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DECRIMINALISING SEX WORK: THE POLITICS OF POLICY MAKING IN SOUTH AFRICA 1994 – 2019

Corey Sarana Spengler-Gathercole

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Why has the decriminalisation of sex work in South Africa stalled?

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I acknowledge that this research is my own work, and where I have used any other authors' work, I have referred to them. I did the fieldwork and data collection personally and I attest and affirm that I have not submitted this information for any degree purposes before to any other university.



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This certificate of English editing confirms that the manuscript below was edited for: grammar, language, logic, flow, conciseness, repetition, meaning and clarity.

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Decriminalising sex work: the politics of policy making in South Africa 1994-2019

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Dedication

Firstly, I dedicate this research to all women in Sex Work who are fighting to survive and to provide for their families.

Secondly, I dedicate this research to Lebogang More, who was interviewed for this research and has since passed away due to Covid-19 complications.

Finally, I dedicate this research to my daughters, Cassandra, and Evelynn, serving as a perpetual reminder that with dedication and resilience, they have the power to accomplish anything they set their minds to.

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In addition, I extend my gratitude to my supervisor, Dr Siphiwe Dube, whose belief in my research and invaluable guidance were instrumental in bringing this thesis to fruition.

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Summary/Abstract

Keywords: African Feminism; Intersectional Feminism; Liberal Feminism; Prostitution; Radical Feminism; Sex Work Policy; South Africa

Sex Work in South Africa

This thesis explores feminist viewpoints regarding sex work, delving into the intricate web of gender, race, and class within the unique historical context of South Africa (SA). Its central mission guiding the research was to identify, investigate, and shed light on the factors that had impeded the commitment and execution of sex work decriminalisation by the African National Congress (ANC) government. With a specific focus on the prevailing legislative framework in SA, which criminalised the sex industry, the thesis scrutinises the rationale behind this approach and assessed its suitability within the SA context. Additionally, it underscores the adverse repercussions of sex industry criminalisation on sex workers while questioning its effectiveness in achieving its intended goal of eradicating the sex work sector.

Through a feminist lens, this research journey unraveled several root causes of the stagnation in SA's sex worker policy reforms. It explored the intricate dynamics of policy change, unveiling the stumbling blocks that hindered progress in the realm of sex worker policy. Given SA's distinctive historical landscape, characterised by a complex history of apartheid and racial inequality, the thesis argued that comprehending sex work in SA necessitated an examination of its inextricable connection to the country's socio-economic conditions. Moreover, the thesis conducts a comparative analysis of legislative frameworks in other countries where different approaches to sex work regulation had been adopted. Foucault's theory on the regulation of the body provides an invaluable framework for understanding the power dynamics at play within the context of sex work. It illuminates how the criminalisation of sex work was intertwined with exerting control over the female body, aligning with Foucauldian principles. The thesis investigates how these power dynamics sought to render those involved in sex work submissive, echoing traditional perspectives on body commodification.

Drawing upon the history of SA and its tumultuous past, including the legacies of apartheid and the enduring effects of racial discrimination, this thesis contended that sex work in SA cannot be fully understood without considering its historical and socio-economic dimensions. It delves into the nuances of sex work policies in various countries, exploring models such as full decriminalisation, partial decriminalisation, and legalisation through both a feminist and Foucauldian lens. By examining these diverse approaches and their outcomes, the thesis provides valuable insights into the complex landscape of sex work regulation. As a comprehensive contribution to the study of existing legislative paradigms, this thesis addresses the pivotal question: *"Why has the decriminalisation of sex work stalled in SA?"* This inquiry gave insights into the complexities of policy change, the root causes of policy delays, and potential avenues for reforming sex work policy, all while considering the broader global context of sex work legislation and the implications of feminist and Foucauldian perspectives.

Acronyms

ACMS - African Centre for Migration and Society
AFLA – Africa Legal Aid
AIDS – Acquired Immune Deficiency Syndrome
ANC- African National Congress
ANCWL – African National Congress Women League
ART - Anti-Retroviral Treatment
ARVs - Antiretroviral Drugs
AU – African Union
BCEA - Basic Conditions of Employment Act
BT – Business Trust
CALS – Centre for Applied Legal Studies
CATW - Coalition against Trafficking in Women
CCT – Constitutional Court
CEDAW- Convention on the Elimination of all Forms of Discrimination against Women (UN Treaty, 1979)
CEO- Chief Executive Officer
CGE – Commission for Gender Equality
CSI – Corporate Social Responsibility
CSVR- The Centre for the Study of Violence and Reconciliation
DA – Democratic Alliance
DIRCO - Department of International Relations and Cooperation
DOH – Department of Health
DOJ – Department of Justice
DOJ&CD - Department of Justice and Constitutional Development
DTI - The Department of Trade and Industry
DWYPD - The Department of Women, Children and People with Disabilities
ECOWAS- The Economic Community of West Africa States
EFF – Economic Freedom Fighters
ERAP – Emerging Response Action Plan on Gender-Based Violence and Femicide
EU- European Union
FEWTRAW - The Federation of Transvaal Women
FSW – Female Sex Workers
GAATW – The Global Alliance Against Traffic in Women
GBV- Gender-Based Violence
GBVF – Gender-Based Violence and Femicide
GCB – General Council of the Bar
GEAR – The Growth, Employment and Redistribution Policy
GFP – Gender Focal Points
GPL – Gauteng Provincial Legislature

GREAT - Global Resources Epicentre Against Trafficking
HIV - Human Immunodeficiency Virus
HRC - Human Rights Commission
HRW - Human Rights Watch
LRA – Labour Relations Act
IFP- Inkatha Freedom Party
ILO - International Labour Organisation
ISS- Institute for Security Studies
JHB – Johannesburg
LGBTIQA+ - Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, and Asexual,
MRC- Medical Research Council
MP – Members of Parliament
MPL – Member of the Provincial Legislature
MPWC - Multi-party women's caucus
NA – National Assembly
NCOP - National Council of Provinces
NDP – National Development Plan 2030
NFN- National Freedom Network
NGM – National Gender Machinery
NP – National Party
NPA – National Prosecuting Authority
NGO – Non-Government Organisation
NOW - The Natal Organisation of Women
NPO – Non-Profit Organisation
NSP- National Strategic Plan
NSWP - Global Network of Sex Workers Projects
NZ – New Zealand
OAU - Organisation of African Unity
OCPOL - Gauteng Legislature's Oversight Committee on the Office of The Premier & The Legislature
OSF - Open Society Foundation
OSW - Office of the Status of Women
JMS – Parliamentary Joint Monitoring Committee on the improvement of the quality of life and status of women
PEP - Post-Exposure Prophylaxis
PEPFAR - US President's Emergency Plan for AIDS Relief
PMB - Private Members Bill
PMG – Parliamentary Monitoring Group
PMPWC - Parliamentary Multi-party women's caucus
POWA- People Opposing Women Abuse
RDP - Reconstruction and Development Programme
PhD- Doctor of Philosophy

RHI - Reproductive Health and HIV Institute
PRA – Prostitution Reform Act 2003 (New Zealand)
PTSD – Post-Traumatic Distress Disorder
SA – South Africa
SADC- Southern African Development Community
SAHMS – South African Health Monitoring Survey
SAHR – South African Health Review
SALRC- South African Law Reform Commission
SANAC- The South African National AIDS Council
SAP – South African Police
SAPS – South African Police Services
SDG – Sustainable Development Goals
SOP - Standard Operating Procedures
STDs – Sexually Transmitted Diseases
STIs - Sexually Transmitted Infections
STOP- Stop Trafficking of People
SWEAT- Sex Workers Education and Advocacy Taskforce.
SWP - Sex Worker Plan
TA – Thematic Analysis
TB - Tuberculosis
TCB – Traditional Courts Bill
TOR – Terms of reference
TSR – Transactional Sexual Relationships
VAW- Violence against Women
UIF – Unemployment Insurance Fund
UN- United Nations
UNAIDS – Joint United Nations Programme on HIV/AIDS
UNICEF - United Nations International Children's Emergency Fund
UNIFEM - United National Development Fund for Women
UNISA- University of South Africa
US – United States
UWO - United Women's Organisation
VD - Venereal Disease
WHO – World Health Organisation
WNC - Women's National Coalition
WRHI- Wits Reproductive Health and HIV Institute

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Chapter 1: Introduction

1.0 Introduction[1]

In South Africa (SA), prostitution, or sex work, encompassing activities such as selling sex, brothel keeping, and living off the proceeds of sex, has remained prohibited since the inception of the Sexual Offences Act in 1957. Subsequent amendments were introduced through the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, triggered by the Constitutional Court (CCT) S vs. Jordan and others case that criminalised the act of purchasing sex. This historical backdrop reveals a legacy of stringent laws governing sexual relations in the country. During the apartheid era, the Immorality Amendment Act 21 of 1950 forbade extramarital sex between individuals of different racial backgrounds and same-sex relations. This was later succeeded by the Sexual Offences Act in 1957, with the most recent iteration being the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which also encompasses the criminalisation of clients and the sex industry. Post-1994, the constitutionality and legality of the criminalisation of sex work have become subjects of scrutiny. The issue of sex workers' rights has come to the forefront, with discussions occurring within the CCT and oversight bodies such as the Commission for Gender Equality (CGE), as underscored by Spies (2021:329). There is a growing recognition of the necessity for a comprehensive approach that takes into account the diverse contexts in which sex is exchanged, particularly considering the circumstances of marginalised and economically disadvantaged sex workers.

Gardner (2009:329) observes how sex work is a contentious issue because it "raises complex moral and social questions." These questions alone do not give the answers as to why the government has not decriminalised sex work. Gardener (2009:329) further explains how sex work can be construed as a form of slavery and an extension of male domination over women. Indeed, sex work goes against "Western society's view of the family" (Silver, 1993:3), implying that women should be monogamously married to men and have children. Owing to this and the perceived private nature of sex work, it is difficult for many to grapple with a woman's choice to be a sex worker. By "talking about sex work as work," there is a need to deal with the complexities of what it means for a woman herself to be the commodity being sold (Dlamini and Shackleton, 2016:73). The issue of sex work is still up for debate today, and it has expanded to include the fact that it involves violence against women (VAW) and that no woman would voluntarily enter such an industry. The connections between sex work and VAW significantly impact how sex work is perceived in society and dealt with politically. Simultaneously the question needs to be asked whether changing the legal

[1] A journal article was published in 2022, based on content from this thesis, Spengler-Gathercole, C., 2022. Feminist advocacy and the push for sex work policy change. Agenda, 36(3), pp.116-129.

status of sex work would also remove the discrimination faced by sex workers and facilitate its acceptance by society. Ryan (2020:91) describes how sex workers have been viewed historically:

> Female sex workers [were] marked as women in transgression. Like women who used drugs, they [were] viewed as bad or fallen, depending on the discourse applied to the wider institution of prostitution. Female sex workers [were] bad women, if they [were] motivated to sell sexual services for self-interest or fallen when prey to malicious male violence and abuse. Be they agents or victims, female sex workers [were] enmeshed in the public imagination with historical, political, and social anxiety related to appropriate norms of femininity, sexuality, and responsible citizenship.

Ryan (2020) highlights how sex workers were historically marked and viewed negatively. Additionally, due to sex work being an emotive topic, there is a lack of general knowledge and a general disregard for sex workers' real-life experiences. However, sex work continues to be a growing industry (Mail and Guardian, 1998), and there is a need to discuss the concerns raised by people working there. Dlamini and Shackleton (2016:73) argue that framing sex work as a form of work confronts uncomfortable truths for those who prefer to "rescue" women by offering alternative forms of employment, like "second-hand clothing sales and beading," instead of engaging in critical discussions about issues related to capital, labour, and gender. The South African Law Reform Commission (SALRC) report (2017:4) outlines two themes which dominated public opinion about sex work. These were the constitutional protection of human rights and the "role of the law in enforcing moral or religious values" (ibid). Sex work emerges from an intricate interplay of social and economic dynamics, encompassing factors such as poverty and inequality. Ranoszek (2020:5) highlights the issue of the "feminisation of poverty in SA," attributing it to factors such as "elevated unemployment rates, restricted educational opportunities, and the dual challenges of childcare responsibilities and persistent gender disparities."

As Gardner (2009:335) elucidates, the criminalisation of sex work has led to its integration into SA's "expanding informal economy," where such occupations are marginalised and not officially recognised as legitimate forms of employment. This expansion of the informal sector, coupled with a heightened consciousness of women's rights, has catalysed a notable transformation in the discourse surrounding sex work in SA. This shift is substantiated by the heightened activism witnessed among non-governmental organisations (NGOs), as documented on the South African National AIDS Council (SANAC) website (accessed in 2016). Despite this, the CCT, in 2002, defended the current legislation, noting that sex work is "associated with social ills, such as violence, child trafficking, and drug abuse" (Thusi, 2015:239). Government bodies, however, believe that sex workers' views must be included in combatting gender-based violence and femicide (GBVF).

Nevertheless, in the context of sex work being criminalised, "organising sex workers to protest injustice, create safe spaces, and support one another is a difficult job" (Dlamini and Shackleton, 2016:70). Some of the organisations which fight for the rights of sex workers in SA include the Sex Worker Advocacy and Education Taskforce (SWEAT), Sisonke Sex Workers Movement, Embrace Dignity, the South African Law Commission, Child Justice Alliance, South African National AIDS Council (SANAC), Commission for Gender Equality (CGE), and the Asijiki Coalition for the Decriminalisation of Sex Work in SA. It has been argued that through the decriminalisation of the sex industry it could assist in reducing some of the social ills associated with the industry. This would be linked to sex workers' increased access to health and educational opportunities, which would also assist in combating the crimes against sex workers.

While decriminalising sex work may not represent a flawless solution to the multifaceted challenges faced by sex workers, including issues such as violence, stigma, limited access to healthcare, susceptibility to sexually transmitted diseases, and the constant fear of legal repercussions, it is a strategy in alignment with the harm reduction theory. Historically applied to benefit drug users, this approach underscores the argument for decriminalisation as the optimal course of action. Rekart (2005:2123) endorses this viewpoint and presents a comprehensive range of harm reduction strategies customised for the sex industry. These strategies encompass vital components like education, empowerment, prevention, care, occupational health and safety, decriminalisation of sex work, and human rights-based approaches. (Rekart, 2005:2123). To bring about substantial enhancements, a combination of interventions have been suggested. These measures include peer education, training in negotiating condom use, safety guidelines for street-based sex workers, the distribution of both male and female condoms, integration of prevention and care efforts, the implementation of occupational health and safety standards for brothels, the formation of self-help groups, and the development of community-based child protection networks (ibid, 2123). While advocating for the decriminalisation of sex work is one vital component, it is imperative to recognise that its success hinges on its integration with these complementary strategies. This multifaceted approach, combining decriminalisation with various supportive measures, is poised to significantly alleviate the hardships endured by sex workers and enhance their overall well-being.

This research delves deep into the intricate dynamics of sex work within institutional frameworks, primarily focusing on its connection to the broader context of policy evolution. It is essential to acknowledge that this study did not entail direct engagement with sex workers due to its institutional orientation. The decision not to interview sex workers was influenced by a confluence of factors, encompassing both ethical considerations as well as the study's focus. On the one hand, there may have been concerns from the Wits ethics committee regarding the legality and vulnerability associated with sex work, prompting caution in

approaching this demographic for interviews. On the other hand, I intentionally chose to focus on organisations and governmental bodies, aiming to explore systemic responses and policies rather than directly focusing on individual experiences within the profession. This dual rationale underscores the complexity and multifaceted nature of my decision-making process when selecting research subjects. However, it is imperative to recognise that alternative research methodologies have been employed within sex work studies. For instance, the African Centre for Migration and Society at the University of the Witwatersrand, Johannesburg, and organisations like SWEAT have undertaken research initiatives that directly involve sex workers, contributing valuable insights to this field. Through interviews and interactions with organisations actively engaged with or supporting sex workers, this research has garnered valuable perspectives that enhance its depth and comprehensiveness. This research particularly hones in on the experiences of "female sex workers" and underscores the critical link between sex work and gender-based violence and femicide (GBVF). The 2020 National Strategic Plan on GBVF underscores GBVF as just one facet of the multifaceted challenges faced by women and children within a societal landscape rife with prevailing patriarchy and chauvinism (Radford, 1992:2). Femicide, a term coined to encapsulate the "misogynist killing of women by men" (Russel, 1992:xi), has been a central theme in this research. Radford (1992:3) aptly characterises femicide as a manifestation of "sexual violence," and the use of the term "femicide" empowers women to articulate their lived experiences. This sexual violence against women (VAW) manifests in various forms, encompassing "rape, sexual harassment, pornography, and physical abuse of women and children," all representing distinct expressions of male sexual violence (Radford, 1992:3). Simultaneously, this broad spectrum of sexual violence endured by women facilitates the analysis of male sexual violence as a pivotal instrument in upholding patriarchy (ibid, 4). Two distinct viewpoints have historically characterised the discourse on sex worker rights. The one aimed at protecting women from sex work and therefore VAW/GBVF. In the UN Declaration on the Elimination of VAW adopted in 1993 (UN Human Rights Office of the Commissioner, 1993), the term VAW is defined as:

> "any act of GBV that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."
>
> (UN Human Rights Office of the Commissioner, 1993)

This definition is utilised to highlight the violence enacted against women. Sex workers, as women, experience violence in line with the definition of VAW given by the UN. This definition also reflects how GBV is violence based on gender and could affect women, transgender men, and gender non-binary people. However, VAW is violence that is enacted explicitly against women. The choice between utilising GBV or VAW hinges on the context and objectives of a given discussion or initiative. GBV is preferred when

inclusivity and recognition of intersecting factors are crucial, as it encompasses violence affecting individuals of all genders. Conversely, VAW is specific to violence experienced by women due to their gender and is suitable for discussions with a gender-focused or legal context. Both terms serve distinct purposes, with GBV emphasising a broader perspective and VAW centering on gender-specific issues. The choice of terminology should therefore align with the goals and nuances of the discourse, ensuring it accurately reflects the scope and focus while considering the preferences of those affected by such violence. Within this thesis the term VAW is utilised in contexts where the violence is specifically enacted against an individual due to them being a woman versus gender which encapsulates all minority groups.

The other side of the debate aims to protect sex worker rights within the context of sex work. Due to two very distinct arguments around sex work, combined with a lack of knowledge about women's experiences in sex work, it has been difficult for either side to understand the opposing views. Dlamini and Shackleton (2016:73) point out that much "complexity in sex work is ignored because it couldn't be neatly placed on either side of the debate." This aligns with binary thinking, which Grose (2016:301) defines as identifying "just two ways to look at the world – my way and the wrong way with no room for compromise, connection or overlap." An inability to understand the opposing views resulting in a stalemate with sex workers stuck in the middle. As there is no agreement on the best way forward, sex workers are not receiving the protections and freedoms they deserve. Binary thinking will be utilised further in the theoretical framework (Chapter 5) concerning the different strands of feminism. This research focuses specifically on issues that affect female sex workers. The investigation aimed to explore sex workers' rights as women's rights in line with feminist research and to create a space to explore the lack of change in legislation regarding an issue that mainly affects women. At the same time, the thesis acknowledges that a change in the legislation governing sex work would also benefit male and transgender sex workers.

1.1 Aims and Objectives of the Research

This research is unequivocally dedicated to dissecting a critical issue: "the politics of policy-making in SA regarding the possible decriminalisation of sex work between 1994 and 2019." Its overarching objective is to meticulously identify and scrutinise the underlying factors responsible for the prolonged hesitation exhibited by the ANC government in executing the much-awaited decriminalisation of sex work. In essence, the central question that this thesis endeavours to unravel is why sex work remains entangled in a web of criminalisation, despite fervent calls from civil society, Chapter 9 institutions, and sex workers themselves advocating for its decriminalisation. This perplexing situation persists amidst the shifting political landscape in SA, which ostensibly appears ripe for such a transformative change. One pivotal revelation from this research is the profound schism within civil society.

On the one hand, fervent proponents are clamouring for the unequivocal decriminalisation of sex work, while on the other, a faction still espouses the notion of continued criminalisation or the implementation of a partial decriminalisation model akin to the equality model. However, it is noteworthy that a substantial consensus exists among these diverse voices, concurring that the perpetuation of sex work's criminalisation is not in the best interests of sex workers. This research meticulously probes these findings, underscoring the alarming lack of consensus regarding the optimal approach to addressing sex work in SA. This paucity of consensus, in turn, contributes to a stark disconnect in charting the path forward to address the myriad of challenges faced by sex workers and their recognition within the political arena. The aim is to bridge the gap between theory (historical context) and real-world perspectives (interviews) to provide a more holistic understanding of the ANC's inconsistency in its legislative stance towards sex work. This research aims to delve into the historical context, highlight the gaps in existing literature and incorporate real-world perspectives to offer innovative insights into sex work in SA.

In answering this question, the research was guided by the following sub-questions:

1. How has the legislation around sex work evolved in SA to form the current legislation?
2. How do the political approaches adopted by other countries compare with the political approaches taken in SA?
3. Which of these approaches could potentially be applied in SA?
4. What have been the obstacles to changing the sex-worker policy?
5. What still needs to be done to change the legal framework around sex work in SA?
6. What form should this change take, linked to the unique context of SA?
7. Is decriminalisation the best policy approach for SA?

In achieving its aims, this research employs document analysis to delve into the evolution of legislation surrounding sex work in SA, offering a comprehensive historical perspective on the subject. The exploration encompasses assessing how legislation impacts sex workers compared to alternative legislative options. Furthermore, this study compares case studies to draw parallels between the approaches adopted in other countries and the political trajectory taken in SA, to foster the decriminalisation of sex work. It critically reflects on the historical barriers obstructing policy change within sex work, dissecting the prerequisites for legislative transformation, all while considering the unique South African context. To glean insights into these dynamics, semi-structured interviews were conducted with Members (MPLs) of the Gauteng Provincial Legislature (GPL), non-governmental organisations (NGOs), Chapter 9 Institutions, research institutes, and consultants collaborating with sex-work NGOs or Chapter 9 institutions. This thesis scrutinises the reasons

behind the delay in altering the sex-work policy in SA, particularly the legislative framework of decriminalisation as a viable alternative. This research's significance lies in its role in shedding light on the political dynamics in SA, directly influencing policy shifts within the context of the evolving landscape of sex worker rights worldwide. Additionally, it scrutinises the stalled progress of decriminalisation and the factors influencing its potential implementation, contributing substantively to the discourse on the comparative politics of sex-work regulation.

1.2 Methodology Overview

To achieve the aims and objectives of this research, as detailed above, a feminist lens is applied using feminist epistemology through document analysis and semi-structured interviews to generate the research data. The thesis utilises document analysis to outline the history of the legislative framework in SA. The semi-structured interviews were used to generate meaningful data addressing the research aims. The first interviews were conducted with Members (MPLs) of the Gauteng Provincial Legislature (GPL) to clarify policy creation and change, their views around sex work, the best policy framework, and obstacles to change in the sex work policy. These interviews emphasised how opinions around sex work had influenced the legislative framework and the lack of commitment to changing the policy. Interviews were then conducted with non-governmental organisations (NGOs), Chapter 9 institutions, research institutes, and consultants working with sex-work NGOs or Chapter 9 institutions (referred to as organisations going forward). These interviews further provided analytical data for the thesis' arguments regarding the value of decriminalisation. The interviews with various organisations delved into a multifaceted exploration of their perspectives on sex work, its prevalence, and the factors influencing women's entry into the sex industry.

In addition, the discussion encompassed a thorough examination of SA's existing legislation about sex work and their recommendations for an optimal regulatory framework. A historical analysis of the evolution of the sex-work policy in SA since 1994 was also a focal point, shedding light on these organisations' roles in the policy-shaping process and elucidating the prerequisites for enacting policy reforms. Particular attention was dedicated to decriminalisation, explicitly focusing on the alternative approach of partial decriminalisation within sex work. These comprehensive interviews were conducted to gain deeper insights into several key dimensions, including societal attitudes toward sex work, the intricacies of the sex work industry in SA, the spectrum of potential legislative frameworks, the ideal policy framework, the underlying causes of delays in policy change, and the essential steps needed to instigate transformative change. The interviews conducted in this study not only shed light on potential factors contributing to the ANC's apparent reluctance to commit to the decriminalisation of sex work but also illuminated how the challenges faced by this policy may be distinct from those encountered in reforming other policies since 1994.

This understanding is pivotal as it provides a nuanced awareness of the prerequisites for instigating meaningful change. Furthermore, the interviews critically examined whether the persistent lack of change signifies that the criminalisation of sex work remains the most effective approach to addressing the complexities of the sex industry in SA, or if a novel, tailor-made legislative framework is imperative. By engaging with a diverse array of civil society organisations actively involved with sex workers or in research on sex work, this research aimed to comprehensively scrutinise every facet of the ongoing debate surrounding the optimal legislative framework for sex work in SA. Doing so strengthens the groundwork for a more informed and incisive discussion on the path forward in addressing this complex issue.

The intentional portrayal of the ANC as the main cause of the country's political delays in implementing legislation pertaining to sex work in SA reflects the prevailing political climate. Although there are other departments of government, such as the legislative and executive, the ANC has been the ruling party in SA since the inception of the democratic era in the country. Because of its stronghold in the political system, the ANC is ultimately responsible for making choices about legislation and policy. This research examined the internal dynamics, political philosophies, and decision-making procedures inside the ANC that contributed to the impasse regarding policy reform on sex work. This frame made it possible to look more closely at it. This approach enabled a more focused analysis of the elements that contributed to policy stagnation, including ideological disagreements, internal party politics, and the ANC's reluctance to change. Furthermore, by focusing on the ANC, the study was able to investigate the ways in which the party's policies and decision-making were influenced by larger cultural views and historical legacies, offering a thorough knowledge of the complexity of sex work legislation in SA.

The choice to interview Members of the Gauteng Provincial Legislature (GPL) instead of those from another province or the national legislature was motivated by strategic goals of obtaining a more comprehensive knowledge of the dynamics of the policy pertaining to sex work in SA. Gauteng is positioned as a major hub of governance and policy discourse because of its vital role as the nation's economic and political centre, as well as its diversified population and metropolitan nature. The research's examination of legislative procedures and decision-making dynamics was enhanced by the opportunity to discuss both regional viewpoints and more general national patterns in policymaking that came from interacting with politicians in Gauteng. Gauteng was given priority over other regions, allowing for a more thorough analysis of regional dynamics while acknowledging the importance of the national legislature in determining federal policy. Engaging with Gauteng legislators provided a valuable opportunity to explore both localised perspectives and broader national trends in policymaking, thereby enriching the research's analysis of legislative processes and decision-making dynamics. While recognising the significance of the national

legislature in shaping federal policy, prioritising Gauteng allowed for a more in-depth examination of regional dynamics and their implications for national policy frameworks.

1.3 The Researcher's Background[2]

As the author and researcher of this doctoral thesis, I assume the role of a middle-class white woman in her thirties during the research endeavour. It is worth noting that my upbringing occurred within a socio-economically disadvantaged setting in SA. Gender-related issues and the pervasive scourge of sexual violence have consistently been central themes in my academic journey, dating back to my Master's research report. This culminated in 2014 and persists through this doctoral thesis. Furthermore, my engagement as a gender activist, which included voluntary contributions in the field of GBV within SA, entailed responsibilities such as facilitating a support group for survivors of sexual assault. My ardent dedication to defending women's rights in society is intrinsically tied to my scholarly research on this topic. The lack of legal safeguards for sex workers, a group of underprivileged women in SA, became glaringly obvious. Consequently, despite aspirations to eliminate the sex industry through criminalisation, this objective remained elusive. Hence, a paradigm shift was necessitated within the government's approach, transitioning from endeavours to eradicate the industry towards safeguarding the rights and well-being of those operating within it. This research's overarching goal was to underscore this shift's imperative and proffer potential avenues for its realisation. The aspiration rested upon this research to illuminate the plight of individuals entrenched in the sex industry, thereby informing the government's actions towards affording them the requisite protection to uphold their fundamental human rights.

1.4 Overview of the Thesis

The thesis was broken into chapters that addressed the overall research question: *"Why has the decriminalisation of sex work in SA stalled?"* A breakdown of the chapters is provided below.

Chapter 1: Introduction – This chapter serves as an introductory framework for the research, encompassing its core purpose, objectives, and the underlying significance that propels the study forward. It also offers a concise overview of the research methodology, outlines the researcher's background, and provides a fundamental glimpse into the thesis's structure and content.

Chapter 2: Conceptual Framework – This chapter endeavours to establish a robust conceptual framework for the thesis. It encompasses several key elements, including elucidating essential definitions and defining

[2] The researcher refers to the author of this current research report.

the different legislative frameworks. It also explores the governance of sex work globally through illustrative case studies.

Chapter 3: Literature Review: Historical Context – This chapter thoroughly explores SA's historical context concerning the development of sex work policies. It encompasses various facets, including the history of sex work, women's political involvement, the socio-economic landscape of SA, and the prevalence of sex work within the country. Furthermore, the chapter conducts an in-depth analysis of the historical evolution of sex work policies in SA. It does this through insights into the specific legislative framework used to govern sex work in the country. This involves tracing its historical progression since 1994, drawing comparisons with legislative approaches applied to contentious issues, and examining the legal framework surrounding the sex industry.

Chapter 4: Literature Review: Previous Research on Sex Work – This chapter comprehensively reviews previous research, categorised into two main themes. Firstly, it examines government-sanctioned research on adult prostitution. Meaning research which was authorised, funded, and conducted by various government departments. Secondly, it explores academic research focused on the politics of decriminalising sex work in SA, further breaking down this theme into subtopics, including research on sex work, HIV, stigma, stereotypes, and sex work-related trafficking. Throughout this examination, the chapter underscores the pivotal role of research in dispelling myths, guiding policy decisions, and challenging deeply ingrained biases within the intricate landscape of the sex industry. It strongly advocates for the importance of evidence-based research as the linchpin for fostering a more enlightened, equitable, and well-informed approach to regulating sex work in SA.

Chapter 5: Theoretical Framework and Methodology - Giving a theoretical framework this chapter delves into the various feminist perspectives on sex work, with a specific focus on their associations with different policy approaches. It dissects the feminist viewpoints into liberal and radical categories, offering insights into their varying stances on sex work. Additionally, this section explores African feminism and the intricate interplay of gender, race, and class within sex work, drawing from SA's history of racial disparities. Furthermore, the chapter delves into applying Feminist Foucauldian theory in the context of the ongoing research. The latter part of this chapter provides an extensive overview of the research methodology employed, predominantly relying on qualitative research methods. These methods encompass document analysis to trace the historical trajectory of sex work policy in SA and semi-structured interviews conducted with Gauteng Provincial Legislature (GPL) members and professionals affiliated with NGOs, Chapter 9 institutions, research institutes, and consultants involved in sex work-related NGOs. The chapter also

addresses the ethical considerations inherent in this research and outlines the data analysis technique (thematic analysis or TA).

Chapter 6: Data Analysis and Interpretation: Interviews with MPLs from GPL – This chapter delves into the responses provided by the interviewees, with a particular focus on addressing the central research question: "Why has the decriminalisation of sex work in SA stalled?" The chapter provides insights into the Members of the Provincial Legislature's (MPLs) perspectives on how policies are developed and modified in SA. Crucially, this chapter sheds light on the MPLs' attitudes and perceptions regarding sex work, offering valuable insights into how those within the political arena perceive both the practice of sex work and the individuals engaged in it. Furthermore, it elucidates the MPLs' preferred policy approaches, allowing for a comprehensive understanding of the diverse viewpoints regarding the most effective means of regulating sex work in SA. Additionally, the chapter emphasises exploring the dynamics of changes within the sex worker policy framework, dissecting the underlying reasons for the existing policy stagnation, and presenting recommendations for potential pathways toward policy transformation. Notably, all the information presented in this chapter is derived directly from the MPL interviews, offering a unique political perspective. These insights are of paramount importance, as MPLs wield influence in shaping and reforming policies, thus significantly impacting the political discourse surrounding sex work and sex workers in SA.

Chapter 7: Data Analysis and Interpretation: Interviews with Organisations – This chapter delves into the wealth of data garnered through interviews conducted with various stakeholders, including NGOs, Chapter 9 institutions, research institutes, and consultants closely associated with sex-work NGOs (organisations). These interviews serve as the primary source of information, offering profound insights into the multifaceted landscape of sex work in SA. It navigates through the responses obtained from these interviews, with a primary objective: to address the overarching research question—"Why has the decriminalisation of sex work in SA encountered impediments?" To achieve this, the chapter delves into several crucial dimensions. Firstly, it comprehensively examines the sex industry, exploring its intricacies and nuances. It scrutinises the scope and prevalence of sex work, delving into the factors underpinning individuals' decisions to enter this profession. Additionally, the chapter elucidates the perspectives expressed by interviewees regarding the agency levels within the sex industry and their preferred approaches to legislative frameworks governing it. In essence, this chapter serves as an illuminating exploration of the empirical data garnered from interviews, offering valuable insights into the intricacies of the sex work landscape in SA and the factors contributing to the existing policy stalemate.

Chapter 8: Data Analysis and Interpretation – Interviews with Organisations: Deciphering the Dynamics of Change and Transition- This chapter embarks on a comprehensive journey through the rich tapestry of responses from interviews with various organisations. The paramount question at the heart of our exploration pertains to the prospect of change or transition within the sex-worker policy framework. Drawing upon the perspectives and insights shared by these interviewees, this chapter meticulously delineates many reasons accounting for the persistent inertia in sex-worker policy evolution since the dawn of democracy in 1994. Furthermore, it sheds light on our interviewees' pivotal considerations and essential prerequisites, as they contemplate policy transformation. In essence, this chapter serves as an illuminating voyage through our interviewees' collective wisdom and discernment, offering profound insights into the complexities surrounding sex-worker policy development and change.

Chapter 9: Conclusion – This chapter serves as a comprehensive synthesis of the research findings. It encompasses a condensed overview of the interviews, elucidating the impediments obstructing policy change, while concurrently illuminating a spectrum of strategies aimed at catalysing a transformation in the sex worker policy. Furthermore, this chapter extends its purview to proffer recommendations tailored to resonate with pertinent stakeholders, encompassing academia and politics. This chapter also acknowledges the research's limitations.

1.5 Conclusion

This chapter serves as an introduction to the intricate terrain of policy change concerning sex work in SA. Within this context, we delineate pivotal considerations to construct a robust foundation for our research. We elucidate the overarching aims and objectives, which are intrinsically tied to the exhaustive exploration of the factors impeding the commitment and implementation of sex work decriminalisation by the ANC government. In the forthcoming chapter, we transition to a more targeted approach, delving deeply into the research's conceptual framework. This phase entails an in-depth exploration of key definitions paramount in any discourse surrounding sex work. Additionally, we explore the diverse legislative frameworks that resonate with various global case studies, enriching our understanding of the subject.

Chapter 2: Conceptual Framework

2.0 Introduction

This chapter serves as a navigational guide for the thesis, designed to illuminate the path ahead. It accomplishes this by elucidating crucial definitions that will serve as guiding stars, steering the arguments and evidence within the forthcoming chapters. Through this, it offers concise glimpses into the overarching themes and plays a pivotal role in spotlighting the foundational concepts utilised throughout this thesis. Moreover, this chapter extends its reach by furnishing an expansive overview of diverse global case studies, thereby shedding light on the myriad of approaches utilsed to govern sex work worldwide. Subsequently, it transitions to an exploration of the South African context, providing a comprehensive examination of the nation's legislative landscape as it pertains to sex work.

2.1 Key Definitions

2.1.1. Distinction Between Sex Work and Prostitution

In documenting various discourses concerning sex work, it becomes imperative to delve into the nuances that distinguish between the terms "sex work" and "prostitution." The significance of this distinction transcends mere semantics; it extends to the very core of how society perceives and comprehends the sex industry. This differentiation hinges on whether the sex industry is portrayed as a realm characterised by oppression or, conversely, as a legitimate avenue for pursuing a career and earning a livelihood. The terminological choice, in essence, becomes a lens through which we view and interpret the sex industry. When we label it as "prostitution," it often carries connotations of exploitation, victimisation, and societal disapproval. This framing tends to emphasise the negative aspects of sex work, perpetuating stigmatisation, and further marginalising those engaged in the profession. On the other hand, the term "sex work" positions it as a form of employment that, like any other, holds the potential for autonomy, agency, and economic sustainability. This distinction is not merely a matter of semantics but a powerful determinant of how individuals, policymakers, and society approach the subject. It shapes the policies crafted, the attitudes held, and the rights conferred upon those involved in the sex industry. Consequently, in understanding and analysing the discourse surrounding sex work, carefully considering these terminological choices is paramount, as they carry profound implications for the rights, dignity, and well-being of those operating within this complex and multifaceted industry.

The CGE (2013:2) distinguish between prostitution and sex work, noting that they are not the same concept. Prostitution is defined as "coerced sex work where women have no choice in the matter and [is] …

demeaning and that women are victims" (CGE, 2013:2). By contrast, sex work is described as an act that "indicates agency and therefore allows for women's decisions in capitalist systems" (CGE, 2013:2). This term is utilised to remove the stigma that prostitution imposes on women and stresses a woman's agency. The Women's Legal Centre (2012:5) believes that using the term sex work does "not change the stigma that sex workers face, but it shows respect for the dignity and human rights of people who exchange sexual services for money." Dlamini and Shackleton (2016:73) report that "women engaged in sex work [can] earn up to three times more than other available forms of employment." They emphasise that sex work provides "more favourable working hours, increased autonomy, and, in certain instances, improved working conditions as well" (ibid). Edlunda and Korn (2002:181-182) use the word prostitution but recognise that it is a "low skill, labour-intensive, female and well paid" job. They explain how it is a multibillion-dollar business employing millions of women worldwide. In a more neutral definition, Deady (2011:522) explains how the term prostitute refers to an individual who "exchanges sexual acts for money."

Dworkin (1993:2), on the other hand, characterises prostitution not as a mere concept but as "the mouth, the vagina, the rectum, typically penetrated by a penis, occasionally by hands, or sometimes objects, by one man and then another, and then another, and so forth." Dworkin (1993) underscores women's unpaid labour and how calling something sex work takes away from its underlying principle as something that still privileges and benefits men at the cost of women (even though there was supposed agency by naming it sex work). This is an important argument to consider, given SA's socio-economic context. Decriminalisation is envisioned to give sex workers the ability to action their labour rights by joining a union. However, unions in SA are not as effective as they have been and the protection offered can be questioned (Cloete, 2021) in a context where in the neoliberal regime, profits are prioritised. While history has shown that while unions ensure workers' rights, they do not monitor the implementation of these rights (ibid). On the other hand, by calling it prostitution, we are calling a spade a spade and could better highlight the violence, lack of rights, and other associated problems that afflict specifically women as an underclass serving men primarily. However, this language of religion and conservative civil society tramples on rights and agency in the name of social good. Using this terminology also removes the focus from selling sex as work, restricting it to being defined as exploitation. Therefore, the language used to define the sale of sex gives it a particular meaning concerning the need to protect women in the sex industry and highlights the type of protection needed. For example, sex work implies a need for labour-related rights to protect women as it is a form of work. Prostitution, on the other hand, implies the need for a different type of protection as it involves violence and force. The terminology used to define the industry is often in line with supporting a particular legislative model to govern the sex industry.

In navigating the complex terrain of defining the sale of sex, this thesis has adopted the terminologies put forth by the CGE in 2013. The deliberate choice to utilise the term "sex work" is intended to underscore the agency associated with individuals who voluntarily engage in the sex industry. Conversely, the term "prostitution" conveys situations characterised by coercion or force. It is important to acknowledge the inherent complexities associated with both terminologies, particularly in the context of potential decriminalisation. The theory selection aligns harmoniously with the sources referenced throughout this work. Notably, the term "prostitution" is officially recognised within governmental discourse, notably by bodies such as the South African Law Reform Commission (SALRC).[3] This consistency in terminology usage lends credence to the choice made in this thesis. Furthermore, it is imperative to recognise the distinction between Western and African understandings when delving into sex work. For instance, Kruger (2004:143) delineates "traditional African-style prostitution" as a form where emotional affection plays a pivotal role. Conversely, Kruger (2004:143) aptly observes that "Western-style impersonal prostitution" encapsulates what is commonly understood as "prostitution" within the contemporary SA context. This terminological precision serves as a foundational step in comprehending the multifaceted nuances of sex work, ensuring that our discourse accurately reflects the lived experiences and diverse realities of those involved in this industry while remaining in alignment with the legal and theoretical frameworks underpinning this research.

2.1.2 Trafficking

In contrast to sex work, the forced sale of sex is known as trafficking. Butcher (2003:1983) defines trafficking as coercion, forced labour and slavery. While most trafficking involves women and children, it is not limited to the sex industry. SA signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on 14 December 2000 and ratified it on 20 February 2004 (UN, Treaty Series, 2000).[4] This document supplements the UN's Convention against Transnational Organised Crime. UNAIDS (2012:5) defines trafficking as follows:

> Trafficking, which represents the denial of virtually all human rights, involves the recruitment, transportation, transfer, harbouring or receipt of persons, using threat or use of force or other forms of coercion, abduction, or fraud, of deception, of abuse of power… or the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for exploitation.
>
> (UNAIDS, 2012:5)

[3] The definition of sex work by the Joint United Nations Programme on HIV/AIDS (UNAIDS, 2012:3) is: "female, male and transgender adults and young people who receive money or goods in exchange for sexual services, either regularly or occasionally." This definition of sex work by UNAIDS have been challenged, for example, by Richter (2012: 63), who states that the use of the word youth is open to interpretation; the other terms – such as sexual services and regular or occasional – were also ambiguous. This point makes the definition unsuitable in a study analysing sex work.

[4] The United Nations is an international entity established in 1945 following "World War II by 51 nations" dedicated to upholding global "peace and security," fostering amicable relationships between countries, and advancing social development, improved living conditions, and human rights (UN, 2015).

The UN protocol in Article 3(a) similarly defines trafficking as follows:

> (a) The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude, or the removal of organs. The consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant.
>
> (UN, 2000, Article 3(a, b):2)

By signing the UN Protocol, SA committed to dealing with trafficking in SA. South African law in line with this commitment, defines trafficking in the Prevention and Combating of Trafficking in Persons Act No. 7 of 2013 as:

> 4. (1) Any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases, or receives another person within or across the borders of the Republic, by means of—
> (a) A threat of harm.
> (b) The threat or use of force or other forms of coercion.
> (c) The abuse of vulnerability.
> (d) Fraud.
> (e) Deception.
> (f) Abduction.
> (g) Kidnapping.
> (h) The abuse of power.
> (i) The direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
> (j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons.
>
> (Prevention and Combating of Trafficking in Persons Act No.7 of 2013)

The delineation of trafficking, as defined in the Prevention and Combating of Trafficking in Persons Act (Act No. 7, 2013), offers a pivotal perspective in this thesis. This definition fundamentally characterises trafficking as the commodification of a person, where one individual receives payment for procuring another against their will. It encapsulates the grim reality of individuals being forcibly sold and deprived of their fundamental human rights. In contrast, sex work entails consensual sexual transactions for monetary gain, signifying individuals willingly offering their services in exchange for compensation. Here, they are essentially selling their labour and agency. The criticality of this definition cannot be overstated, as it serves as a paramount tool in demarcating the distinctions between trafficking and sex work. At its core, the crux of this distinction hinges upon the presence or absence of consent, coupled with the pivotal question of who ultimately benefits from the transaction. This elucidation is crucial in navigating the convoluted landscape where the lines between sex work and trafficking are often blurred. The prevailing lack of comprehension has perpetuated the misconception that sex work is synonymous with trafficking, further compounded by legal frameworks that have, at times, contributed to the obfuscation of these crucial distinctions. By anchoring our

discourse in this precise definition, we aim to disentangle the complexities surrounding these two intertwined issues, thereby contributing to a more nuanced understanding of the challenges and rights associated with both sex work and the fight against human trafficking.

2.1.3 Consent / Rape / Agency / Free Will

Rape, characterised by non-consensual and unlawful sexual activity, stands in stark contrast to sex work, a form of labour involving consensual sexual exchanges. It is crucial to emphasise the differences between them since they include quite diverse dynamics. In this environment, it is crucial to address concerns like human trafficking, exploitation, safety, and the autonomy and rights of those working in the sex business. Contrary to rape, which is intrinsically non-consensual, sex work functions inside a complicated system were people trade money and goods for closeness. At the crux of this distinction lies the pivotal concept of "consent." Consent emerges as the linchpin that sets sex work apart from trafficking and rape. Rape, by definition, involves sexual intercourse devoid of consent. It has been posited that sex work can be likened to "paid rape," as articulated by Comte (2014:198). Consequently, comprehending the nuances of consent becomes central to understanding the intricacies of the sex industry. This raises the fundamental question of what constitutes consent, particularly within an environment where the primary motivation for sexual interactions is monetary. To navigate this terrain, it is imperative to turn to legal definitions. The Criminal Law (Sexual Offences and Related Matters) Amendment Act (Act No. 32, 2007:6), Chapter 1(2), defines consent as "voluntary or uncoerced agreement." This legal framework serves as a crucial reference point in our exploration, shedding light on the boundaries of consent in sex work. By anchoring our discourse in this precise definition, we gain a deeper understanding of the multifaceted relationship between consent, sex work, trafficking, and rape, thereby enhancing our capacity to address the complexities and rights associated with the sex industry. The Criminal Law (Sexual Offences and Related Matters) Amendment (Act No 32, 2007) defines rape and compelled rape as:

> **Rape**
> 3. Any person ("A") who unlawfully and intentionally commits an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of rape.
>
> **Compelled rape**
> 4. Any person ("A") who unlawfully and intentionally compels a third person ("C"), without the consent of C, to commit an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of compelled rape.

The South African Law Reform Commission (SALRC, 2017:11), in their report on adult prostitution, uses the term choice when referring to issues of consent. The Commission uses the words "choose" or "choice", noting that it refers to "the choice exercised at the time of the specific transaction as opposed to the reason for entering prostitution, which may not have been a result of a voluntary choice" (SALRC, 2017:11).

This clarification brings to the forefront that a sex worker needs to give consent for each sexual transaction. Consensual sex is, therefore, not rape. The issues around consent and choice bring up issues of agency and a sex worker's ability to choose to join the sex industry. Agency, in this instance, is the ability of an individual to make their own choices. MacKinnon (2011a:273) defines agency as "freely choosing, actively empowering, deciding among life chances, asserting oneself in a feisty fashion, fighting back against forces of femininity, resisting moralistic stereotypes." Women choosing to partake in the sex industry is an example of this type of agency. Fuchs (2001:26) defines agency as something that is "part of human nature" and that involves "consciousness, free will, and reflexivity." As an application of agency, free will means an individual can make choices without constraint. As defined by Pecorino (2001:348), "free will is the ability of agents to make choices unconstrained by certain factors."

Herndl and Licona (2012:3) define agency as "the conjunction of a set of social and subjective relations that constitute the possibility of action." Herndl and Licona (2012) analyse agency in relation to its relationship with authority. They argue that agency is "in fact not 'held' at all; people and groups are positioned differently within it" (Herndl and Licona, 2012:7). Bandura (2018:130-131) defines agency as it relates to "social cognitive theory." Therefore, agency involves forethought, self-reactiveness, and self-reflectiveness. Forethought is the ability to "transcend the dictates of [an] immediate environment and to shape and regulate the present to realise desired futures" (ibid, 131). Self-reactiveness is the ability of "individuals to manage their behaviours by self-sanctions within a self-governing system," and in turn this ensures that "behaviour measures to their adopted standards" (Bandura, 2018:131). Self-reflectiveness takes self-reactiveness further by incorporating the ability of individuals to be "self-examiners of their functioning" (ibid, 131). These agentic properties shape individual actions in relation to authority. In the case of sex work, the state has set the standard of how sex work should be defined through its criminalisation.

Feldman (2017:131) defines agency similarly, as the "metacognitive capability to reflect on oneself and the adequacy of one's capabilities, thoughts and actions," which he views as the "most distinctly human core property of agency." In the same breath, he divides agency into "individual, proxy and collective". Individual refers to what is in an individual's control. Proxy is linked to not having "control over social conditions and institutional practices that affect everyday lives." Under proxy agency, the reliance is on "influencing others to act on their behalf." Bandura (2018:131) explains how proxy agency is utilised by "people [not having] direct control over social conditions and institutional practices that affect their everyday lives." To achieve their goals, they "rely on socially mediated proxy agency." An example of proxy agency is politicians in the form of local counsellors, and Members of Legislatures and Parliament. Individuals use proxy power to "obtain the outcomes they desired" (ibid, 131). Collective agency is where "knowledge, skills

and resources" are pooled together and used to "act as a collective to shape their future." In other words, "unity of effort for common purpose" (Feldman, 2017:131). For Herndl and Licona (2012:13) "agent function" is the "moment or opportunity when and where action is possible." An intersection which "offers only a potential for action, an opportunity." On the other hand, constrained agency develops due to the "relationship between agentive opportunity and the regulatory power of authority" (Herndl and Licona, 2012:19). Herndl and Licona (2012:22) believe that there is no shared notion of agency since it could "only be described in its contextual enactments." Through these definitions, this thesis differentiates between agency and free will. Agency is the ability to make choices and free will is the ability to do so without constraint. At the same time, the issues of constraint placed on sex workers due to criminalisation of the sex industry is acknowledged.

The concept of agency encompasses multifaceted layers, with its exercise often contingent upon the prevailing "regulatory power of authority." As a result, agency encompasses more than simply the ability to make decisions and is closely related to the settings in which such judgments are made. This viewpoint has its roots in the lengthy history of racial prejudice, extreme poverty, and significant unemployment in the sex industry. A woman who voluntarily engages in the sex industry uses her agency to "shape and regulate the present to realise a desired future" (Bandura, 2018:131). Many people rely on sex jobs to support their families and pay for necessities like food, clothes, and education. However, the legality of sex work casts questions on the employment of this agency. This criminalisation introduces self-reactiveness and self-reflectiveness within sex workers, as their actions deviate from societal norms and standards. This internal conflict manifests as a tension between pursuing individual aspirations and conforming to prevailing societal norms. Therefore, it is evident that the criminalisation of their profession undeniably constrains the agency of sex workers. Furthermore, the level of education among many sex workers acts as an additional constraint on their agency, as it limits their prospects for entering other industries and earning income elsewhere. Despite these limitations, sex workers continue to wield their agency in various ways. This includes their choices to work within the sex industry, their ability to set boundaries with clients, and their implementation of safety precautions. Their agency also extends to financial management, where they make decisions regarding the money they earn, as well as their advocacy efforts to improve working conditions and secure greater protection. In sum, while the agency of sex workers faces notable restrictions, it remains a resilient force that manifests in their choices, boundaries, safety measures, financial acumen, and advocacy endeavours. Recognising and understanding the dynamics of agency within sex work is essential in formulating policies and interventions that respect and support the rights and well-being of those engaged in this complex profession.

2.1.4 Patriarchy / Customary Law / Gender Apartheid

The evidence of patriarchy within South African society is another example of a constraint within which women's agency is further constrained. Patriarchy is important to any discussion on sex work as it significantly influences the dynamics, attitudes, and experiences inside the sex work sector. Because it significantly influences the dynamics, attitudes, and experiences inside the sex work sector, patriarchy is essential to conversations on sex work. Plaatjies Van Huffel (2011) describes patriarchy as a social structure that supports hierarchies and gives one group economic, political, and social dominance over others. The use of the term patriarchy is extended to a belief system that gives men authority over women (Vetten, 2000:57). The word patriarchy also implies that men wield control in "society's important institutions," often denying women access to the same authority (Lerner, 1986:239). When defining patriarchy, it is evident that men hold power over women at a micro (family) and a macro (societal) level. This thesis uses the term patriarchy to highlight men's power over women and how it affects the way women are treated. Within African cultures, customary law is an example of a patriarchal constraint that directly impacts the rights of women, namely through denying them "adult status" and subjecting them to "male control" (Meintjes, 1996:53). Meintjes (1996:53) stresses how this is in a context where the "migrant labour system" increases the responsibilities of women in rural areas. Women's increased responsibility within this context did not give them greater rights. Frenkel (2008:2) claims that women were "clearly both empowered and victimised, seen and unseen, included and excluded in different ways." Frenkel (2008:2) made this claim based on the "patriarchal nature of apartheid," which led to "ambiguous gender positionings."

Customary law is important to understanding sex work in SA because it provides insights into the cultural, social, and legal contexts that shape the experiences and rights of sex workers. Recognising and respecting customary norms while advocating for the rights and well-being of sex workers is essential for developing effective policies and interventions in this complex and diverse country. In the development of customary law, "traditions were reinvented," but women were excluded from the process, resulting in "new customs (where) women… serve male interests" (Oyewumi, 1997:146). SA's legal system is characterised by its pluralistic nature, comprising distinct legal traditions such as "transplanted European laws, primarily Roman-Dutch law" with later influences from "English common law", collectively referred to as the "common law", alongside traditional laws known as "African customary law" (Ghebretekle and Rammala, 2018: 331-332). The Constitution explicitly allows for the continuation of approximately "1,500 traditional courts" across SA (ibid). However, these courts vary significantly in their nature and organisation from one community to another, making generalisations about their structure challenging. Moreover, disputes arise at various levels when the values and interests of communities are contested or unfulfilled (ibid). While "customary institutions" have been criticised for their alignment with dominant interests which may render

judgments that undermine the rights and interests of marginalised "groups such as women, children, and minorities" (ibid: 330).

Mokgoro (1998:15) associates' customary law with the concept of "ubuntu." Ubuntu, utilsed as a term to encompass an African worldview which emphasises the collective solidarity and interdependence of individuals within a community. It embodies humanistic values, emphasising that "a human being is a human being because of other human beings," highlighting communal well-being over individual interests (Mokgoro, 1998:15-16). According to Mokgoro (1998:18), customary law in relation to patriarchy would be viewed through the lens of ubuntu, where the values of dignity, humaneness, conformity, and respect are expected to be inherent in SA's cultural systems. Therefore, any deviation from these values, such as patriarchy, would likely be seen as incongruent with the principles of ubuntu and customary law. This perspective offers a contrasting view on customary law compared to other authors' arguments, emphasising the importance of humanistic values and community well-being over patriarchal norms.

Examining other legislative proposals that touch on more general concerns of gender inequality and cultural norms is crucial, in addition to the legal framework pertaining to sex work. The amended Traditional Courts Bill [B1-2012], which purports to provide chiefs in rural regions more authority, is one such example (Osman, 2018:45). Much debate has surrounded this bill, which was first proposed in 2008 and was envisioned to be adopted by the National Council of Provinces in 2021 (Custom Contested, 2021). Critics claim that because it upholds gender inequality, it violates the basic values included in the Freedom Charter and the Bill of Rights, while supporters claim that it is consistent with African customary law. On September 8, 2022, the Amended Traditional Courts Bill (TCB) was approved by the National Assembly despite opposition (Mail and Guardian, 2022), ostensibly to enhance the effectiveness and integrity of traditional courts. Parliament justified the Bill to serve the following purpose:

> The Traditional Courts Bill is intended to increase access to justice services by enhancing effectiveness, efficiency, and integrity of traditional courts in resolving disputes, in keeping with imperatives and values of the Constitution. The Bill repeal[ed] remaining provisions of the Black Administration Act 38 of 1927 and legislation of former homelands still regulating traditional courts (Parliament of the Republic of South Africa, 2019).

Scholars such as Classen (2009:10) express grave concerns about its detrimental effects, particularly for women living in rural areas. Classen (2009:10) explains how the bill exacerbates barriers that rural women already face, such as limited access to land and increased vulnerability to poverty, while maintaining patriarchal power relations inside traditional courts. In addition, the 2019 final report from the Advisory Panel on Land Reform and Agriculture emphasises how entrenched patriarchal systems continue to support gender inequality in land ownership and control (The Advisory Panel on Land Reform and Agriculture, 2019:24).

As a result, not only does the TBC fail to adequately address structural gender imbalances, but it also exacerbates rural women's marginalisation, increases their vulnerability, and prolongs cycles of poverty, especially within rural areas in SA.

Classen (2009:10) stresses how the TCB is "likely to impact on the balance of power in rural areas," especially as it "reinforces the power of traditional leaders." Historically, women were not leaders in the traditional courts and could not represent themselves there; instead, a male relative represented them (ibid). There is a need for the TBC to incorporate women within these courts at 50% to ensure women's issues are "taken seriously and addressed sensitively" (Classen, 2009:13). Classen (2011:8) documents the challenge regarding the eviction of widows, arising out of disputes following the deaths of their husbands. These evictions directly affected women's access to land and increased the feminisation of poverty within rural areas. The TBC not only entrenches the patriarchal power of rural leaders but also entrenches the power of the courts within rural areas to resolve disputes (Weeks, 2011:33). Due to the increased power of the courts and traditional leaders, it increases women's vulnerability and poverty and denies them access to justice. The advisory panel on land reform and agriculture's final report to the President in 2019 confirms that women are "discriminated against when it [comes] to ownership and control of land resources" due to the "system of patriarchy." As a result, women are still unable to inherit land and only gain access to land through marriage or male children (The Advisory Panel on land reform and agriculture, 2019:24). Not being able to access land in rural areas would result in more women being displaced and due to high levels of unemployment would cascade them further into poverty. This led to what the Coalition Against Trafficking in Women (CATW) referred to in a letter to Amnesty International as "gender apartheid." CATW defines "gender apartheid" as a situation where:

> One category of women may gain protection from sexual violence and sexual harassment and offered economic and educational opportunities, while another category of women, whose lives are shaped by the absence of choice, are instead set apart for consumption by men and the profit of their pimps, traffickers, and brothel owners. (CATW, 2015).

The CATW uses the term gender apartheid to openly oppose the decriminalisation of sex work with what they view as "support [for] the decriminalisation of pimping, brothel owning, and sex buying." This support, they argue, "would, in effect, support a system of gender apartheid" (ibid). Gender apartheid is historically embedded in apartheid including the unequal treatment of women of different races. The new democratic government in 1994 sought to do away with all apartheid-based policies and followed a human-rights approach to policy reform. The policy around sex work is an exception; the current policy is still based on apartheid-era policies. Since 1994, with the removal of the apartheid government, women have been integrated into the political sphere. In 1994, there were 27.8% of women in Parliament; in 1999, 30%; in 2004, 32.8%; and in 2009, 43%. In 2014, Parliament comprised 40.5% of women (People's Assembly, 2014),

rising to 46% in 2019 (Gender Links, accessed 2020). The gender apartheid argument foregrounded the widely circulated observation that, despite women entering politics, there had been no change in the legislation towards sex workers. It could be speculated that women in Parliament were either not standing up for change in the legislation governing sex work, were outnumbered, or did not support change in this policy. Women's lives in SA were improved with the inclusion of more women in Parliament, but not all women were offered the same opportunities to improve their lives. Sex worker rights were, in essence, a fight for the rights of a particular group of women in SA. The current legislation governing sex work affected women; it raised the question of how many more women would need to be affected before changes were made. The central question was, "what would the effects be of giving women full rights over their bodies?"

2.1.5 Gender Equality

Gender inequality results from the patriarchal societal framework, which grants men privileges and positions of control over women. In many societies, patriarchy is characterised by gender inequality, of which the sex work industry is a classic example. Despite making up a sizable share of the sex industry, women remain underrepresented and powerless. Women experience powerlessness in the sex industry due to the pervasive influence of patriarchal structures within societies. Patriarchy, which favours men and confers them with privileges and control over women, perpetuates gender inequality. Within this framework, the sex industry exemplifies the unequal power dynamics. Despite comprising a significant portion of the sex industry workforce, women are often marginalised and lack agency. They face various forms of exploitation and discrimination, including limited access to resources, economic coercion, and vulnerability to violence. Consequently, women's voices and rights are often overlooked or disregarded within the sex industry, highlighting their systemic powerlessness in this context. Patriarchy may exacerbate these power imbalances by making it more difficult for sex workers to demand improved working conditions and defend their rights. Gender equality, as defined by UNICEF (2017:3), embodies the principle that women and men, as well as girls and boys, should enjoy equal conditions, treatment, and opportunities to realise their full potential, uphold their human rights and dignity, and actively contribute to, as well as reap the benefits of, economic, social, cultural, and political development. This definition underscores the essence of gender equality in providing identical opportunities without discrimination based on gender. It asserts that men and women should be regarded as equals across all strata of society, acknowledging that equality does not imply sameness. Instead, it signifies that both genders should share comparable responsibilities and prospects (ibid). In this thesis, we employ this definition of gender equality, emphasising the notion that while men and women should have equal opportunities, their unique identities should be acknowledged. This distinction is significant because women aspire to achieve equality while retaining their distinct identity rather than simply assimilating with men. It reflects the desire for equal rights and recognition as women. Prioritising gender

equality for sex workers could not only aid in diminishing their vulnerability but also help safeguard their rights and safety. Furthermore, this approach is pivotal in mitigating power imbalances, diminishing discrimination, securing legal protections, and fostering comprehensive support for their health and well-being.

2.1.6 Transactional Sex / Clients

There is a complex relationship between gender equality and the clientele of sex workers that involves several factors, including economics, violence, power relationships, and legal frameworks. To encourage safer, fairer, and courteous encounters within the framework of sex work, gender equality initiatives should address the intricate relationships between these aspects. To gain a comprehensive understanding of the sex industry and its regulation, it's essential to examine the individuals who pay for sexual services, commonly referred to as "Johns." In a study by Hammond and van Hoof (2019:1), interviews were conducted with 35 male clients of female sex workers in the UK, specifically during 2007/2008. Their analysis highlights that women are often perceived as the gatekeepers to sexual encounters. Factors like the dynamics of relationships, sexual experiences within those relationships, and occasional sexual disappointments influence this perception. These factors can lead clients to justify seeking the services of sex workers. Hammond and van Hoof (2019:6) introduce the concept of "masculine right," referring to a man's perceived entitlement to seek sexual satisfaction outside of a committed relationship. For those not in relationships or are "waiting to be chosen," engaging with sex workers offers them the agency to select their sexual partners and thus empowers them to take control of their own sexual experiences. This concept of masculinity often allows men to separate physical intimacy from emotional attachment, treating sex as primarily a physical act (ibid, 7).

Through financial transactions for sexual encounters, men can pursue pleasure while safeguarding their relationships. Payment for these interactions can help manage the emotional aspects associated with sex (ibid, 8). Therefore, Hammond and van Hoof (2019:9) illustrate how engaging with sex workers provides men with an outlet for their perceived biological urges while offering an intimate space to retreat from external demands and expectations. In another study by Pitts, Smith, Grierson, O'Brien, and Mission (2004:353), involving 68,123 participants over three days, they found that men utilised sex workers primarily for three reasons. Firstly, it offered them the ease of a commercial sexual encounter. Secondly, it fulfilled their need for engagement with another person. Lastly, it provided a means of sexual relief. These three criteria were succinctly summarised as "ease, arousal, and engagement." These studies highlight how understanding the motivations and perspectives of clients in the sex industry, often referred to as "Johns," is crucial for a comprehensive grasp of the industry and its dynamics. Such insights shed light on the complex interplay of factors that drive individuals to seek the services of sex workers.

Jewkes, Morrell, Sikweyiya, Dunkel and Penn-Kakana (2012a:9) review men's transactional relationships with sex workers in SA. They highlight how transactional relationships represent the "commodification and instrumental use of sex [as being] culturally normative in modern-day SA." At the same time, it encompasses an element of a "moral obligation to support the needy" (Jewkes, Morrell, Sikweyiya, Dunkel and Penn-Kakana, 2012a:9) men justifying the use of sex workers as it offers them financial support. In interviews with 1645 sexually active men in SA, they found a distinct difference between sex with sex workers and transactional sex, where men provided for women and, in turn expected them to be "sexually available" (ibid). This distinction is significant in understanding sexual interactions for reward in SA and therefore highlights how transactional sex is not limited to a woman being a sex worker but also occurs in other relationships. Jewkes, Morrell, Sikweyiya, Dunkel and Penn-Kakana, (2012b:8) found in their research with men in SA, that of the men who partook in their research, the "minority [were] men who in their attitudes and behaviour would be viewed as 'normal' SA men." While the "majority (75%) [were] a very violent group of men." Jewkes, Morrell, Sikweyiya, Dunkel and Penn-Kakana, (2012b:8) argue that their findings align with the high levels of violence sex workers in SA experience with their clients. Jewkes, Morrell, Sikweyiya, Dunkel and Penn-Kakana, (2012b:8) stress the importance of understanding "whether the experience of buying sex enhances men's sense of sexual entitlement" and whether it heightens the "likelihood of raping and other violence towards other women." Therefore, any change in a legislative framework on sex work needs to consider the buyers of sex who "pose a risk to sex workers" (Jewkes, Morrell, Sikweyiya, Dunkel and Penn-Kakana, 2012b:9).

Transactional sexual relationships (TSR) refer to accepting commodities (money) for sexual engagements. Within this context, it was usually seen between younger females and older men (De Wet, Frade and Akinyemi, 2018:2). The underlying motivation for TSR is "economic" and often linked to childcare responsibilities. Hunter, 2015:364 defines transactional sex as "non-prostitute relations where gifts and sex [were] closely connected." Transactional sex is different from sex work but Hunter (2015:364) explains the similarity being that both involve "an expectation of male-female gifts." These relationships are not referred to as sex work but rather seen as more of a longer-term relationship between a young female and an older man, taking place in a context of poverty and a need to fulfil "basic needs" (ibid, 2018:3). The difference is in how the relationship is termed: those in transactional relationships are "not positioned as 'prostitutes' and 'clients' but rather 'boyfriend' and girlfriend'" (Hunter, 2015:364). The standard terms to refer to these relationships include: "sugar daddy" or "blesser." The insinuation is that older men are willing to provide "gifts and money" in exchange for sexual transactions from poorer females (youth) who would be willing to engage in these relationships (ibid, 2018:2). De Wet, Frade and Akinyemi, (2018:3) make use of the "Social

Exchange Theory" to understand TSR in SA and to understand the "cost-benefit (or punishment-reward) analysis of [these] interactions." The cost of TSR is noted as being "unintended pregnancy" and the risk of STIs mainly due to a "lack of condom use" (ibid, 2018:3). Therefore, for those who partake in TSR the benefits were seen to outweigh the costs. Transactional sex is different from sex work mainly due to the timeframe of the relationship as it "endures for some time" and the fact that there are love feelings involved (ibid, 369).

Hunter (2015:369) attributes the increase in transactional sex firstly to a "rise [in] chronic unemployment," particularly for youth in SA, and secondly, the "increase in social inequalities that are highly gendered." Both are seen to increase "the gap between the rich and the poor." Hunter (2015:369) also attributes it to the reduction in marriage in the 1960s, where only "30% of black South Africans [were] in wedlock" (ibid, 369). The decline in marriage, particularly amongst the poor, is due to men not being able to afford to pay ilobolo (ibid, 369). Hunter (2015:367) outlines how, traditionally, "ilobolo (bride wealth) constituted the most important means through which men express[ed] love." Ilobolo, paid to a woman's father, is a transaction where the father is paid in exchange for the marriage of his daughter (ibid, 367). As an alternative source of income, Edlund and Korn (2002:182) argue that women could use marriage but that a woman could not be a prostitute and a wife. They further explain how prostitution is well paid as it compensates for women giving up on marriage. It is often claimed that marriage was a form of transactional sex. Some women married to avoid becoming sex workers but still provided sex in return for material gain (Jewkes, Morrell, Sikweyiya, Dunkel and Penn-Kekana, 2012). Moreover, "sex workers' roles as mothers were completely ignored and made invisible" (Dlamini and Shackleton, 2016:73). For sex workers who are also mothers, sex work "offers better working hours, greater independence, and in some cases, better working conditions too" (ibid).

In the 1970s Australian feminists made a distinction between marriage and sex work. They describe marriage as "a poorly paid form of prostitution in which women were more vulnerable to violence and had less control over their daily lives" (Sullivan, 1991:8). Those supporting sex work also challenge the "traditional social and sexual arrangements such as marriage" (ibid). Bell (2009:1) challenges the idea that men owned women in prostitution, noting that "men did not own prostitutes when they [were] paying her for sex any more than a businessman owned his factory workers." Bell (2009) argues that if sex work occurs in the right context, it is "not a question of temporary ownership," as women could control the process or interaction. This distinction between sex work and marriage highlights some traditional beliefs about sex. Historically, marriage has been seen as the key to socially acceptable sexual relations. The decline in marriage, particularly amongst the poor, in a South African context is often due to men not being able to

afford to pay ilobolo (Hunter, 2015:369). This increase in women in the urban areas and a lack of work opportunities resulted in women relying on "men for material support" (ibid, 269-370). No longer paying ilobolo or having a wife enabled men to buy gifts for women, and in exchange, they received sexual interactions (ibid). Similar reasons that led to an increase in transactional sexual relationships would also have led to an increase in women entering the sex industry. Transactional sexual relations meant that the women had one sexual partner over a longer period, rather than multiple sexual partners with a direct exchange of money per sexual act.

2.2 Legislative Frameworks (public policy) governing Sex Work

Gumede (2008:8) defines public policy "broadly as all formal and publicly known decisions of governments that come about through pre-determined channels in a particular administration." Osman (2002:38) outlines how policy is a "broad statement that reflects future goals and aspirations and provides guidelines for carrying out these goals." Roux (2002:425) explains how public policy should "never be static" and "should always relate to current issues in society." Based on these definitions, it includes all acts and laws made by the government. These definitions reflect public policy's purpose, which is vital as this thesis speaks directly to the sex work policy. The term policy is mainly utilised within the thesis to represent a public policy. Public policy is critical to this research as it encompasses the legal framework that governs sex work. Understanding public policy concerning legislation on sex work involves a comprehensive analysis of the legal framework, policy objectives, stakeholder engagement, human rights considerations, public health and safety concerns, labour issues and the evolving nature of the industry. Effective policies should prioritise the well-being, rights and dignity of all individuals involved while addressing societal goals and challenges.

In the context of the legal framework, there are several policy options for addressing sex work, each of which has been implemented to varying degrees worldwide. These policies play a crucial role in shaping the industry and determining the rights and responsibilities of those involved. Firstly, sex work has been regulated through criminalisation (CGE, 2013:4). One of the ways of understanding the *criminalisation* of sex work is centred on the need to rescue women, with the primary aim being to end sex work (Leigh, 1999:61-62). Deady (2011:516-517) divides the criminalisation of sex work into prohibition and abolition. Prohibition is complete criminalisation, where "all forms of prostitution are unacceptable and illegal." (Deady, 2011:516-517). Abolitionism refers to the partial criminalisation and/or decriminalisation of sex work, also known as the Swedish or equality model. Here, the sale of sex is not criminalised, but "related activities such as keeping a brothel or solicitation are illegal" (ibid, 517). Embrace Dignity advocated for the partial criminalisation of prostitution in SA, based on the Swedish equality model (Embrace Dignity Website, accessed 2019). The support of partial criminalisation was underpinned by a belief that sex workers did not

enter sex work voluntarily but rather for structural reasons – such as poverty, unemployment, and gender inequality. Notably, this model posited that sex work was not a legitimate profession. Criminalising the demand for paid sex, rather than sex workers, would prevent sex workers from incurring a criminal record and give them more opportunities to leave the industry (Meji, 2018a). Nigeria is another African country pushing for sex work to be decriminalised. Different regions of the country manage sex work differently, with the Islamic-practising northern states making it illegal. While in the southern parts, activities of pimps, underage prostitution, and the ownership of brothels are penalised through the Nigerian Criminal Code (Enoch, 2020: 204). At the same time, the Constitution itself does not explicitly prohibit sex work. The calls were for voluntary sexual transactions to be decriminalised in Nigeria (Enoch, 2020: 206).

Secondly, sex work was regulated through ***legalisation/regulation***, which means that sex work is controlled by the government (CGE, 2013:4). Leigh (1999: 60) defines legalisation as the "legalisation of a minority of individuals, and/or a narrow range of practices." This policy option means strict state control in a context where many prostitutes and prostitution activities are criminal offenses. Deady (2011:516-517) defines legalisation as prostitution controlled by the government and legal only under certain state conditions. Similarly, in the regulatory approach, "sex work is legal, but certain aspects – such as health or conditions of employment – are specially regulated" (Bonthuys, 2012:13). Regulation of sex work means that sex work would only be legal within regulated contexts and therefore outside of these contexts, it was illegal. Therefore, sex workers would need to comply with the regulations to partake in the benefits, which is not in line with the calls made by the human rights movements due to its "regulation through criminal codes" (Leigh, 1999:61-62).[5]

The third policy option is ***decriminalisation***, also known as the total non-criminalisation of sex work. Here, sex work would become a legitimate career choice (CGE, 2013:4). Vanwesenbeeck (2017:1631) describes decriminalisation as a system where "no particular laws other than regular employment laws address commercial sex." The term decriminalisation represents "an absence of specific laws criminalising or legalising prostitution" (Leigh, 1999:61). Deady (2011:516-517) defines decriminalisation as a process where the government does "not criminalise prostitution, but they also do not have prostitution-specific statutes that regulate the industry." These definitions indicate how sex work would be a legitimate occupational option under decriminalisation, with sex workers protected under the Labour Relations Act (LRA), Act No. 66 of 1995. Regardless of policy choice, the policy's terminology primarily determines how the policy is

[5] The sex workers' rights movement is described by Bindel (2019:35) as "made up of several perspectives and positions." This movement marked a "shift from the 1980s and 1990s" support for legalisation towards a more rights-based approach, namely the decriminalisation of sex work. Leigh (1999:59) describes how this movement recognises the "rights of prostitutes to autonomy and self-regulation."

implemented. Hence, the terminology has a direct impact on sex workers. For example, the policy in Sweden on 1 January 1999 prohibited "the purchase or attempted purchase of a temporary sexual relationship." However, the terminology is open to interpretation, making the policy difficult to enforce (Kulick, 2003:202). Using this example, terms in the policy such as remuneration, procedures, and temporary could have multiple meanings. Kulick (2003:202) raises issues relating to non-monetary remuneration, for example, purchasing dinner, which leads to sexual interactions. Another issue is with the use of the word temporary. What does this mean, and would it exclude clients with more long-term relationships with the sex worker (ibid)?

Consequently, even across the four main policy frameworks used to manage sex work, each policy could differ depending on the terminology. Significantly, policy implementation therefore differed. In SA, other legislative frameworks governing similarly controversial issues and/or activities have been decriminalised/legalised, such as abortion, gambling, and marijuana, raising questions about the continued criminalisation of sex work. In practice the different legislative frameworks could showcase different power dynamics. Namely under criminalisation the power would rest with the state (government) and the police; under decriminalisation the power would be with the sex worker. When legalised, the power would rest with the state (government), and if it is partially decriminalised, it will rest with the client. The question is who has power over the women in the sex industry in the different ways the industry is governed. The role of decriminalisation is to shift the power to the sex workers, giving them a choice to join the sex industry and exit it.

2.3 Case Studies: Governance of sex work globally

In the comprehensive exploration of diverse legislative frameworks surrounding sex work, the selection of various case studies assumes paramount significance. These case studies serve as powerful lenses through which we can scrutinise how different policy frameworks manifest in the lived experiences of sex workers on the ground. New Zealand, for instance, stands as an illuminating example of the tangible effects of decriminalising sex work, shedding light on the transformative impact of such a policy shift. Furthermore, the pioneering approach of Sweden, where partial decriminalisation was introduced as early as 1999, offers us invaluable insights into the nuances and complexities of this regulatory model. In contrast, the cases of the Netherlands and Senegal illuminate the contrasting landscape of legalisation, presenting distinctive perspectives on how this framework influences the sex work industry. These case studies transcend mere academic exploration; they are windows into the real-world consequences of differing legislative approaches. They furnish policymakers with essential data points to inform their decisions, empower advocates with evidence-based arguments, and contribute to cultivating a more nuanced and enlightened public discourse surrounding issues entwined with sex work and its legal regulation. In sum, the strategic deployment of case

studies within this context is a compelling tool, enriching our understanding of the practical implications of diverse regulatory strategies. This, in turn, propels us towards informed and judicious policymaking while concurrently fostering an environment conducive to nuanced and constructive dialogues regarding the multifaceted realm of sex work and its legal governance.

2.3.1 Decriminalisation of Sex Work in New Zealand

New Zealand is pioneering in sex work legislation, notably being the "first country to decriminalise sex work" and formally recognising it as a legitimate form of service work (Abel, 2014:580-581). This pivotal shift was facilitated through the enactment of the Prostitution Reform Act of 2003 (PRA), which marked a transformative departure by decriminalising not only "prostitution" but also related activities such as promoting prostitution, owning brothels or escort agencies, and street solicitation (Deady, 2011:548). The purposes of the PRA were to:

- Safeguarding the human rights of sex workers.
- Protecting sex workers from exploitation.
- Promoting the welfare and occupational safety and health of sex workers.
- Creating an environment conducive to public health.
- Protecting children from exploitation in relation to prostitution.

(New Zealand Parliament, 2012; cited here verbatim).

The legislative journey undertaken by New Zealand represents a transformative shift from the realm of "moral arguments regarding sex work" to one grounded firmly in a "human rights argument" (Abel, 2014:581). This profound departure in approach marks a watershed moment that sets the nation apart from others embroiled in moralistic discourses surrounding sex work. Crucially, this paradigm shift is underpinned by the active inclusion of sex workers in developing the Prostitution Reform Act (PRA) passed in 2003. This inclusive approach is a beacon of hope and a replicable model for other countries grappling with similar debates surrounding sex work (Abel, 2014:581-582). Unlike nations where moral discourse had been utilised as a substantial impediment to progress, New Zealand's collaborative approach with sex workers offered an alternative path forward. The PRA's development in partnership with the very individuals most affected by its provisions lent an air of legitimacy and credibility to the legislation. It demonstrated that a more inclusive and rights-based approach could supersede moralistic arguments, providing a blueprint for others to follow. In a testament to New Zealand's commitment to evidence-based policy, a committee conducted a comprehensive review of the PRA in 2008. Their findings affirmed the Act's overall effectiveness in achieving its intended purposes. However, this process also underscored an important acknowledgment: legislation on paper does not necessarily mirror its real-world impact. Hence, the decision to schedule a further review in 2018 demonstrated New Zealand's recognition of the need for ongoing assessment, recognising that the complex dynamics of the sex work industry could evolve (New Zealand Parliament,

2012). New Zealand's journey from moral arguments to a human rights-based approach, forged in collaboration with sex workers, is a compelling example for other nations grappling with similar challenges. It underscores the transformative potential of inclusive, evidence-based policymaking and highlights the importance of ongoing assessment to ensure that legislation aligns with its intended goals and stands the test of time.

After the implementation of the PRC, the committee confirmed that although it was challenging to establish the exact number of sex workers, it was evident that decriminalisation had not resulted in a substantial increase in the number of sex workers, as had been feared. The Act was seen to result in an improvement in sex workers' working conditions. This is mainly because sex workers are no longer criminals and can negotiate safer sex practices, especially those within indoor venues. The New Zealand government acknowledged that while violence still occurred for "street-based sex workers," mainly perpetrated by clients, "most sex workers [were] aware of their right to say 'no' to sex," and this was seen to make a difference (New Zealand Parliament, 2012). Richter, Chersich, Scorgie, Luchters, Temmerman and Steen (2010:4) similarly documented how, for sex workers in New Zealand, the decriminalisation of sex work led to "improved working conditions and wellbeing" and increased their access to justice as they could "report abuse to police."

Barnett, Healy, Reed and Bennachie (2010:67) document three critical factors that played a role in the legislation which decriminalised sex work in New Zealand in 2003 being passed. First, "a strong and politically supportive and diverse majority at first reading," which was seen to carry through till the bill was passed. Secondly, a sponsor who had support within Parliament. Thirdly, the support of female politicians and the Prime Minster who was in office then. The Parliamentary system in New Zealand was similar to SA with Members' seats being allocated based on votes. In the case of the Prostitution Reform Bill (PRB) it was proposed in Parliament by Tim Barnett as a private Members bill. At the centre of campaigns to change sex work, legislation was the principle of harm minimisation. (Barnett, et. al, 2010:64) The basis of this approach was that despite individual views on sex work it was important for "law to focus on minimising harm" (Barnett, et al, 2010:65). For others, human rights issues are at the centre of policy change (Barnett, et. al, 2010:65). The key to the example of New Zealand is that a politician campaigned for a change in the legislation governing sex work and put it on the political agenda in 2000. The bill still had to pass through the parliamentary process, but the process was started, which was significant. Another key aspect was lobbying for change in the sex work legislation. Those supporting the legislation lobbied for it to be changed, gaining support from other Members of Parliament. The PRB was adopted in Parliament on "25 June 2023 by 60 votes to 59 with one abstention" (Barnett et al, 2010:66). The legislation was passed with only one vote,

highlighting the power of lobbying in Parliament. The main argument behind the petitions to change the policy related to how laws "focus(ing) on minimising harm" were critical (Barnett, et al, 2010:66).

However, despite its decriminalisation, the nature of the sex-work industry meant that it remained a controversial issue within New Zealand society (New Zealand Parliament, 2012). Hence, whereas indoor sex workers receive little attention, outdoor or street-based sex workers, being visible, were deemed a public nuisance. The role of the PRA is not to "endorse or morally sanction prostitution or its use" but rather to fulfil the "health and human rights" of sex workers (Abel, 2014:589). Under the PRA, sex workers' rights are upheld; sex workers are seen to open cases against brothel owners, and the murders of sex workers are also being investigated. It is evident that "sex workers are utilising their rights and have more freedom to govern their sex work" (ibid, 585). Therefore, although sex work remains contentious, sex workers could access their human rights. A significant achievement is that the New Zealand government developed the PRA with the sex workers themselves, making it a legal framework that sex workers supported. Mgbako, et al. (2013:1437) argue that despite the different socio-economic conditions in SA and New Zealand, "the similar experiences of human rights abuse and exploitation" experienced under criminalisation, made "New Zealand a fruitful case study." In so doing, New Zealand could give "evidence of the positive impact decriminalisation could have" (Mgbako, et al.,2013:1437).

In contrast to this in a debate in Parliament in August 2016 in SA, the SALRC highlighted how "the New Zealand model is quite far removed from SA, and that SA has a particular context that has to be borne in mind" (Morutoa, 2016a). In this debate, civil society also notes that comparative politics is not productive as other countries "did not have the same institutionalised violence as SA, largely due to the latter's apartheid system." Another justification is that "(New Zealand) did not allow illegal migrants, nor did it allow migrants to join the sex industry." Some call the model implemented in New Zealand more of a regulated model than one fully decriminalised (ibid). There are opposing views of the New Zealand model towards sex work and the actual impact of this model on sex workers, while its applicability to SA is challenged. Despite this, New Zealand is still the first country to implement a model for decriminalising sex work. Therefore, it was able to showcase the possible impact of this legislative framework on sex workers. It also illustrated how there was no perfect model for dealing with sex work and that a particular model's applicability would also depend on the country's socio-economic and historical conditions. SA has a unique history due to its racial past of apartheid; it is also a developing country with deep structural poverty and inequality. The models used as comparisons were mainly from Western countries, significantly affecting the outcome. New Zealand's model towards sex work highlights how legislative change alone is insufficient to change the sex industry and make sex work acceptable within communities.

Despite being in separate geographical locations, SA and New Zealand share several sociopolitical parallels. Both nations had colonial pasts; SA was impacted by both British and Dutch colonisation, while New Zealand was colonised by the British (Belgrave, 2012). Both countries made the transition to democratic administration after their wars for independence, implementing multiparty systems and holding regular elections (ibid). Their populations are diversified, made up of a range of ethnic groups and cultures, which add to the rich diversity found in every community. Furthermore, disadvantaged populations in both countries were disproportionately affected by socioeconomic issues such as high unemployment, poverty, and income disparity rates in both nations (ibid). Despite these commonalities, each country has a unique socio-political landscape shaped by its historical context, geographic location, and cultural heritage. Decriminalisation of sex work in SA would present numerous advantages. It could help enhance public health by improving access to healthcare services and reduce stigma and violence against sex workers. Furthermore, it would uphold human rights, empower individuals, and help distinguish between voluntary sex work and trafficking, aiding law enforcement efforts. Decriminalisation would also foster economic empowerment, the reallocation of resources towards more pressing issues, and ultimately promote social justice and dignity for all involved in the sex industry.

2.3.2 Partial Decriminalisation of Sex Work in Sweden (Swedish / Nordic Model)

The other legislative framework utilised to manage sex work is the Swedish model, adopted in Sweden in 1999. This model represents the partial decriminalisation of sex work, where only the client is criminalised and not the sex worker (Dodillet and Östergren, 2011:4). The debate between SWEAT and Embrace Dignity is about whether decriminalisation or partial decriminalisation – in line with the Swedish model – would be the best decision for SA and sex workers. This is also part of the feminist debate, discussed in Chapter 3. Notably, the decriminalisation debate focuses mainly on women's rights in line with liberal feminism. In contrast, the partial decriminalisation debate focuses on protecting women and reducing prostitution in line with radical feminism. The Swedish Penal Code, also known as the Sex Purchase Law, was ratified in 1999. This event made Sweden the first country to pass a law legalising the selling of sex but criminalising the buying of sex and related activities (Dodillet and Östergren, 2011:4).[6] The policies in Sweden are unique as it was the first time a country has criminalised those who purchase sexual services and those who benefit from the sale of sexual services (e.g., brothel owners) but not the sex workers themselves (Florin, 2012:269). The criminalisation of the buyer model is underpinned by the view that "prostitution is a male mode of dominating, objectifying, and dehumanising women" (ibid, 270).

[6] This approach is in line with partial criminalisation/decriminalisation and is globally known as the Swedish model (Florin, 2012:269).

Holman (2008:120-121) argues that Sweden's unique laws could "effectively combat sex trafficking." Holman (2008) bases his observations on the fact that Sweden achieved a "50% decrease in women selling sex and a 75% decrease in the number of men buying it;" he claims that this, in turn, reduced the number of women trafficked into Sweden. In contrast, Deady (2011:547) argues that "prostitutes … [in Sweden had] criticised the law for driving prostitution further underground." She further notes how "the argument that decriminalising demand reduced prostitution and sex trafficking lost some of its validity when one considers that an illegal industry still exists" (Deady, 2011:547). Hence, within the literature, there were two opposing arguments. Some view this policy approach as a success, and others view it as a failure. Kulick (2003:200) argues that sex work is not a significant challenge in Sweden, with fewer than 1000 sex workers on the streets. His view is that Sweden criminalised the purchase of sex because the country became part of the European Union (EU) and that the media had created fear around a "new form of prostitution," known as "mobile prostitution" (ibid).

One critique of the legal framework utilised in Sweden is that it is generated without consulting the sex workers themselves. This legislation aims to respect the rights of sex workers, who might not have chosen to be in the prostitution industry, and in turn, to abolish sex work by reducing its demand. The legislation affects street sex workers the most because they often need instant cash to buy food for their families or support a drug habit (NSWP, 2015b:10). The best way to make instant cash is on the streets as other options require resources, such as advertising on the internet. It has been argued that criminalising clients creates a "client's market," meaning that the client has substantial control (ibid). The sex worker, in turn, has little time to negotiate with a client, as clients do not want to be seen with them for fear of being arrested. This could have resulted in the sex worker overlooking possible warning signs and potentially placing themselves at risk of violence (ibid). In turn, research has shown that this legal framework has not reduced prostitution in Sweden, but instead, prostitutes had rather been "displaced." The initial visible decline in prostitution after enacting the legislation in 1999 was claimed to be accounted for by the "emergence of internet technology and sex workers moving indoors," which was a situation not unique to Sweden (Canadian Alliance for Sex Work Law Reform, 2014:1). The information came from organisations working directly with sex workers therefore, it can be inferred that it represented the reality of the new legislation in action.

When inferring how the Swedish model would play out within a SA context it is important to compare the SA context with that of Sweden. Sweden had a general population of 10,142,759 people (Worldometer, 2021a) and an unemployment rate of 9.3% in January 2021 (Trading Economics, 2021a).[7] The number of

[7] This is a live count of the population therefore the figures given were as of 08 March 2021.

prostitutes in Sweden before the 1999 law was passed was estimated at "about 650 women in street-based prostitution in the three largest cities;" about "two or three times as many sold sex indoors" (Dodillet and Östergren, 2011:8). The overall number of prostitutes in Sweden was estimated at between 1,850 and 2,500, with some sources stating there were 3000 prostitutes in the country (ibid). SA, by contrast, had a population of 59,787,105 people (World Population Review, 2021) and an unemployment rate of 32.5% in the fourth quarter of 2020 (Trading Economics, 2021b).[8] Researchers estimated the number of sex workers in 2013 to be between 121,000 and 167,000 (SWEAT, 2013:4). The SALRC, in their report published in 2017, recommends partial criminalisation as a policy option but noted that "Sweden's reported success was linked to the country being a strong welfare state" (SALRC, 2017: xxiii). The statistics above drew attention to the socio-economic differences between Sweden and SA, with Sweden having lower unemployment and a far smaller population. SA on the other hand had a larger population with a higher unemployment rate. Given these statistics, the Swedish model's applicability within the SA context could be questioned. There was also a significant difference in the number of sex workers in SA compared to Sweden. This questioning was thus primarily linked to more unemployed people in SA.

Despite the different socio-economic factors mentioned above, the countries share the following socio-political similarities. Both SA and Sweden are democratic nations with welfare states and multiparty political structures, yet Sweden's social system is more extensive (Strömbäck and Nord, 2008:107). Although they both place a high priority on gender equality, Sweden is frequently regarded as being more progressive in this area (Lane and Jordansson, 2020:28). Due to immigration, the populations of both nations are varied, although Sweden has a greater proportion of citizens who were born abroad. SA is an important player in African and international politics due to its enormous African economy, even though Sweden is more renowned for its impact in diplomacy and development assistance worldwide (Ingves, 2022:5). Nevertheless, their unique historical, cultural, and economic backgrounds have a varied impact on how their communities and political systems are shaped. Partial decriminalisation of sex work in SA presents significant challenges and drawbacks. Concerns include potential exploitation of workers, barriers to accessing essential services, perpetuation of stigma, lack of clear accountability mechanisms, confusion in enforcement, cultural objections, and increased risks of human trafficking. These issues emphasise the need for a comprehensive approach to address sex work, considering the diverse socio-cultural and legal dynamics in the country.

2.3.3 Legalisation (Regulation) of Sex Work in the Netherlands

[8] This is a live count of the population therefore the figures given were as of 24 February 2021.

The final approach towards sex work is the legalisation of the industry. This option is explored using the Netherlands and Senegal as case studies. The Netherlands being the first country to legalise the sex industry in 1999 through an "Act lifting the ban on brothels" and making prostitution a legitimate profession. This Act was passed in Parliament and "came into force on October 1, 2000 (Act of 28 October 1999)" (Post, Brouwer and Vols, 2019:108). In the Netherlands, Amsterdam is famous for its red-light district which were made legal through this Act. For sex workers to work legally, they must be registered under Amsterdam's Municipal Ordinance to work independently (Abdul, 2019). Outshoorn (2012:233) notes how the 1999 Act applies to sex between consenting adults; by contrast, "forced prostitution – including human trafficking – remained a criminal offence." These rights are also only applied to EU citizens. Anyone outside the country who performed sex work is considered illegal, particularly if they did not have a work visa (ibid, 233). The Dutch Ministry of Foreign Affairs (2012:6) observes, in their publication, how making brothels legal enables "local authorities [to] publish by-laws governing safety, hygiene and working conditions in brothels." Within the Netherlands, "prostitution is considered a legitimate occupation;" this means that sex workers have "the same rights and obligations as other professionals" (The Dutch Ministry of Foreign Affairs, 2012:6). Due to these rights, employers are expected to "comply with labour laws and tax and social insurance obligations in the same way as any other workplace" (ibid, 7). These rights benefit women who worked in brothels. In contrast, for those who work on the streets, prostitution remains banned by many local authorities. However, there are a few designated zones, where sex workers could work (ibid, 10). Hence, in the Netherlands, in practice only relatively upmarket sex work is legal.

In 2009, the Netherlands' policy was reviewed due to abuses in the industry and the link to trafficking. The revised policy introduced sterner conditions to regulate the industry and its connection to human trafficking and crime. The age of sex workers was raised from 18 to 21 years. However, the onus is placed on the client to ensure the sex worker is registered and "not an 'illegal' worker" (Outshoorn, 2012:233). The policy evaluation implied that the administration thought there was a connection between human trafficking and sex work. There is a need for stricter measures to control the adverse effects of legalising prostitution. However, they did not change the legislation, which reflects that legalising sex work was still the best approach towards sex work in the Netherlands. This legalisation was passed despite the history of the prohibition of sex work in the Netherlands before 2000. Post, Brouwer and Vols (2019:105) review the justification for a government restricting a person's freedom by placing controls on an activity, such as sex work. They noted four justifications. The first is the need to "protect others from harm." The second is to "protect others from serious offences" when encountering considered offensive behaviour. The third is a desire to protect people from themselves; in this regard, even if a person willingly agrees to perform an activity, that activity could harm them. The last justification is to protect society's moral values (ibid). In line

with these justifications, the 2009 legislation was approved with the understanding that sex work is not the same as other professions in the Netherlands. The government wanting to control the industry based on a belief that the industry "affects individuals' physical and mental integrity" and the need to make the industry "safer and more transparent." In line with the new legislation sex work is regulated by city by-laws, which served two roles: 1) to protect sex workers and 2) to "prevent it being a public nuisance" or being linked to crime (ibid, 109).

During an interview conducted by CTAP in Amsterdam, Netherlands, with a sex worker, some noteworthy observations were made.9 One striking difference was the social safety net in the Netherlands, which provided unemployment benefits different from those in SA. This difference implied that fewer women in the Netherlands might engage in sex work as a means of survival. This then raised the question as to why a woman would remain part of the industry (CTAP, 2015). In the interview, the sex worker emphasised how sex work gave her a sense of freedom and financial stability. She acknowledged the existence of sex trafficking; however, she highlighted how some women voluntarily chose to participate in the sex industry. There were, however, certain limitations even though sex work was legal in the Netherlands. Sex work is still seen as a precarious profession, and there is no certainty regarding one's long-term earning potential. Legalisation did not eliminate the stigma associated with the industry; with many still perceiving women involved in sex work primarily as "victims of trafficking" (ibid). In contrast to the Netherlands, a developing nation like SA faces high unemployment rates and lacks comprehensive unemployment benefits, which may compel many women to turn to sex work as a means of survival. To illustrate, in January 2021, the Netherlands reported a relatively low unemployment rate of 3.6% for a population of 17,160,894 people (Trading Economics, 2021c; Worldometer, 2021b). These statistics reflect the Netherlands' smaller population and its favourable unemployment rate, which is markedly different from SA's socio-economic conditions. In 2019, there were advocacy groups in the Netherlands that called for a re-evaluation of the country's sex worker policy. They argued in favour of criminalising clients, essentially proposing a partial decriminalisation model. These groups contended that by criminalising the clients of sex workers, it would be possible to reduce both the demand for sex work and the trafficking of women in the Netherlands (Care for What You Believe, 2019).

The Netherlands and SA exhibit several socio-political similarities despite their geographical and historical disparities. Both nations have embraced democratic governance, featuring multiparty political systems and a commitment to the rule of law (Netherlands Institute for Multiparty Democracy and Instituut voor Publiek and Politiek., 2008). With the Netherlands having colonised portions of SA, their common colonial past has left lasting cultural and economic legacy. Furthermore, both nations are known for their

[9] CTAP stands for Прв Колектив на Сексуални Работници на Балканот (First Collective of Sex Workers in the Balkans) - https://starsexwork-org.translate.goog/?_x_tr_sl=mk&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=nui,sc

progressive social policies; SA has put laws in place to correct historical injustices and advance social equality, while the Netherlands is a pioneer in liberal approaches to matters like drug control and Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, and Asexual (LGBTQIA+) rights (Government of the Netherlands, 2018). They both also have diversified populations that have been influenced by immigration and contribute to thriving multicultural cultures. Both countries have robust, industrialised economies that have a big impact on the world economy (Ministry of Foreign Affairs, 2022). Finally, they take an active part in international affairs through participation in global organisations and diplomatic efforts (ibid). Despite these parallels, each country's unique historical trajectories, cultural identities, and contemporary challenges contribute to distinct socio-political contexts.

2.3.4 Legalisation (Regulation) of Sex Work in Senegal

Senegal is an example of an African country where "sex work has been legalised and regulated through public health policy" (Ito, Lepine and Treibich, 2018:1628). The criminalisation of prostitution throughout Africa has heightened the vulnerability of African sex workers. Notably, Senegal stands out as the only nation in Africa where sex work is legal and regulated (Mgbako and Smith 2011:1185). Despite the criminalisation of sex work being linked to "greater isolation and stigma" of sex workers (Ito, Lepine and Treibich, 2018:1627). Even though sex work is legal in Senegal there were difficulties faced by those wanting to register as sex workers officially. Ito, Lepine and Treibich (2018:1628) note how due to "fear of becoming a social outcast" in the capital city of Dakar about "57% of sex workers are not registered" and up to 80% overall in Senegal are not registered. Moreover, research conducted with 630 female sex workers in Dakar sheds light on the experiences of registered sex workers. This study found that registered sex workers were more likely to engage in riskier sexual activities, experience physical violence, and receive less social support from their co-workers (Ito, Lepine, and Treibich, 2018:1628). In Senegal, to be recognised as a registered sex worker, individuals are required to register with a healthcare facility and attend monthly routine health check-ups, primarily for the testing and treatment of sexually transmitted infections (Ito, Lepine, and Treibich, 2018:1632). The legalisation of sex work in Senegal dates back to 1969 and mandated that all legal and registered sex workers carry a registration card containing information about their compliance with these monthly health checks (Ito, Lepine, and Treibich, 2018:1643).

In research with registered unregistered sex workers Ito, Lepine and Treibich, (2018:1632) discovered that while registration reduces STIs it affects the "emotional and social well-being" of those that are registered. The cause of this they link back to the stigma attached to sex work. These findings showcase how acceptance of sex work within legislation does not directly translate into acceptance of sex work in society. The change in legislation around sex work is not enough as many women working as sex workers

chose to operate outside of the legal sphere due to the stigma attached to being a known sex worker. The research done by Ito, Lepine and Treibich, (2018) documents the negative effects of female sex workers having to register as sex workers. If their findings are summarised, it shows that registration positively led to an increase in the utilisation of health care facilities. However, on the negative side due to an increase in sex it results in a "higher risk of STIs," while more risks are taken, and an increase in stigma which in turn deteriorates their mental well-being. Those that did register mainly did so due to "health concerns (62%) and police threats (36%)" (Ito, Lepine and Treibich, 2017:1638). Registration is a choice made by sex workers and Ito, Lepine and Treibich, (2018:1644) argue that the moral costs of registration namely the resultant "external and internal stigma" for sex workers stopped them from registering. External stigma being from society and the "damage to the family name" and internal stigma relating to "damages to self-image and self-esteem" (Ito, Lepine and Treibich, 2017:1644). As the only example of sex work being regulated on the African continent Senegal showcases the effects of social stigma on sex work. Being able to work as a legal sex worker in Senegal meant carrying a health pass and publicly identifying as a sex worker. Being known within the community as a sex worker often led to them becoming social outcasts, which was seen to outweigh the fear of working as a sex worker illegally (Ito, Lepine and Treibich, 2017). Legislative change around sex work done in isolation of addressing and educating society on sex work has been seen in this example to be ineffective. This example shows how legalising an industry alone does not solve the issues faced by the industry and in this example sex workers are rather exposed to more violence. It also highlights the need to consider not only what is best for the sexual health of sex workers but also their mental well-being.

Despite their geographical distance, Senegal and SA have a lot in common politically. Senegal was originally ruled by the French (Stiftung, 2020), but SA was colonised by the Dutch and British. Following their wars for independence, both countries adopted multiparty systems and regular elections as part of their democratic transition to government (Stiftung, 2020). The rich tapestry of identities inside each nation is enriched by the numerous people that comprise a range of nationalities and cultures. Socioeconomic problems that disproportionately impact marginalised people in both countries include high rates of poverty, unemployment, economic and social inequality (Stiftung, 2020). They also show a dedication to continental participation and regional integration by actively engaging in organisations such as the African Union, the Economic Community of West African States (ECOWAS) for Senegal (Stiftung, 2020), and the Southern African Development Community (SADC) for SA. Despite these similarities, every nation has its own sociopolitical environment that is influenced by its topography, linguistic and historical legacy. The legalisation of sex work in SA would offer a comprehensive approach to resolving a range of social, economic, and health-related issues. Legalisation, according to proponents, would protect human rights by giving people autonomy over their bodies and decisions and advance public health by facilitating access to

healthcare and regulating the industry. Additionally, it may lessen prejudice and stigma against sex workers, giving them the voice and authority to fight for their rights and better working circumstances. Legalisation, however, is not the same as decriminalisation, which is the preferred option in SA. Decriminalisation eliminates criminal penalties for engaging in consensual adult sex work but does not necessarily regulate the industry. While legalisation entails establishing a legal framework to oversee and govern the sex industry. Notwithstanding this difference, both strategies seek to improve the rights, health, and safety of sex workers, aligning with global trends towards harm reduction and human rights-based policies.

2.3.5 Understanding the Different Legislative Frameworks.

Östergren (2017) researches sex work and the policies utilised to govern the sex industry. She divides the different policy approaches into "repressive, restrictive and integrative" (ibid, 9). The first two approaches are linked to negative views regarding the sex industry and the need to eliminate or restrict the industry. Conversely, the integrative approach regards the sex industry as a complex phenomenon that encompasses both negative and positive aspects, advocating for its integration into the broader societal framework for more effective management (ibid). Within this approach it opposes all forms of forced sexual interactions or trafficking and is based on a human rights ideology. The integrated approach upholds the "right to a livelihood, security, and health," along with access to justice, asserting that these rights should extend to all consenting adult sex workers, regardless of their gender or social status (ibid, 10). Östergren (2017:15) outlines how the integrative approach is not a moral agreement with the sex industry but rather an acknowledgement that "all citizens including sex workers, should receive protection by the state." There is a view in this model that sex between consenting adults could be seen as a service occupation (ibid, 15) with laws to protect sex workers due to the stigma attached to the sex industry as well as "campaigns and education initiatives to combat the stigmatisation" (ibid, 16).

Shamir and Thiemann (2022:21) adopt Östergren's (2017) terminology but introduce a "fourth category of ‘permissive’ policies," situating it between the "restrictive and integrative categories." This addition of permissive policies aims to acknowledge that they may reflect the realities on the ground, even when policy intent differs (Shamir and Thiemann, 2022:25). They argue that this new category allows for a more nuanced understanding of sex work legislation, moving beyond legislative intent to legislative outcomes, thereby creating a space to differentiate between the law on paper and the law in practice. The permissive approach, as outlined by Shamir and Thiemann (2022:31), embraces a multifaceted understanding of commercial sex, often viewing it as a necessary but regulated activity. They connect the permissive approach to legislation that seeks to protect the rights of sex workers within the sex industry.

Shamir and Thiemann (2022:35) highlight the achievements of anti-prostitution governance feminists in effectively eliminating the existence of a tolerated, unofficially permitted, above-ground sex industry through their dedicated efforts to end the practice altogether. Halley (2018:ix) defines governance feminism as "every form in which feminists and feminist ideas exert a governing will within human affairs." This concept centres on how feminists in positions of power impact legislative changes and policy shifts. However, Shamir and Thiemann (2022:44) emphasise the need to exercise caution when considering the transfer of a regulatory model from one country to another. They underscore the importance of recognising the influence of distinct regulatory foundations, welfare state interventions, and market dynamics, which can significantly alter the impact of such a transplant. Their analysis predominantly revolves around campaigns aimed at ending the legalisation of prostitution. These campaigns effectively achieve their objectives by drawing attention to the prevalence of force, coercion, and lack of consent within the sex industry. They portray prostitution as a form of work that no one would willingly choose given alternative opportunities (ibid, 45). This approach positions the sex industry as a space characterised by violence, sexualisation, and coercion (ibid, 45).

2.4 Conclusion

A prominent thread running through the extensive literature review of case studies involving countries that have adopted diverse legislative frameworks for regulating sex work is the marked divergence in approaches and outcomes. These case studies illuminate the intricate dance between legislative frameworks and their degree of effectiveness in addressing the complexities of sex work. It is important to note that the difficulties involved in adapting these global models to the special South African setting have not gone ignored. The differences in socioeconomic standing, cultural norms, and historical backgrounds among these countries do, in fact, highlight the impracticality of using a one-size-fits-all strategy. This thesis stands as a beacon, showcasing these disparities and advocating for the imperative of crafting a bespoke legislative model to govern sex work within the South African context. By contextualising the current study within the broader landscape of existing literature, the next two chapter underscore the critical significance of this research endeavour. These chapter emphasises the need to consider the distinctive socio-economic and cultural terrain of SA when shaping sex work policy. Following that in the subsequent chapter it will expand on the points made so far and further explore this analysis by offering a thorough examination of the technique and theoretical foundations that support this thesis. This will prepare the reader for a thorough investigation of the complex dynamics underlying sex work in SA, by providing the reader with a thorough comprehension of the complex problems at hand.

Chapter 3: Literature Review: Historical Context

3.0 Introduction

The chapter dedicated to the conceptual framework has meticulously elucidated a constellation of critical concepts that serve as the bedrock for this thesis, expounding upon their nuanced applications in the context of this study. Yet, to attain a profound and comprehensive grasp of the legislative framework surrounding sex work in SA, it is incumbent upon us to embark upon a journey into the annals of the nation's history. Delving into SA's historical context unfurls a rich tapestry that is intrinsically interwoven with the evolution of its sex work policies. It is a journey through time that reveals the intricate threads of socio-cultural influences, political shifts, and economic dynamics that have all played their part in shaping the landscape of sex work regulation in the country. Traversing this historical terrain not only enhances our understanding but also unveils the historical roots of contemporary challenges and debates. In essence, this retrospective exploration provides the much-needed contextual lens through which we can decipher the complexities and implications of SA's legislative framework surrounding sex work. It links the past to the present, illuminating the trajectory of policy development and enabling a more informed analysis of the issues at hand. Consequently, delving into the historical backdrop is not just a choice; it is an imperative in the pursuit of a comprehensive and insightful examination of sex work legislation in SA.

The second half of this chapter delves into the intricate historical trajectory of SA's legislative framework pertaining to sex work, offering a comprehensive overview of its evolution. Understanding this legislative backdrop is paramount for grasping the larger tapestry of social, legal, and human rights issues that envelop the practice of sex work. It serves as the bedrock upon which discussions of social justice, gender equality, policy reform, and public health rest, enabling us to make informed, evidence-based decisions in this complex and nuanced domain. The historical narrative unfolds across distinct epochs: pre-1994, 1994–1996, 1996–2010, and 2010–2020, each encapsulating subtle shifts and modifications in the sex-work policy landscape, even though the overarching framework of criminalisation persisted. This examination underscores the intricate interplay between policy developments and the absence thereof within the realm of sex work. It sheds light on the multifaceted context in which these changes—or the lack thereof—unfolded, offering crucial insights into the underlying factors contributing to the inertia in policy transformation. The overarching theme of SA's sex work legislation narrative revolves around the persistent spectre of criminalisation and the persistent contestations regarding its potential decriminalisation. The history is marked by a continuous struggle between advocates for change and those championing the status quo. Policy evolution is viewed through the lens of potential decriminalisation within a broader context of continued criminalisation. Consequently, unravelling the history of the legislative framework governing sex work in SA

necessitates a keen understanding of the tensions inherent within this expansive framework. In sum, this historical exploration serves as a vital foundation upon which the nuanced complexities of sex work policy in SA can be comprehended. It illuminates the forces at play, the catalysts for policy inertia, and the ever-present push and pull between opposing perspectives within this intricate tapestry of legislation and societal attitudes. By analysing the history this thesis not only provides context for this research but also develops a theoretical framework for understanding the current scenario regarding the indecisiveness of the ANC regarding the sex work policy. The historical context highlighting a gap in the existing literature, by giving an account that goes beyond simply blaming the historical context for the ANC's indecision.

3.1 History of South Africa

3.1.1 A Short History of Sex Work in South Africa

South African history plays a significant role in shaping the way the sex industry is governed today. The colonial legacy, apartheid era, and ongoing issues of migration, gender inequality, and HIV/AIDS have all contributed to the complex landscape of sex work. Historical criminalisation and social stigmatisation have marginalised sex workers, while advocacy efforts and constitutional principles have led to discussions about policy reform. SA's history is intertwined with the challenges and complexities of sex work, making it a critical factor in shaping current attitudes and governance approaches. South African history has left a profound imprint on the socio-economic conditions, legal frameworks, and societal attitudes that shape the governance of the sex industry today. Understanding this history is crucial for policymakers, activists, and scholars seeking to address the complex issues surrounding sex work in SA and to develop more effective and equitable policies. Simultaneously, a historical perspective would assist in establishing a theoretical foundation for understanding the ANC's current actions or decisions regarding the sex work policy. The history elucidates the context of sex work in SA, along with the challenges it poses for the ANC. The ANC inheriting a country with serious socio-economic issues particularly linked to the economy as raised above. The sex industry in SA having developed largely within a colonial context where increased urbanisation shifted the role women previously held within societies. While the hierarchy of women in society combined with difficult economic conditions, and the changing role of the family pushed lower class women into the sex industry, largely as a survival strategy.

As noted by Trotter (2008:673), historians pinpoint the emergence of commodified sex to the 1650s. Coincidentally, Oliver and Oliver (2017:1) date the official colonisation of SA to 1652, aligning with the inception of the sex industry in the region. The history of colonisation can be segmented into distinct eras, during which the role of the sex industry evolved. Nevertheless, a constant theme throughout this history was the imperative to engage in the sex trade for survival. The first era of colonisation was unofficial, taking place

"about 2000 years ago" by "black groups from the North." The second phase was official colonisation in 1652 which originated in the country's south. After taking control of the Cape Colony in 1795, Britain colonised the entire country in 1806; this period ended with SA becoming a Republic in 1961. The last stage involved the internal colonisation of the nation by white Afrikaners, lasting from 1961 until 1994 when democratic SA emerged (Oliver and Oliver, 2017:7). Colonisation resulted in an explosion of capitalist development. Capitalism introducing the concept of wage labour, a key concept within capitalism (Aderinto, 2016:470). Aderinto (2016) highlights the multifaceted impact of colonisation on Africa. The primary objective of colonisation, as Aderinto (2016:472) underscores, was to exploit the continent's human and material resources. This exploitation extended to the realm of sexual transactions, with prostitution tracing its roots back to the colonial period (Aderinto, 2016:470). Prior to colonisation, various forms of sexual transactions existed. However, the commodification of labour during colonisation catalysed the growth of modern-day sex work. Urbanisation, a key aspect of colonisation, provided fertile ground for the expansion of the sex industry. Aderinto (2016:471) observes that colonial urban centres, military bases, and mining settlements thrived on "competitive cheap male labour," creating an environment where women could provide not only sexual services but also food and the comforts of home (Aderinto, 2016:477).

The commodification of labour is linked to the payment of tax which was imposed during the colonial period. Ndlovu (2017:3) explains how this tax was for the gain of white people. The original role of tax was linked to raising funds to cover the costs of the colonies, especially as the European settler population grew and "administrative discipline and political functions" needed to be put in place. The first tax implemented by the British colonial government was in Natal in 1849. With the growing need for labour for the agriculture and mining industry, taxation was utilised to "induce Africans into the labour system" (Ndlovu, 2017:3). Ndlovu (2017:3) explains how taxation was utilised as a "pillar of state control." Through taxation, Africans were shaped into "colonial subjects that were governable and moral subjects." The taxation system was different from how it existed before colonial rule, especially as it was "underpinned by a cash economy." The British colonial rulers introduced the concept of cash. The taxation took three forms: "hut tax, poll (head) tax and livestock rate (dripping or tank tax)." The "Native Taxation and Development Act" was passed in 1925 resulting in all men over 18 having to pay a general rate (roll) tax (ibid, 5), cementing the power of the state. While Africans paid more in direct taxes, the state spending on Africans was minimal (ibid, 10). Through taxation in the form of cash, the British colonial order "steered Africans towards wage labour" (Ndlovu, 2017:7). The hut tax was implemented only on Africans who paid per hut, therefore those with more than one wife, who each had a hut, felt the burden of increased tax. The tax resulted in more men moving into the urban areas to work on the mines, with women left behind in the rural areas. In conjunction, the British

colonial government gave Africans who modernised their ways of living and converted to Christianity an exemption from paying taxes (ibid, 12).

After the Boer war, passes were applied to Africans moving to the urban areas for work and were issued subject to taxes being up to date (ibid, 19). Therefore, implementing taxation on Africans had varying implications on a "political, administrative and socio-economic level" (ibid, 28). The departure of African men from rural areas with the intention of sending money back home had adverse effects. When these remittances couldn't be sent, it resulted in unpaid taxes. Consequently, women faced the risk of losing access to their land, which often compelled them to relocate to urban areas. With fewer people working the land, there was an increased need for cash to buy food and essential resources. As per Ndlovu's (2017:28) analysis, the aim of taxation was to create a "colonial subject that was civilised, moral and governable." The adverse effect on the African people led to them being overworked and impoverished. The connection between wage labour, sex work, and race in SA's history was profoundly influenced by systemic racial discrimination and the economic exploitation of individuals from marginalised communities. To put it succinctly, this direct correlation emerged because of entrenched racial discrimination and economic exploitation. Discriminatory labour policies limited individuals from marginalised communities' individuals' access to formal employment, forcing some, particularly Black women, into the informal economy, where sex work became a survival strategy. This historical context illustrates the complex interplay of race, gender, and economics in shaping the lives of marginalised communities in SA.

The connection between race and sex work in SA started with the arrival of the Dutch East Indian Company and its link to slavery in the 1950s (Roberts, 1993:366). Within the colonial context, sex work emerged as a complex practice, serving various purposes. It was, in part, a means to fulfil the sexual needs of sailors and deter them from seeking homosexual relationships (ibid). Additionally, sex work provided enslaved individuals with opportunities to earn an income, enabling many to work toward purchasing their freedom. Trotter (2008:675) further elaborates on this, explaining that slaves were sometimes left to engage in prostitution as it also contributed to the "increase of the slave population." Furthermore, during this era, white men who owned black women as slaves frequently subjected them to sexual abuse, viewing them solely as objects for rape, breeding, or exploitation (ibid). This perspective contributes to the perception of black women as morally tainted, which, in turn, normalised their involvement in sex work (Thusi, 2015:224). Notably, during this time, there were very few instances of white sex workers. The issue of race has remained a central concern for sex workers throughout the recorded history of sex work in SA. Indeed, as Oyewumi (2002:2) points out, a "sexualised narrative was projected onto African women in European representations from the Middle Ages onwards." After the British assumed control of the Cape Colony in 1795, some white

women from Europe arrived in SA to work as sex workers. This influx of white women gradually shifted the demographics of the industry, leading to a whitening effect (Thusi, 2015:224). The British abolished slavery in 1834 (Trotter, 2008:675), and during this period, prostitution was technically deemed an "offense, but it was rarely prosecuted" (ibid, 678). Moreover, it's essential to acknowledge that dockside sex workers played a distinctive role in this complex historical narrative, as they navigated the intersections of race, labour, and the port cities' unique dynamics.

Dockside prostitutes, so called due to the location within which the women operated on the dockside/port played a role in the formation of the sex industry in SA. The clients were mainly foreign seafarers, docked in SA for a short period of time who sought "recreational options as a group" or "companionship as well as sexual satisfaction" (Trotter, 2008:673). Due to the nature of the docks, these women operated differently, often indoors, and could evade legal surveillance (ibid, 674) and were therefore not prosecuted. Due to prostitution being illegal and the women being marginalised, the history of dockside prostitutes was not fully documented, with no clear knowledge of how these women operated. The women working on the docks adapted to the nature of the working environment, learning different languages and cultures "allowing them to corner the ethics of the market" (ibid, 676). In turn it created a niche market where women could operate freely with no fear of being identified while clients "lack[ed] local knowledge and citizen's rights" as well as "social reach to reveal a prostitute's identity" (ibid, 673). This meant that women were free from the stigma of being outed as a prostitute. Despite it being illegal, dockside prostitutes were seen, according to Trotter (2008:678), as being "opportunistic agents, with some measure of control and not just passive victims of the vice trade." This meant that women had some control and were tolerated as inevitable. This tolerance shifted with the increased spread of disease particularly sexually transmitted infections (STI).

During 1868-1900, prostitutes were linked to the spread of diseases. Dockside prostitutes particularly played a part in the "global traffic of ideas, diseases, DNA, contraband and currency" (Trotter, 2008:673). At the same time the sex industry grew in Johannesburg alongside the growth of the mining camps enabling women to work "outside of native communities" and therefore guaranteed their anonymity (Aderinto, 2016:472). Within these areas, sex work was accepted mainly due to it happening behind closed doors. Aderinto (2016:477) points out how the "issue was not the sexual act itself, but several activities associated with it." Aderinto's (2016) observation is important because it encourages a more comprehensive and nuanced perspective on sex work. By recognising that the issue extends beyond the sexual act itself, it opens the door to more informed, rights-based, and effective approaches to addressing the challenges faced by sex workers and crafting policies that promote their well-being and rights. The argument contends that the issues

surrounding the sex industry have not always been solely moral concerns but have often been linked to the negative consequences associated with the industry. The argument suggests that if these negative outcomes were absent or effectively managed, the concern around the industry would not be as significant. This perspective underscores the need to address the multifaceted aspects of the sex industry to reduce its societal impact and promote more informed and equitable policy and support for sex workers.

The aim of colonisation was to access cheap labour and resources, but the activities associated with prostitution began to affect the productivity of this labour. At this point, it needed to be regulated. An example given by Aderinto (2016:477) is its link to illegal beer brewing and therefore, drunkenness, which reduced productivity. The second example is prostitution being linked to venereal disease (VD). Two diseases at the time were syphilis and gonorrhoea, which spread through sexual intercourse. These diseases could "deplete the African population and undermine the availability of labour", which would directly affect the "maximum exploitation of the colonies" (ibid, 477). These diseases also started affecting the "productivity of the colonial army which was needed to maintain law, and order, therefore key to sustaining imperialism." Prostitution which had previously been accepted in military towns due to it helping with the "discipline of African soldiers", now needed to be regulated (ibid, 477). After more than 13% of their troops were admitted to the hospital with STIs in 1866, the colonisers threatened to pull back their forces from Cape Town (Gardner, 2009:330). The Contagious Disease Act was passed to help curb the spread of VD. The Contagious Diseases Act is important for a study on sex work because it represents a historical example of how public health concerns intersected with the regulation and control of sex work. It sheds light on the challenges and consequences of such regulation and continues to inform discussions and policies related to sex work and public health. This Act permitted prostitutes to be examined and treated for diseases (Trotter, 2008:678). The fear of contagion grew within the middle class during this period, particularly "through contact with the lower order" (ibid, 768). Prostitutes were seen to come from this class. Nevertheless, in 1880 the sex industry bloomed with the mineral revolution, leading to an "influx of continental women" and the "professionalisation of the trade." Trotter (2008:678) notes how there was a brothel explosion during this period with "European trafficking becoming a global enterprise."

The connection between sex work and the fear of racial survival during the colonial period in SA is rooted in the historical context of racial segregation, economic disparities, and the exploitation of marginalised communities. Within this context sex work became a lens through which racial dynamics were both perpetuated and contested, highlighting the intricate relationship between the two phenomena in this historical context. A "direct threat to racial survival" was perceived by the white or European population because of white sex workers having relations with black men (Thusi, 2015:211). The rise of the Victorian

Era (1837–1901) ushered in greater sexual conservatism and women needing to be protected from the male sexual appetite (ibid, 212). During this time, inter-racial sex became more of a concern, linked to a desire to maintain racial purity (ibid, 214). White sex workers having sex with black or coloured men was seen as a challenge to "the dominant white male patriarchal order" (ibid, 227). Trotter (2008:678) outlines the associated fear that black men wanted to rape white women, resulting in the policing of sex between white women and black men. But regardless, sex between white men and black women continued despite this policy (Thusi, 2015:235). The focus of policing revolved around safeguarding the perceived purity of white women, leading to an unequal emphasis on the surveillance of black men compared to white men. This accentuated the racialised aspect of policing, underscoring the devaluation of black women's bodies. Concurrently, there was a belief that the engagement of lower-class women in prostitution could uphold the virtues attributed to those seen as respectable (Thusi, 2015:212-213). During this era, legislation pertaining to sex work was primarily aimed at maintaining racial segregation. However, in the context of democratic SA, this approach was no longer relevant. Surprisingly, despite the evolving societal landscape, the legislation concerning sex work remained unchanged.

The fear of black men, termed the black peril, began to take root at the end of the Anglo-Boer War in 1902. This fear of black male sexuality was related to the threat it posed to white male masculinity (ibid, 226). The "Black Peril" stereotype and sex work were interconnected in colonial contexts through the lens of racial segregation, moral panic, and fear of racial mixing. This intersection influenced the regulation, stigmatisation, and treatment of sex work, particularly concerning racial dynamics during the colonial era. Thus, the government passed legislation that criminalised sex between black men and white women due to "black men's sexual attraction to white women posing a threat" (ibid, 227). Richter (2012:63) documents how the "laws that criminalise sex work in SA" were a "remnant of the Immorality Act of 1927." Trotter (2008:680) records how the Immortality Act of 1950 was an attempt by "apartheid officials, so-called Christian nationalists, to stamp out prostitution." Trotter (2008:680) reflects on how this legislation "places the burden of moral virtue on women" which in turn enforced "old Victorian double-standards" where the female, viewed as the solicitor, was illegal but the purchasing by the man was legal. The burden of evidence required for prosecution meant that police largely used municipal by-laws to prosecute women, focusing on "streetwalkers and known brothels" (ibid, 681).

Trotter (2008:684) underscores the limited impact of the "Immorality Act" on dockside prostitutes, highlighting how prostitution was ingrained as a "norm in everyday life" within these communities. Even after their forcible relocation from the docks to distant townships in 1970, dockside prostitutes continued to operate within dockside clubs. However, it's worth noting that there's been limited research on the sex industry

during the first part of the twentieth century (Trotter, 2008:680). The presence of dockside prostitutes illuminates the intricate nature of sex work. Trotter (2008:674) emphasises how these women weren't merely selling sex but offering their expertise in meeting complex companionship needs. This occurred within a framework that was simultaneously local, global, and liminal in nature. Richter (2012:12) highlights the inherent contradiction in classifying sex work as illegal, especially when the government did not participate or "interfere with the sexual and private lives of consenting adults." This paradox raised fundamental questions about the state's authority to regulate individuals' bodies and choices. Historically, the criminalisation of sex work has disproportionately targeted the female body. This pattern is deeply entwined with the historical control exerted by men over women, rooted in patriarchal and gender-biased structures.

In summary, during the colonial era in SA, the growth of the sex industry was intertwined with a range of complex factors influenced by colonial policies. Economic exploitation by colonial powers led to widespread poverty and limited economic opportunities, particularly for marginalised communities. Discriminatory policies restricted economic prospects for individuals from marginalised communities' , pushing some individuals into the informal economy, where sex work could become a means of survival. Burdensome colonial taxation exacerbated economic vulnerability, encouraging some to turn to sex work as an alternative income source. Social dislocation caused by colonial disruption disrupted traditional livelihoods, making certain groups more susceptible to sex work. Gender inequalities, reinforced by colonialism, left women with limited economic options, often resulting in their engagement in sex work. Stigmatisation and criminalisation by colonial authorities pushed sex work underground, increasing the vulnerability of sex workers. Labour migration during the colonial period also played a role, contributing to the growth of the sex industry in urban areas. Additionally, colonial administrations were seen to regulate sex work for public health reasons, influencing how the industry was organised and operated. These complex factors interacted differently across regions and communities, shaping the historical link between colonial tax policies and the expansion of the sex industry in SA.

3.1.2 Role of women politically in South Africa

Examining women's political roles is vital as it unveils their perspectives, contributions, and challenges in policymaking, governance, and societal transformation. Beyond fostering inclusivity and diverse viewpoints, it underscores the pivotal importance of gender representation in decision-making arenas. By acknowledging women's agency in advancing social justice, human rights, and gender equality, this discussion amplifies the call for more equitable and well-rounded policies. Furthermore, delving into the historical and contemporary dimensions of women's political engagement illuminates their remarkable journey in dispelling stereotypes, overcoming barriers, and inspiring a new generation of female leaders. In essence, discourse on women's

political roles underscores their profound influence in shaping communities, legislations, and movements, underscoring the ongoing imperative of pursuing gender parity and fostering inclusive governance.

The women's political movements in SA during the early 1900s were marked by a racial divide that mirrored the broader societal divisions of the time (Hassim, 2014:24). Despite these challenges, African women significantly contributed to the struggle for equality and justice, laying the foundation for future activism and political change in the country. The ANC was formulated in 1912, and the Bantu Women's League was formed in 1918. At this time women were not considered active members of the ANC and had no voting rights. Women historically played the role of "providing suitable shelter and entertainment for delegates of congress" (ibid). It was only after the renewal of the ANC in 1940 that at the 1943 annual conference, women were granted full membership (Walker, 1982:89). During this time, the women's league became known as the ANC Women's League (ANCWL) with the first president being Madie-Hall Xuma (Walker, 1982:89). The history of the ANCWL was linked mainly to the pass laws, with Hassim (2014:20) highlighting how the "pass laws created the spark for a new form of politics of gender." She linked this to the fact that men were not willing "to take up the cause of passes for women" resulting in women taking up the cause themselves (Hassim, 2014:22). Due to the formation of the ANCWL, it was seen how "women's rights became central to defining the modernity of the ANC" (Hassim, 2014:25). Despite this, the "national struggle for freedom and equality took precedence over the special problems and issues of women" (Walker, 1982:89). During this period the ANCWL was formed as a subsidiary body to the ANC and in so doing, Walker (1982:89) argues they recognised "that women occupied a distinct and inferior position to men in society." Walker (1982:90) reflected on how this "reinforces stereotypes about women's role and women's work…separate is not equal."

The formation of the ANCWL in 1943 marked the beginning of a significant transformation, though it took several years for the organisation to gain momentum and become active, particularly towards the late 1940s (Walker, 1982:90). It was the implementation of passes for women that played a pivotal role in driving the rapid growth of the ANCWL, particularly after 1950 (Walker, 1982:91). The year 1949 brought a crucial turning point when the ANC adopted the program of action, shifting the organisation towards a more radical direction. Within the ANCWL, the transition was notable as Madie-Hall Xuma stepped down from her presidency, and Mtwana assumed leadership—an event that Walker (1982:92) contends marked the initiation of a new era for the organisation. Under Mtwana's dynamic leadership, the ANCWL saw a broader representation of working-class women, signifying a significant departure from its previous composition, which had primarily consisted of upper-class women, as well as wives and daughters of men within the ANC (Walker, 1982:92). Nonetheless, it's worth noting that despite these changes, male congress members

remained hesitant to fully embrace the active involvement of their wives and daughters in the administration of the ANC (Walker, 1982:92). Under Mtwana's guidance, the ANCWL became increasingly concerned with addressing the restrictions on women's mobility and economic activities imposed by the emerging apartheid system (Hassim, 2014:30). This transformation underscores the organisation's commitment to tackling the adverse effects of apartheid policies on women's lives and rights.

The ANCWL formed simultaneously with other women's movements, with collaborations taking place between these organisations. The ANCWL was made up of African women in line with the development of the ANC. The ANC was developed "at a time in which each 'racial' group – African, Indians, Coloureds, and whites – organised under its own structures but worked together in the so-called Congress Alliance" (Hassim, 2014:31). This prevented the ANCWL from becoming a non-racial group. On the other hand, the Communist Party "was much more strongly committed to nonracialism" and, in turn, strongly influenced the growing women's movement (Hassim, 2014,32). Due to the desire for a non-racial movement, the Federation of South African Women was formulated (FEDSAW) in 1954 at a meeting attended by members of the ANCWL, the Communist Party and trade unions (Hassim, 2014:32). At the first meeting of the federation the Women's Charter was adopted. This charter, while "located within the anti-apartheid struggle" also "sought to address the specifics of women's oppression" (Hassim, 2014:33). Women in the movement aiming to "teach men [that] they cannot hope to liberate themselves from the evils of discrimination and prejudice as long as they fail to extend to women complete and unqualified equality in law and practice" (Hassim, 2014:33) This quote came from the newly adopted women's charter which Hassim (2014:34) argues challenges not only the parallel struggle for women's rights, but also the "deeply entrenched gender hierarchies within black (and other) communities." The ANCWL represented the formation of a platform from which women could advocate for policy change, including decriminalising sex work.

In the preamble to the 1954 Women's Charter, it highlights the aims women had of striving for gender equality:

> We, the women of South Africa, wives, and mothers, working women and housewives, African, Indians, European and Coloured, hereby declare our aim of striving for the removal of all laws, regulations, conventions, and customs that discriminate against us as women, and that deprive us in any way of our inherent right to the advantages, responsibilities, and opportunities that society offers to any one section of the population. (Women's Charter, 1954).

The quote from the Women's Charter of 1954 holds significant relevance in discussions about sex work in SA. It emphasises how dedicated women from various backgrounds were to fight prejudice against women, reflecting the larger fight for gender equality. This dedication is essential when discussing sex work since female sex workers frequently experience severe stigma and prejudice. The Charter is showcasing the

natural entitlement of all women—including sex workers—to equal benefits, obligations, and opportunities. Its diversity in bringing together women from all racial origins serves as a reminder that sex workers, too, come from a variety of backgrounds and should not be ostracised because of their line of work. Furthermore, the Women's Charter's historical backdrop serves as a reminder of the ongoing fight against systematic injustices that have plagued sex workers throughout SA's history.

Bonner, Delius, and Posel (1993:2) explain how the "strains produced by the co-existence of a racially exclusive social and political order with an economic system based on the incorporation of expanding numbers of black workers" were "fundamental to the making of apartheid." The quote from Bonner, Delius, and Posel (1993) highlights the historical setting of apartheid in SA, which was marked by a racially restricted social and political order coexisting with an economic system that included an increasing number of black employees. Discussions on sex work in SA are pertinent given the widespread racial injustice and inequality that characterised apartheid society. Access to work possibilities and economic involvement were just two areas of life where there were disparities and prejudice. This historical backdrop is useful in the context of sex work because it places the difficulties and experiences of sex workers, especially women of colour, into a larger context of the social and economic systems of the apartheid era and the gendered dynamics they entailed. The economy in SA was stimulated mainly by the availability of low-wage workers and increasing urbanisation: a process which was started during the earlier colonisation by the British. "The state of the labour market had perhaps even greater implications [for] patterns of participation in location political life" for women (ibid, 265). Outside domestic work, women were often restricted to "beer-brewing, hawking and prostitution" (ibid, 265). Through the "tighter control upon female mobility and urban residence," it "meant that the position of women in urban areas was extremely precarious" (ibid, 265). The introduction of the pass system for women in 1950, a system used previously to regulate African male movement in urban areas, combined with the crumbling of marriages and families, drew women into national political organisations like the ANC and FEDSAW.

Till the late 1980s, the ANC believed that "the emancipation of women was secondary to and contingent upon national liberation" (Hassim, 2006:32). Therefore, it meant that the mobilisation of women was meant to be for the broader struggle. It was only in the 1980s that progress was made in defining the nature of women's interests and triple oppression, the latter referring to the intersection of gender, race, and class oppression. Within this context, black women were the most marginalised and oppressed (Hassim, 2006:43). The prominent women's organisations in the early 1980s included the following: "United Women's Organisation (UWO) in the Western Cape, the Federation of Transvaal Women (FEWTRAW), and the Natal Organisation of Women (NOW)" (Hassim, 2006:47). These organisations played a huge role in influencing

the "ideological content and strategic direction of the women's movement in the 1980s and 1990s," working with the ANCWL to "provide the leadership and constituency for the Women's National Coalition" (Hassim, 2006:49). In the 1980s women activists began to question what national liberation would deliver to women and began linking the struggle for national liberation and that of the liberation of women. Women emphasised that they couldn't be separated but rather that woman were "an integral part of how liberation itself was defined" (Hassim, 2006:87). Despite the push for the rights of women, the "push for national liberation" dominated (Hassim, 2014:33).

Key to the women's movement was the conference in Amsterdam, 13-18 January 1990, known as the Malibongwe Women's Conference. This conference was vital as it discussed the challenges faced by women in SA as well as the "preferred role of women in South African politics and society" (COSATU, 2018:1). Several resolutions came out of this conference that would help address women's emancipation as well issues around gender equality (COSATU, 2018:1). McBride and Mazur (2011:4) define Gender Machinery as "formal government structures assigned to promote gender equality and/or improve the status and rights of women." The SA gender machineries were discussed at the conference paving the way for the formation of the Office on the Status of Women (OSW) in 1996, and the Commission on Gender Equality (CGE) in 1996. In 2004, the National Ministry of Women, Children, and Disabled Persons was developed as a gender machinery within Parliament (COSATU, 2018:14). In 1992 the Women's National Coalition (WNC) was launched. "The WNC agreed that its main objectives would be to prepare a document on women's rights (Women's Charter) for inclusion in the new constitution of SA" (Hom, 1992:85). The WNC notes the need to get the views of a broad range of South African women, therefore both the educated and deprived (Hom, 1992:85). The WNC was successful in bringing together a "remarkable range of SA women" from across various organisations as well as from different racial groups and classes, coming from both urban and rural areas. The WNC represented the emergence of a social movement. 1992 was a transition period where negotiations were taking place to end apartheid and formulate the new democratic SA. Due to the male-dominated political parties involved in the negotiations, women found themselves and gender issues marginalised in the political process (Hom, 1992:85-87). A significant challenge was that most organisations that women belonged to were not involved in politics, resulting in no organisation which could claim to represent or negotiate on their behalf. The WNC represented the start of collecting women's needs, demands, and aspirations.

The WNC aimed to go beyond the 1954 Women's Charter that FEDSAW developed. In so doing, the Women's Charter would represent a broader range of SA women and "address the needs of women in a post-apartheid SA." The new charter included issues from the 1954 charter; however, it aimed to take these further

and give more detail on the concerns faced by women in SA (Hom, 1992:87). Once the aspirations of women in SA had been documented, FEDSAW was determined to fight for it not to be a "meaningless piece of paper" (Hom, 1992:87). The creation of the new Women's Charter represented the hopes of women in SA for a democratic SA which included democracy, human rights, and equality for all, including women (Hom, 1992:88). The creation of this Charter was a way for women in SA to ensure that their issues were not forgotten, but rather included in the foundation of a post-apartheid SA. The Charter was adopted in February 1994 as The Women's Charter for Effective Equality. The Charter aimed to push for women's social, economic, political, and legal equality in the family, workplace, and state. (The Woman's Charter for Effective Equality, 1994:1). This equality must be embodied at all levels in legislation and government policy (ibid, 1). The Charter encompasses various dimensions of equality, as elaborated within its provisions. These dimensions encompass equality in legal and judicial matters, economic participation, education and training, infrastructure and environmental development, access to social services, involvement in political and civil affairs, family and partnership dynamics, prevention of violence against women, healthcare access, and representation within the media (ibid.).

Under economic equality, the issue of sex work was noted and mentioned explicitly with support for its decriminalisation. As quoted from the Charter:

> prostitution shall be decriminalised. Appropriate measures shall be taken to protect the health and safety of sex workers and their clients (The Woman's Charter for effective Equality, 1994:4).

The specific mention of sex work in the Charter is significant especially as women across the racial and class divide developed the Charter therefore representing support by women generally for the decriminalisation of sex work. It also highlighted the importance of decriminalising sex work in achieving equality for women in SA.

During the formation of the new democratic SA, it was hoped that equality for women would form part of the foundation of a democratic SA. The South African constitution adopted in 1996 noted the following in the Preamble on the role of the SA Constitution (1996):

> Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; Improve the quality of life of all citizens and free the potential of each person; and Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations. (Preamble, SA Constitution, 1996: 1).

The South African constitution, rooted in democratic principles, obliges the government to craft policies in line with the people's will and ensure equal legal protection for all citizens. In this context, addressing the legislation surrounding sex work emerges as an imperative step toward achieving gender equality within the nation. Historically, this issue might not have received the attention it warranted, as it

appeared not to affect all women equally. However, the deeply troubling gender-based violence and femicide (GBVF) crisis in SA has highlighted the urgent need to legalise sex work. This linkage between sex work and GBVF effectively underscores the argument that legalising it not only legitimises sex workers' concerns but also elevates them to a broader realm of women's issues, demanding society's collective action to confront the myriad challenges faced by sex workers. However, it's essential to recognise that legislative change, while crucial, cannot stand alone; it must be part of a comprehensive approach that includes efforts to alleviate poverty and combat inequality, addressing the root causes that drive many women into sex work, thus perpetuating their vulnerability and social marginalisation within SA.

3.1.3 The Contemporary Socio-Economic Context of SA

In 1994, before the African National Congress (ANC) assuming power in SA, the party articulated a compelling vision in their election manifesto. Rooted in the ANC's historic goals, dating back to its formation in 1912, was the ambition to forge a non-racial society that would enhance the quality of life for all South Africans (ANC, 2012b). This overarching vision encompassed several vital components. Firstly, it aimed to establish a democratic society built upon the principles of equality, non-racism, and non-sexism. Secondly, it sought to cultivate a sense of national identity by embracing the rich tapestry of cultures, beliefs, and languages as sources of collective strength. Thirdly, the ANC aimed to fuel economic growth by providing essential elements such as employment opportunities, housing, and education. Finally, a cornerstone of this vision was the creation of a tranquil and secure environment where citizens could live without fear (ibid). These core objectives represented the ANC's enduring commitment to crafting a more inclusive and equitable SA, serving as guiding principles for the nation's development. These aims were outlined in the Reconstruction and Development Programme (RDP), developed in 1994 shortly after the first democratic election. The RDP was an integrated, cogent socio-economic policy framework aimed at mobilising SA's people and resources toward the complete abolition of apartheid and constructing a democratic, non-racial, and non-sexist future (O'Malley, 1994). Some of the aims of the ANC, as outlined in their 1994 election manifesto, included improved quality of life, jobs and better incomes, a growing economy, workers' rights, ending rural poverty, eliminating discrimination (implementing affirmative action and equality before the law) and healthcare (ANC, 2012b). The ANC manifesto outlined what the ANC saw as the ideal situation for SA by creating a better life for all, regardless of race or gender. At the same time, within this context, the issues around sex work were not resolved. There was a paradox between what the ANC hoped to achieve and the lived reality of sex workers in SA.

The socio-economic context leading up to 1994 was informed by a particular worldview, which the ANC then took up in various ways, leading to the current vacillation around the sex work policy. This world

view adopted in 1994 was linked to the economic investment into the country to encourage investment and therefore promote economic growth. Economic diplomacy is linked to the policies that "promote trade, investment, tourism and technology transfers to SA." These policies aimed to help improve the "imaging, branding, marketing and public diplomacy (domestic and international)" of a country (Makokera, 2015:1). SA entered democracy with the effects of economic sanctions that were placed on the country during the apartheid era. After Nelson Mandela was released, there were closer engagements between the government and business. With SA companies expanding internationally there were restrictions "in the form of substantial exchange controls" which were due to the "legacy of the sanctions" (Spicer, 2016:8). Stals (1998) outlines how "a very comprehensive system of exchange control that covered certain current account transactions and the inflows and outflows of both resident and non-resident investment funds" existed in SA. When "international punitive actions against the South African economy were removed" with the dawn of the democratic era, there was agreement that the exchange controls should be removed but no clarity on how long the process would take (Stals, 1998). These controls which started in 1993 were removed over a 5-year period, with the aim that the "capital inflow would exceed the outflow." International dialogues however only resumed in 1999. (ibid).

The aim of economic diplomacy in 1994 was to encourage financial investment into the SA economy in the creation of "a stable democracy that [would] enable the pursuit of long-term investment and growth" (Spicer, 2016:4).According to Spicer (2016:4), these relations increased the "confidence of the business community that any new government in SA would be less likely to pursue policies that had been comprehensively discredited elsewhere." One such policy would be the policy regarding sex work which had not been resolved globally due to a possible belief that decriminalisation could potentially damage the image of SA due to its links to violence against women (VAW) and the increase in criminal activity and trafficking (even though the extend was not known) associated with the industry. According to Spicer (2016:6) the government established the Business Trust (BT) in 1998/9 to execute the goals of The Growth, Employment and Redistribution policy (GEAR). GEAR being a "self-imposed restructural programme" which aimed to "stabilise and restructure the economy" and in turn avoid "International Monetary Fund (IMF)/World Bank restructuring intervention" (Spicer, 2016:6). Spicer (2016:6) explains how in the formation of BT there was an agreement that the government "would temporarily delay the addressing of many of society's development needs" and anticipations created; the plan was for the delays to only be till the economy was stabilised. In exchange for these delays, Businesses were willing to coinvest with government, addressing key challenges like employment creation and education. (ibid.). The challenge here would be linked to how a stabilised economy would look and be identified and when the society's development needs would be addressed. The economic factors listed above gave another possible reason for the delay in policy change. The newly elected

ANC government in 1994 committed to the people to improve the economy. This required that certain other matters be put on hold to guarantee the economy's stability, which was crucial at the time. The government committed to business and needed to preserve the country's image to meet its commitment to business. Decriminalising sex work at that time would have contradicted the international policies used to regulate sex work. New Zealand decriminalised sex work in 2003 which paved the way for the SA government to review the way sex work was governed in SA. Despite this sex work was still criminalised in SA, but there was an increase in dialogue and advocacy around its potential decriminalisation.

The ANC's objectives were not merely aligned with growing global demands for racial and gender equality; they were a vital part of this worldwide call for justice. Their goals and electoral promises gave the party an immense responsibility and the critical need to prioritise key issues. Regrettably, the concerns faced by sex workers were inexplicably overlooked and relegated to the sidelines. This stark disparity between the ANC's policy proclamations and their actual implementation bore substantial repercussions, particularly concerning sex work. Astonishingly, legislation criminalising sex work, enacted during the apartheid era, remained unexamined and unchanged. This enduring neglect meant that sex workers continued to operate within the shadow of criminality, perpetually haunted by the threat of arrest and abuse. Such a scenario starkly contrasted with the Freedom Charter's vision, which aspired to grant freedom to all. The Charter placed a significant focus on women's rights, raising the question of whether the rights of sex workers, predominantly women, were considered integral to the broader discourse on women's rights. This poignant juxtaposition underscored a critical juncture where the ANC's commitment to equality faced a pivotal test, particularly when advocating for the rights of marginalised and often silenced voices. The resonance of the global call for equality required a comprehensive approach—one that acknowledged the interwoven fabric of gender, labour, and human rights, ensuring that no segment of society remained neglected in the pursuit of a just and equitable SA.

The principles articulated in the Freedom Charter, particularly the provisions that proclaim, "the people shall share in the country's wealth" and affirm that "all people shall have equal rights to trade where they choose, to manufacture, and to enter all trades, crafts, and professions," stand as a resounding testament to the collective aspirations of a just and equitable SA (ibid). However, the criminalisation of sex work starkly contradicts these foundational principles, thereby infringing upon the fundamental tenets of the Bill of Rights, a cornerstone of the South African Constitution (Chapter 2, 1996). This Constitution unequivocally guarantees every individual’s equal rights, equality, human dignity, freedom, and security of person (Constitution of the Republic of SA, 1996:5-6). By persisting with the criminalisation of sex work, the ANC fails to uphold its promises of equality for all and actively compromises the human rights of those affected by these policies. This discord between rhetoric and reality creates a distressing hierarchy, wherein

marginalised groups like sex workers have diminished access to their rights and freedoms. This hierarchy is antithetical to the principles of inclusivity and equity that the ANC professes to champion, rendering it imperative for the party to address these disparities and ensure that the rights and dignity of all South Africans, regardless of their occupation, are upheld with unwavering commitment. Andrews (1997:316) documents how women activists in SA during the creation of the new democratic government gave evidence of the importance of formalising protection for women. He highlights how gender equality was included "into a system of constitutional law that retained respect for traditional law" (Andrews, 1997:316). Women's right to bodily and psychological integrity was guaranteed in section 12 of the Bill of Rights (ibid, 329). Kehler (2001) explains that while citizens have rights, these are restricted by funding availability, leading to cuts in social spending. Due to women's reproductive roles, cuts in social spending have been seen to have a greater impact on women and reduce their active participation in "the workforce and increase their poverty" (ibid, 44). This is combined with the fact that despite development in SA, "significant proportions of the African population still have aspects of their lives governed by customary law" (Andrews, 1997:319).

In his momentous 1994 inauguration speech, Nelson Mandela acknowledged that while SA had achieved political emancipation, a profound need persisted to "liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender, and other discrimination" (Mandela, 1994b). This visionary leader, was reaffirming his commitment to a brighter future, further asserting that the ANC government would create a legal framework that would facilitate, rather than hinder, the monumental task of reconstructing and developing a society battered by its past (Mandela, 1994a). A vital meeting on May 24, 1994, echoed the significance of ensuring that all facets of government, including the President himself, comprehended that true freedom hinged upon the complete emancipation of women from every form of oppression (Mandela, 1994c). Notably, this included "all forms of oppression," yet the legislative framework criminalising sex work continued to perpetuate the oppression of women. Kehler (2001:41) poignantly observes that despite legal strides made in favour of women, the harsh realities in SA still hinged on factors such as race, class, and gender. Moreover, Kehler (2001:49) acknowledges that while the laws may exist on paper, the true challenge lies in their effective monitoring and implementation. This dissonance between policy and practice underscores a glaring gap between intention and execution, questioning the commitment to gender equality and social justice. It's crucial to differentiate between the ANC as a political party and a government. This distinction explains the inconsistencies in their stance on sex work. Promises made by the ANC as a party were not always upheld by the ANC in government, leading to a credibility crisis. Furthermore, it's noteworthy that the ANC published various documents as the government rather than as a party, raising questions about why the ANC, in its dual roles, couldn't reconcile differing approaches toward sex work. The ANC's transformation from a political party to a governing entity underscores the distinction

between what is needed to secure an election victory and the complexities of running a nation. This transition compelled the ANC to prioritise certain issues over others, leading to the proliferation of promises that ultimately exceeded the capacity for fulfilment. Consequently, the ANC found itself in a quagmire of unfulfilled commitments and a growing credibility deficit, a stark reminder of the challenges inherent in translating political ideals into concrete actions within the complex landscape of governance.

3.1.4 The Extent of Sex Work in South Africa

Engaging with the extent of sex work in post-apartheid SA is vital due to its multifaceted impact on social justice, gender equality, public health, and legal reform. Addressing sex work aligns with the country's commitment to human rights, economic empowerment, social inclusion, and international reputation. It is essential to building a more equitable and just society, ensuring that marginalised groups, like sex workers, were recognised and protected in the nation's journey toward progress and equality. Simultaneously the extent of sex work in SA can provide insights into the government's policy choices, its commitment to human rights and gender equality, its effectiveness in public health management, and its overall approach to addressing complex social issues. It serves as a litmus test for the government's ability to balance social, legal, and public health considerations in its governance. Understanding the extent of sex work in SA is essential to comprehending why policy change was required in this sector. SANAC and SWEAT compiled a report in 2013 documenting this. The report stated that the intermediate estimate was 153,000 sex workers in SA, making up 0.9% of the adult female population (SANAC and SWEAT, 2013:4). However, the range of sex workers were between 132,000 and 182,000, therefore between 0.8% and 1.1% of the adult female population (ibid). The report divided the percentage of prostitutes per province in SA; these percentages are outlined in table 1.

Table 1: Percentages of sex workers per province:

Province	Percentage
Gauteng	22%
KZN	16%
Western Cape	11%
Eastern Cape	10%
Mpumalanga	10%
Northwest	10%
Limpopo	10%
Free State	7%
Northern Cape	4%

(Source: SANAC, and SWEAT, 2013:4).

SANAC and SWEAT further broke down sex workers into urban versus rural areas, with 51% of prostitutes in larger urban areas, 37% in small urban areas and 12% in rural areas (SANAC- and SWEAT,

2013:4). The report also highlighted approximately 5% male and 4% transgender sex workers in SA (ibid). In a study by Richter, Chersich, Temmerman and Luchters (2013: 248) on sex workers in four different sites in SA, namely Hillbrow, Sandton, Cape Town and Rustenburg, the interviewees included 1,653 female sex workers, 87 male sex workers and 59 transgender sex workers. Through their research, Richter et al. (2013) pointed out that most sex workers in SA were female.[10] An updated study was needed to understand the extent of sex work in SA. SANAC, in the South Africa's National Sex Worker, HIV, TB and STI plan (2019-2022), still quotes the SANAC and SWEAT 2013 study when outlining the number of sex workers in SA. When giving these statistics, SANAC highlighted that "there [was] limited data on the absolute population size of sex workers due to social marginalisation and criminalisation of sex work" (SANAC, 2019:9).

Other statistics important for this thesis include women's employment and unemployment in SA. The unemployment rates affect the sex industry because sex work may be many people's only viable employment option. The statistics, particularly the stark gender disparities in employment, shed light on the intricate relationship between the labour market and the sex industry. In 2018, among the 19,122,000 women aged 15 to 64 in SA, a mere 10,119,000 were actively participating in the labour force. Concurrently, approximately 2,986,000 women found themselves unemployed, culminating in an overall unemployment rate of 29.5% (Statistics SA, 2018:19). Alarmingly, women, constituting 51.9% of the population, represented only 34.5% of the labour force. In stark contrast, men, comprising 48.9% of the population, dominated the labour force at 65.5%, with a considerably lower unemployment rate of 25.3% (ibid, 20). Crucially, these figures lay bare the entrenched gendered economic disparities between men and women as well as the more general economic disparities prevailing in SA. More men secured positions in the formal sector, translating to higher earning potential. This gendered division of labour perpetuated historic gender roles where men were often regarded as primary breadwinners while women were confined to domestic responsibilities. Consequently, women bore the brunt of structural poverty and inequality, pushing many into the sex industry due to dire financial circumstances.

The statistics, therefore, serve as a sobering testament to the enduring legacy of gender-based economic discrimination and its consequential impact on women. They spotlight the harsh realities faced by a significant proportion of South African women, with 54.9% living in poverty on less than R579 a month and a staggering 72.4% existing in poverty below R1117 a month in 2012 (Department of Women RSA, 2015:72; ibid, 111). In the broader context of South African society, these statistics illuminate the intricate

[10] I, as the researcher, acknowledge that men and transgender people may engage in the profession of sex work. However, as most people who sell sex are women, the focus of this research is on female sex workers. It is also acknowledged that all sex workers, both male and female, are criminalised in SA. Therefore, a change in the sex-work policy would benefit "male and transgender sex workers" as much as female sex workers.

gender disparities within the marketplace. Furthermore, the substantial population of unemployed women underscores an urgent need for employment opportunities tailored to women's unique circumstances. Failure to address this issue could inadvertently contribute to the expansion of the sex industry, as women, grappling with financial hardship, may see it as their only viable recourse for survival. In essence, these statistics are not just numerical data points; they are windows into the lived experiences of South African women, the economic inequalities they endure, and the potential repercussions for the sex industry's growth. Recognising the urgency of providing equitable employment opportunities for women becomes paramount in the broader pursuit of gender equality and economic justice.

3.2 History of the Sex-work Policy in SA

3.2.1 Sex-Worker Policies Before 1994

Before 1994, apartheid policies primarily aimed to keep different racial groups apart. The National Party (NP), which came into power in 1948, had three initial policies: Population Registration Act, Mixed Marriages Act and Group Areas Act (Omond, 1986:16). The NP wanted to maintain power and apartheid legislation at all costs. Omond (1986:16-17) outlined how when the NP required a two-thirds majority for any change in voting rights, it passed a bill reconstituting itself as a High Court with the power to review legislation declared invalid by the Appeal court. In 1954, J.G. Strijdom ensured that the NP received the necessary two-thirds majority by enlarging the Senate increasing the number of the appeals court to eleven and ruling that all needed to be present to hear constitutional appeals. By 1984, the "new constitution was shaped so that the majority party in the white house of Assembly effectively rule[d]" (ibid, 21).

These developments directly impacted policies created during this period as those within Parliament primarily supported the legislative frameworks underpinning the apartheid era. The Immorality Act of 1927 criminalised sexual intercourse between natives and Europeans, which included the procurement of native women to have sex with European men and the procurement of European women to have sex with native men. The Act used illicit carnal intercourse to refer to sex outside marriage (Immorality Act of 1927). The Immorality Amendment Act No. 21 of 1950 (Act No. 21 of 1950) was the "dominant legislation that regulated South African sexual lives during the apartheid era", including the exchange of money for sexual interactions (Thusi, 2015:233). The Amendment Act replaced the use of the word native with non-European, criminalising any sex between Europeans and non-Europeans, including buying sex between races (Immorality Amendment Act No. 21 of 1950). Between 1950 and 1980, more than 11,500 were convicted in line with the Immorality Act for sex across the colour lines, and twice that number [were] charged (Osmond, 1986:33). The use of the word immorality underpinned the idea that certain sexual acts were immoral and therefore required regulation.

The Sexual Offences Act replaced the Immorality Amendment Act of 1950 in 1957. However, only through the 1988 Amendment of the Act was "sex work firmly criminalised" (Thusi, 2015:237-288). The Sexual Offences Act, No. 23 of 1957, criminalised brothel-keeping. Section 2 of the Act explained that any person who keeps a brothel would be guilty of an offence. The Sexual Offences Act, No. 23 of 1957 also criminalised the selling of sex for reward in Section 20:

> 20 Persons living on earnings of prostitution or committing or assisting in commission of indecent acts
> (1) Any person who-
> (a) knowingly lives wholly or in part on the earnings of prostitution; or
> (b) in public commits any act of indecency with another person; or
> I in public or in private in any way assists in bringing about, or receives any consideration for, the commission by any person of any act of indecency with another person, shall be guilty of an offence.
>
> (Sexual Offences Act, No. 23 of 1957)

The Sexual Offences Act, No. 23 of 1957 superseded the Immorality Act of 1950. The latter governed sex work in SA until 1957 and treated sex workers and their clients differently under the law. A client was treated more harshly than a sex worker because of the perceived view of women's sexual innocence and the opinion that women's sexuality was overpowered by men (Thusi, 2015: 233). The criminalisation of sex work was linked to "morality that was consistent with the beliefs of the Dutch Reform Church," which also viewed women as the property of men (ibid, 232-233). Thusi (2015:234) has observed how sex work remained criminalised in 1957, despite studies documenting how criminalisation did not affect the industry's existence. Instead, sex workers continued operating during this period, regardless of the punishment attached to being a sex worker. The treatment of a sex worker's body as less respectable than that of other women within the legal system was evident in how the law treated the rape of sex workers, viewing it as less problematic (ibid, 235).[11] The basis of this view was that since sex workers charged for sex, it was unclear how they could claim to have been raped.

Bourke (2007) examines rape and its history, including women who accused men of rape. Harriet Stump is given an example of a servant girl from Islington, London, in the 1880s who accused her master of raping her. She was only 14 years of age at the time of the rape. While Harriet Stump's case may not directly pertain to sex work, it offers insights into the broader dynamics of sexual violence, power, and exploitation. These insights can be relevant when considering the complexities surrounding sex work and rape in contemporary society. For example, in 1890, Bourke (2007) highlights how women from the lower classes were assumed to be familiar with sexual life. There was a perception that individuals' prior knowledge of sex

[11] This view is retained regarding sex workers in SA today.

would enable them to resist being subjected to it against their will. (Bourke, 2007:27). These women from more humble homes were also considered unrapable women. Indeed, women who stood up and made rape accusations were labelled as degenerate and mostly accused of lying (ibid, 34). There was a belief that the only true rapist was a stranger and where physical violence was used (ibid, 41). Bourke (2007:43) explores various rape myths including the fact that "if a woman had 'got herself into the situation' she deserved it."

The issue of rape is integral to understanding the complexities of the sex industry. It highlights the vulnerability of sex workers, the challenges they face in reporting abuse, and the broader social, legal, and human rights considerations that must be addressed to create safer and more equitable conditions for those involved in the industry. The link between the legislation on rape and the legislation on sex work indicates an attempt to control the female body through policy. Roberts (1993:359) argues for a link between the laws on rape and the need to regulate competing male interests which controlled sexual access to females. Prostitutes were viewed as a necessary evil, as per the Dutch East India Company's views, as they gave men access to female bodies, so they did not resort to rape to satisfy their sexual needs (Thusi, 2015:207, 211). Given men's access to sex workers, it was often questioned whether a sex worker could claim to be raped. The primary question revolving around how a sex worker could assert a rape claim when they have engaged in a financial transaction for sexual services. Thusi (2015:235) documents how sex workers were not viewed as respected members of the community and as a result, were not expected to be truthful. Hence, the body of a sex worker was not treated the same as that of a woman whom society defined as virtuous. A sex worker claiming to be raped was often not believed, which led to the "normalisation of rape against sex workers." Gqola (2015:149) similarly observe how "sex workers could be particularly vulnerable to rape as they [worked] in a criminalised sector and therefore [couldn't] claim the same resources that other workers [could]."

During the 1950s, interracial sex was prohibited. This prescription of interracial sex was driven by the need to keep white women safe from black rape and maintain the purity of the races (Thusi, 2015:224). Despite this prohibition, white men still had sex with black sex workers (ibid, 235). During the apartheid period, the beliefs held towards women affected all women, regardless of their racial classification. Among these were laws such as the Mixed Marriages Act of 1949, which prohibited interracial marriages until its repeal in 1985, and the criminalisation of interracial sex (Osmond, 1986:33). Women were only integrated into Parliament after 1994 (People's Assembly, 2014), which meant that Parliament comprised men, who made the policies before 1994. Men in Parliament aimed to retain their power over women and prevent black men from having sexual intercourse with white women. The moral discourse was still robust during this period, in line with religious teachings, reinforcing the belief that sex was designed for marriage. This belief

affected the decision to continue criminalising sex work. Under apartheid, the decriminalisation movement concentrated on the "public health benefits of increased tolerance and leniency" towards sex work in SA (Wojcicki, 2003:84).

Wojcicki (2003:85) observes how under apartheid, the voices advocating for this tolerance and leniency and the decriminalisation and legalisation of sex work were mainly white. She argues that there wasn't significant access to the public media for black South Africans to express their standing (ibid, 84) effectively. Wojcicki (2003:86) highlights how the movement to decriminalise sex work during the 1990s called for reallocating scarce police resources to patrolling violent crimes and, therefore, away from sex work. In the 1990s, Wojcicki (2003:95) outlines how those calling for decriminalising sex work are largely healthcare professionals and public representatives. She showcases how under apartheid, there was a paradoxical discourse around unlawful sexual behaviours that revealed a divided public opinion (ibid, 103). This resulted in limited knowledge of black South Africans' real views around sex work during the apartheid period, thus creating a gap in the literature around sex work. She observed how the movement to decriminalise sex work under apartheid was underpinned mainly by the long tradition of "tolerance towards prostitution in the Cape Colony and the ZAR (Zuid Afrikaansche Republiek)" (ibid, 84).

3.2.2 Policy Development 1994–1996

After the first democratic elections in 1994 and the appointment of the ANC as the new government, the political landscape of SA changed. The 1994–1996 period heralded the democratic era, with the ANC as the new government. Documents developed during this period formed the basis of the creation and amendment of legislative frameworks in the future.[12] At the 4th World Conference on Women in Beijing in 1995, SA confirmed that the country did "not want to be associated with discrimination" and adopted the Beijing Declaration and Platform for Action, which supported women's rights (UN, 1996:171). Following this conference, the SALRC approved the examination of sexual offences laws. The request was received from the "Justice Parliamentary Portfolio Committee and the (then) Deputy Minister of Justice" to investigate adult prostitution (SALRC, 2002:27). This was done to decriminalise sex work and address the vulnerability and rights abuses that sex workers faced (Albertyn, 2019).

The SALRC forms part of the Department of Justice and Constitutional Development (DOJ&CD) in SA and is established by the South African Law Reform Commission Act 19 of 1973 (Act No. 55, 2002. Judicial Matters Amendment Act). The organisation is established to ensure "the continuous reform of the law of SA" and ensure all laws aligned with the Constitution (National Government of SA, accessed 2019).

[12] An overview of the creation and amendment of policies in SA is given in Appendix A.

The role of the SALRC being to conduct "research concerning all branches of the law to make recommendations to the government for the development, improvement, modernisation or reform of the law" (SALRC Website, accessed 2018). The organisation "investigate[d] matters appearing on a programme approved by the Minister of Justice and Constitutional Development" (ibid). Overall, the role of the SALRC was to produce "ground-breaking research pivotal to the improvement and renewal of the legal system of SA" (SALRC, 2019-2020:4). The SALRC was commissioned to research adult sex work in SA in line with the above mandate.

In addition, SA signed the international elimination of all forms of discrimination against women (CEDAW) resolution in January 1993, endorsed on 15 December 1995 (DIRCO, accessed 2019). CEDAW is an international treaty "adopted in 1979 by the UN General Assembly" also known as an "international bill of rights for women" (UN Women, 2007). CEDAW has a global aim of promoting gender equality. All countries that endorsed the resolutions must "incorporate the principle of gender equality and non-discrimination into their legal systems while abolishing discriminatory laws." Additionally, they are obligated to "establish institutional protections against discrimination, take affirmative measures to advance gender equality, and eliminate discrimination against women by private individuals and organisations" (UNIFEM, 2006:6). The influence of these international treaties on gender-related issues significantly shaped policy development in post-apartheid SA. A pivotal moment in the civil society landscape occurred in November 1994 with the launch of SWEAT in Cape Town, marking the establishment of the first organisation in post-apartheid SA dedicated to mobilising sex workers to demand fair and equal treatment while upholding their rights (SALRC, 2002:39). One of the critical roles undertaken by SWEAT was to facilitate the expression of sex workers' needs and concerns within government platforms, thereby forging a crucial link between sex workers and the government. In 1994, sex workers harboured hopes that the SALRC review into adult prostitution would steer the policy on sex work towards decriminalisation (ibid). The creation of SWEAT assumed immense significance as it laid the groundwork in post-apartheid SA for sex workers to vigorously advocate for their rights and the decriminalisation of sex work. These developments underscore the profound impact of international treaties on the evolution of policies and civil society initiatives in SA (SALRC, 2002:39).

Further policy developments in SA include the adoption of the final Constitution of SA on 8 May 1996, which aimed to place women's rights at the forefront. In line with the Organisation of African Unity (OAU) Constitution, the ANC government sought to "mainstream women's issues, draw them out from the side-lines of policy discussion and place them in the foreground" (Myakayaka-Manzini, 1998:2). The South African Constitution of 1996 (the Constitution), introduced the equality clause in Section 9, ensuring that all

South Africans would be treated equally before the law. Chapter 2, Section 9 of the Constitution stipulated that:

> (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
> (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.
> (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.
> (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
> (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.
>
> (Constitution of the Republic of SA, 1996:5)

The importance of the equality clause is that it outlines how no person should be unfairly discriminated against. It details a person's right to freedom. The equality clause in the Constitution directly contradicts the criminalisation of sex work, which could also be seen as the government's attempt to restrict individuals' freedom by determining what they could or couldn't do with their bodies. The equality clause is relevant here as discrimination against sex workers for selling sexual services can be considered unfair. Further, the criminalisation of sex work highlights how the mainstreaming of gender issues has not filtered down to all women in SA.

In the same way apartheid categorised women based on race, post-apartheid SA seemingly ranks women based on class. This is evident by the fact that income inequality prevalent in apartheid continues today. Seekings and Nattrass (2005:340) noted how it could even have increased, outlining how the ANC government focused on deracialisation as well as the economic empowerment of the black elite and middle-class post-apartheid (Seekings and Nattrass, 2005:341). In turn, this increased income inequality. This environment would have meant growth in the lower classes and a resultant class categorisation, which impacted access to resources and opportunities. As a result, "African women are the most disadvantaged concerning access to the labour market" (ibid, 317). In practice, gender apartheid, as defined by CATW, is taking place post-apartheid, resulting in African women making up the bulk of sex workers in SA.

In addition to the equality clause in the Constitution, sex workers have rights as confirmed in Chapter 2 of the Constitution also known as the Bill of Rights (1996). The rights detailed in the Bill include:

> … equality, human dignity, freedom, and security of the person, right to privacy, freedom of expression, freedom of association, freedom of movement and residence, freedom of trade, occupation and profession, labour relations, environment, right to housing, right to healthcare, food, water and social security, right to education, access to information.
>
> (Women's Legal Centre, 2012:5-7)

Based on the rights outlined above, qualifying persons, including sex workers, have the right and freedom to choose their occupation and have a right to quality healthcare. However, these rights are restricted for criminalised sex workers. In line with the rights outlined above, the movement calling for the decriminalisation of sex work post-1994 uses human rights language calling for the rights of "women and other disadvantaged groups" to be respected (Wojcicki, 2003:86). The continued criminalisation of sex work reinforces the view that sex work is not proper work and therefore not a rights-deserving matter. That, rather than being viewed as work, sex work is regarded as a privilege. This view limits the extent to which a rights-based approach can lay a constitutional claim to the rights of sex workers. Furthermore, Section 9 of the Constitution also mandates that "national legislation be enacted to prevent or prohibit unfair discrimination." In line with this mandate, the government had a constitutional responsibility to avoid the discrimination faced by sex workers by passing appropriate legislation. In contrast to this responsibility, the current policy criminalising sex work appears to promote and reinforce the discrimination faced by sex workers in SA (HRW and SWEAT, 2019:4). The Human Rights Watch (HRW) and SWEAT (2019) base this claim on information gathered through interviews with sex workers on the effects of criminalisation on sex workers. It is evident here that the criminalisation of sex work and not sex work itself is believed to cause this discrimination. As a result, the government is not living up to the equality clause in the Constitution by continuing to criminalise sex work.

1

Section 9 of the Constitution also made provision for the creation of Chapter 9 institutions (Constitution of the Republic of SA, 1996) which added impetus to the defence of the rights of sex workers by foregrounding non-discrimination. However, it was worth considering that rights enshrined in the Constitution were also undergirded by the principle that their enactment was not deemed to be done at the cost or harm of others. Therefore, anti-affirmative action proponents/supporters always argued that affirmative action harmed because it discriminated (even if positively) against others (Pojman, 1998). Granted, this was a limited reading of harm and discrimination, but the applicants had to be constitutionally heard. So, if sex work was read as causing harm, then the equality clause was limited in its capacity, especially if the majority claimed this harm. In line with the commitments to gender equality, the Centre for Gender Equality (CGE) was created as a Chapter 9 institution with the purpose of (as outlined in Section 187 of the Constitution):

> (1) The CGE must promote respect for gender equality and the protection, development, and attainment of gender equality.
> (2) The CGE has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.
> (3) The CGE has the additional powers and functions prescribed by national legislation.
>
> (Constitution of the Republic of SA, 1996:95)

The CGE is a key part of the gender machinery in SA and functions in line with the CGE Act No. 39 of 1996 (CGE Website, accessed 2019). The CGE, as a Chapter 9 institution, is vital to the debate around sex work in SA. The CGE emphasises how decriminalising sex work would assist in achieving gender equality. The creation of the CGE is a positive step in fast-tracking the attainment of gender equality in SA; therefore, their support for the decriminalisation of sex work represents a positive development in the campaigns for sex work to be decriminalised. Despite the support from the CGE, it has not led to a change in the sex worker policy.

3.2.3 Policy Development 1996–2010

The ANC conference in Mafikeng in 1997 presented the resolution to decriminalise sex work. This resolution included liberal policy endorsements, as well as "recommendations against zoning laws, required health checks, registration, or licensing" (Wojcicki, 2003:88). As was widely reported in the media, after this endorsement Gauteng intended to make sex work legal within the province. Unfortunately, these media reports were challenged by Parliament, which confirmed that Gauteng did not have the "constitutional authority to decriminalise prostitution" and that only the National Parliament could do this (Wojcicki, 2003: 88). Despite the increase in support, the ANC determined that due to the contentious nature of sex work, a resolution regarding the possible decriminalisation of sex work would not be adopted until after the 1999 elections (Wojcicki, 2003:89-90). Waiting till after the elections in 1999 highlighted that the ANC was worried about how its discrimination would affect votes. The movement to support the decriminalisation of sex work, pioneered by Gauteng Province, was abandoned after the 1999 elections due to public opposition and change in leadership (Wojcicki, 2003:83). In the post-apartheid era, there was public recognition of black voices in the debate around sex work for the first time. While there are both white and black voices in the discussion around sex work, "black South Africans do so much more vociferously, and in larger numbers" Wojcicki (2003:85) remarks on the disconnection between the post-apartheid focus on human rights and African values, resulting in the decriminalisation of sex work being considered un-African. Pudifin and Bosch (2012:20) research the public opinions of sex work in KwaZulu-Natal, confirm that 80% of black South Africans versus only "just over 50% of white South Africans" feel that sex work "should continue to be a crime in SA." These results Pudifin and Bosch (2012:21) believe, support the claims made by Wokcicki (2003).

Wojcicki (2003) draws a connection between the abandonment of the decriminalisation process in 1998 and certain objections to it. This lapse of 10 years underscores the argument that sex workers' rights did not occupy a prominent position on the political agenda and lacked a dedicated advocate during that period. Consequently, this decade-long hiatus also indicates decreased activism within the public sphere. Ultimately,

the diminished political commitment to addressing issues related to the sex industry and reduced public support contributed to a decline in activism within the public arena. Notably, the sole official review of sex-worker policies occurred in 2007, coinciding with the passing of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007. The Amendment Act extended the criminalisation of prostitution to include not only the selling of sex but also the purchasing of sex, as follows:

> **Engaging Sexual services of persons 18 years or older**[13]
>
> 11. A person ("A") who unlawfully and intentionally engages the services of a person 18 years or older ("B"), for financial or other reward, favour, or compensation to B or a third party ("C")
> (a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or
> (b) by committing a sexual act with B, is guilty of engaging the sexual services of a person 18 years or older.
>
> (Criminal Law [Sexual Offences and Related Matters] Amendment Act No. 32 of 2007).

The extension of the criminalisation of sex work through the Sexual Offences Amendment Act, No. 32, 2007, was a way of dealing with the gender stereotypes within the Act.[14] Before the amendment, only women were criminalised for selling sex, and after the amendment, men were also criminalised for purchasing sex. This extension aligned with the findings of the S vs. Jordan and others Case (CCT31/01 2002) outlined in Chapter 3, section 3.4. The case outlines the gender disparity associated with only criminalising sex workers in SA. According to the report by the CGE (2013:4), the continued criminalisation of sex work was intended to "reduce or eliminate the sex industry."

Between 1996 and 2010, more political support was given to legalising sex work in preparation for the 2010 Soccer World Cup.[15] During this period, developments in the sex-worker policy were linked closely to the Gauteng Province's call for decriminalising sex work. Gauteng was the first province to campaign for the decriminalisation of sex work. This call gained support at the ANC National Conference in Mafikeng, 16–20 December 1997, due to the "HIV epidemic and the discrimination faced by sex workers" (SALRC, 2002:37; Wojcicki, 2003:89-90). Wojcicki (2003:86) emphasised the "need to redirect limited police resources to policing violent crimes." In addition, the Minister of Safety and Security (Gauteng Province) pioneered the investigation regarding decriminalising sex work in SA. He set up a task team, presented the decriminalisation of sex work to the ANC, and obtained further support for the movement (Wojcicki, 2003:86). The task team developed a draft policy document in 1997. This policy was deemed liberal and was

[13] According to the Amendment Act, adult prostitution or sex work is defined as the payment for sex with a person over 18 (SALRC, 2017:7).
[14] In 2015, the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 Act was also amended to allow children between the ages of 12 and 15 to consent to sex with each other (Bhamjee, Essack and Strode, 2016).
[15] The World Cup in 2010 refers to the Soccer World Cup, and the first time such a huge event took place on the African continent, and in a developing country. It took place in June and July 2010 (Knott, 2010).

"approved by the Gauteng Cabinet on February 12, 1997, as Resolution No. 309-324."[16] The then National Commissioner of Police, Jackie Selebi, called for legalising sex work during the World Cup as early as March 2007. He made it clear that this recommendation was limited to specific red-light districts and only for the duration of the World Cup (Bonthuys, 2012:17). Similarly, SWEAT appealed to the Minister of Justice and Constitutional Development and the Minister of Safety and Security "to call a moratorium on sex work-related arrests during the World Cup" (Richter, 2013:148). At the same time, other sex-work organisations also called for legalising sex work. It was the first time since 1997 that the decriminalisation or legalisation of sex work was discussed publicly. The claims made in the media (Bonthuys, 2012:9) that the World Cup would result in "40,000 foreign women being trafficked into the country for sex work" derailed the debate (ibid).

Bonthuys (2012:11) describes how the fear of trafficking created a moral panic in societies, which occurs under the guise of keeping women safe from trafficking and permitted the harassment and punishment of sex workers (ibid, 2). Bonthuys (2012:12) argues that this moral panic within communities around trafficking prevented sex workers from using the opportunity to reform the sex-worker policy. The panic focused on protecting women from the sex industry rather than on protecting those within the sex industry. The CGE (2013:2) highlights how views around sex work are often determined by "religious opinions that view sex work as a 'sin' and sex workers as 'fallen or sinful' women." The CGE (2013:2) further explains how religious views "split the world into a dichotomy of good and bad girls/women, treating it as a moral issue." Weitzer (2006:3) documents what he terms a moral crusade whereby individuals rose in reaction to a perceived social problem seen as an unqualified evil. The crusaders who ran these crusades, according to Weitzer (2006:33), "typically call upon political elites to do something about the problem," and typically, the results of such campaigns were seen in "policy, law, or enforcement practices." The criminalisation of sex work in SA highlighted the result of such views within Parliament. Weitzer (2006:33) outlines how these "moral crusades" took place in the "form of moral panics" where the "targeted evil is blown out of proportion." These crusades "against prostitution were wage[d] by an alliance of the Christian right and radical feminists" (Weitzer, 2006:33). The World Cup in SA was an example where it was "blown out of proportion" as the predicted negative outcomes did not materialise. Weitzer (2007:448) noted that "moral crusades [were] one of the forces responsible for transforming such conditions into problems." To achieve their purpose, "activists [sought] to generate widespread public concern about a problem and lobby political elites" (Weitzer, 2007:448). In the case of sex work, the goal would be to ensure its continued criminalisation.

Gardner (2009:330) highlights a significant aspect of the argument against the legal recognition of sex work in SA. It elucidates how the moral foundation of society, and the sanctity of the family unit were

[16] The current researcher was unable to access a copy of the draft policy document from 1997.

perceived to be threatened by the acknowledgment of sex work as a legitimate profession. This argument finds its roots in the early Christian Church's doctrine, which asserted that sexual activity should only occur within the confines of a lawful marriage and exclusively for procreative purposes, casting sex work as inherently sinful. Furthermore, Gardner (2009:330) delves into the notion that using one's body solely for another person's sexual gratification was deemed morally improper. Adding to this perspective, the South African Council of Churches explicitly denounces sex work as "adulterous and against the law of God" (Ledwaba, 2022), further underscoring the deeply entrenched moral and religious objections to sex work. In the lead-up to the World Cup, the government was presented with two primary justifications for reviewing the proposed sex work policy. First, concerns about the potential surge in trafficking of women and children to cater to the demands of incoming tourists were raised. Second, the apprehension of HIV transmission was cited (Mbanjwa, 2007). Intriguingly, a similar wave of concerns emerged in Germany in anticipation of the World Cup in 2006, only to be largely unfounded, despite Germany's example (Blandy, 2009). Nonetheless, in SA, the fear of trafficking persisted, primarily due to the continued criminalisation of the sex work industry (Blandy, 2009). Surprisingly, both proponents and opponents of legalising sex work cited the same justification: that doing so would stop prospective foreign women trafficking into the nation to satisfy expected demand. This paradox emphasises the complex nature of the discussion surrounding sex work in SA, where differing viewpoints exist on the appropriate method for defending the rights and welfare of women in the context of the sex industry.

Gauteng Premier, Nomvula Mokonyane, supported the call to legalise sex work in 2010,[17] arguing that legalisation would ensure that policies could "…manage sex work so that it [did] not become something to embarrass us" (Bonthuys, 2012:17). The argument by Premier Mokonyane is not necessarily in the best interests of sex workers but rather indicates the need to facilitate policing of sex workers. To persuade the government to legalise sex work in 2010, a conference was held in November 2009 hosted by SANAC and SWEAT. The conference, attended by "government, media, and civil society," addressed concerns around the World Cup (Richter and Massawe, 2010:222). The country’s readiness for the 2010 World Cup and the link to human trafficking was also debated in Parliament on 6 May 2010 (Chikunga, 2010). The only achievement of these debates was the distribution of condoms: the "British donated a million pounds to purchase an additional 42 million male condoms" (Richter and Massawe, 2010:222). People who opposed the legalisation of sex work argued that it led to a moral decline. Bonthuys (2012:18) highlights how those opposing the legalisation of sex work include "political parties, church leaders, local government officials and members of the public." After the World Cup, the government released statistics that confirmed no record of trafficking victims (Delva, Richter, Koker, Chersich, and Temmerman, 2011:4). Despite these debates, there was no

[17] Nomvula Mokonyane was the Premier in Gauteng from 2009–2014 (Seale and Ndaba, 2014).

change in the legislation regarding sex work before, during or after the 2010 Soccer World Cup. In interviews with vital informants who provided insight into issues around sex work linked to the World Cup, Bird and Donaldson (2009:44) concluded that "difficulty in policing the industry led to its unofficial decriminalisation." Thusi (2015:238-239) supports finding by connecting the openness with which the decriminalisation of sex work is discussed with its de facto decriminalisation in several ways. He further highlights how its regulation (policing) is not a top concern for the police, combined with the flexibility shown by the courts regarding the policing of sex work (ibid, 239). These views suggest that over time sex work has become more accepted in SA. The publication of the SA National Sex Worker HIV Plan 2016–2019 also reflects more acceptance of sex work within society.

3.2.4 Policy Development 2010–2020

The 2010–2020 post-World Cup period included debates around the best legislative framework for sex work in SA, including the government reports on adult prostitution. SA adopted the National Development Plan (NDP) in 2012 as "a detailed blueprint for how the country can eliminate poverty and reduce inequality by the year 2030" (Fontyn and Alexander, 2017). This document preceded the UN's 2030 agenda for sustainable development, which SA adopted in 2015 (The Presidency SA, 2019:5). SA participated in the generation of the UN Sustainable Development Goals (SDG). A central theme in both documents was the attainment of gender equality. In the UN SDGs, "goal 5 is the achievement of gender equality and empowerment of all women and girls" (The Presidency SA, 2019:47). This goal includes the "elimination of all forms of violence against all women and children" and the "adoption and strengthening of sound policies and enforcement of legislation for the promotion of gender equality and the empowerment of all women and girls at all levels." The goal also includes access to sexual and reproductive health (UN, 2015:20). What is critical in developing these goals is the use of the word 'all", which emphasises that all women and girls need to be included in achieving this goal. Hence, sex workers as women need to be included if the South African government hoped to achieve gender equality by 2030. In SA, sex workers experience inequality through violence, limited access to healthcare, and the criminalisation of their work.

In 2014 on 17 November, the Gauteng province instituted dialogue sessions with sex workers in Gauteng through the Gauteng Provincial Legislature (GPL) in line with their support towards sex (South African Government, 2014). The conference's aim being to address the "plight of sex workers in Gauteng" and consider "interventions to ensure the protection of their human rights." Sex workers are identified as a vulnerable group in Gauteng. The overall aim of these dialogues was as follows:

> Through the Dialogue, GPL aims to address the consequences, risks, and challenges of Commercial Sex Work in Gauteng which include[d] Violence, including police assaults, rape, extortion, and demands for sex or money

as bribes; working conditions; barriers to safer sex; stigma and health care; and the government policy environment regarding commercial sex work (ibid).

On December 10, 2015, during a session facilitated by the Gauteng Provincial Legislature (GPL) involving sex workers, a compelling case was made for the decriminalisation of their industry to improve their living conditions. The challenges faced by sex workers are closely linked to the criminalisation of their profession, as highlighted by Mkize (2015). One significant issue they faced was the inability to apply for bank loans due to the absence of formal payslips. Moreover, they were vulnerable to exploitation by loan sharks, faced difficulties in purchasing bonded properties, and were subjected to violence, including incidents involving law enforcement and clients. The alarming fact that four sex workers lost their lives in November 2015 alone drew attention to the issue of femicide within this community, emphasising the urgent need for legislative reforms to address their plight. The GPL's recognition of these challenges and the detrimental effects stemming from the criminalisation of sex work marked a significant and positive development. It signified a pivotal moment in SA as it represented the first instance where the government actively engaged with the concerns of sex workers. These interactions were integrated into the GPL's annual public participation program, typically involving one engagement with sex workers each year. These engagements took the form of dialogues or Sector Parliaments, designed to serve as platforms for substantive discussions between public representatives and commercial sex workers, as per the South African Government's initiative in 2016. In 2016, a Sector Parliament exclusively dedicated to commercial sex workers in Gauteng was convened under the theme "following up on our commitment to Gauteng sex workers" (South African Government, 2016). This Parliament, due to the sensitive nature of the topics discussed, was conducted behind closed doors (Mkhonza, 2016). While these dialogues and Sector Parliaments provided sex workers with a safe space to voice their concerns, it is important to note that, they did not lead to any substantive changes in the sex-worker policy.

During this period, another significant policy development was the debates within the NCOP regarding the partial decriminalisation of sex work. As outlined by Gumede (2008), the NCOP played a crucial role in policy development in SA due to its position of incorporating and "ensuring that Provincial interests [were] considered in the National sphere of Government;" in addition, they were the "National Legislative Forum for considering issues affecting Provinces" (Gumede, 2008:11).[18] The role and composition of Parliament in SA was outlined in Chapter 4 of the Constitution. The Parliament in SA was divided into two Houses, the National Assembly and the NCOP. For a bill to be passed into an Act, it had to be passed by both Houses of Parliament (ibid, 12). Therefore, the debates around the sex-worker policy in

[18] Appendix A gives an overview of the standard policy creation process in SA in accordance with the Constitution of the RSA, 1996 which also covered the role played by the NCOP in policy development.

the NCOP were significant due to the role the NCOP played in policy change. The NCOP stance would, therefore, ultimately influence the government's views on the sex worker policy. A petition submitted by Embrace Dignity initiated the debates within the NCOP. Embrace Dignity is "a South African feminist and abolitionist, human rights advocacy NGO established in 2010" (Embrace Dignity Website, accessed 2019). Embrace Dignity submitted the petition to the NCOP in 2014, which called for the "end to the oppression of prostitution and sex trafficking" (Thobejane, 20016a). In the petition, Embrace Dignity requested Parliament to set up a multi-party committee to investigate the "situation of women (and men) in prostitution," "factors that determine[d] the demand for prostitution," "factors that provide[d] and support[ed] the demand" and "factors that perpetuate[d] and facilitate[d] the trafficking in women and girls" (ibid). They also asked Parliament to review the various policy positions towards prostitution as outlined in the SALRC reports of 1999 and 2002 (ibid). Parliament was asked to consider implementing a policy to address the demand for prostitution and "reduce and ultimately eliminate the oppression of prostitution." At the same time, it was stressed that women must be assisted to exit the industry (Embrace Dignity, 2014:2). This petition was congruent with the overall focus of Embrace Dignity as an NGO which aimed to challenge gendered power inequalities and assist in "strengthening support systems for women and marginalised people who want[ed] to leave prostitution" (Embrace Dignity Website, accessed 2019). As an organisation, they advocated for the partial decriminalisation of prostitution as the best option to assist women in prostitution and to help them leave the industry (ibid).[19] The NCOP reviewed the petition on 2 March 2016 and again on 7 September 2016 (Thobejane, 2016a; Thobejane, 2016b).

Before publishing the SALRC report in 2017, but after the report had been finalised, Parliament had a discussion session on decriminalising sex work in SA on 17 August 2016 (Morutoa, 2016a). The CGE, SWEAT, Sisonke, SALRC, DOJ, and the South African Parliamentary Legal services were represented in this session. Those advocating for decriminalisation mentioned sex work's consensual nature, human rights abuse, and issues around gender inequality. The SALRC outlined how the "government [was] not constitutionally obligated/bound to change the existing law or to follow a particular model, since the legislation, when tested, had passed constitutional scrutiny." Despite this, "it [would] be a policy choice and there [was] a range of legal options; there [was] a need for a national strategy to assist" with sex work in SA (ibid). In this debate, the SALRC warned against a radical shift in the legislative framework; it was concerned about "a cultural shift which [would] render women more vulnerable; non-criminalisation [would] not necessarily address the other illegal activities linked to it, or the violence" (ibid).

[19] Embrace Dignity refers to the partial decriminalisation of sex work as the equality model.

In line with the views expressed by the SALRC above, the SALRC report on Adult Prostitution published in 2017 recommended the continued or partial decriminalisation/criminalisation of sex work as policy options. The 2017 SALRC report and Embrace Dignity's petition led to the NCOP conducting a study tour. The study tour had two legs: the first to Sweden to investigate the Nordic model (partial decriminalisation), and the second to the Netherlands, which had implemented a policy around legalising sex work. According to the report of the select committee, "the purpose of the study tours [was] to enable the Committee to understand better and comprehend the legal approaches or models adopted, in each of the selected countries, as a response to the issues [around] prostitution and trafficking" (PMG, 2018). The NCOP resolved to "adopt a final report on the petition" from Embrace Dignity after completing the study tour to Sweden and the Netherlands (ibid). As per the resolution the NCOP took, the first leg of the study tour to Sweden took place on 2–6 October 2017, and the report was submitted to the NCOP (ibid). There was no evidence of the second leg of the study tour – to the Netherlands having taken place.[20] This study tour was vital due to the NCOP's role in changing SA policies. The study tour also called attention to the divided views within the different spheres of government regarding the best policy framework to govern sex work in SA.

The Embrace Dignity petition's prominence within Parliament raises pertinent questions regarding the factors influencing its attention and consideration, especially when compared to other NGOs advocating for changes in the sex-worker policy. While numerous NGOs were championing similar causes, only Embrace Dignity was granted the opportunity to present its case to the NCOP. This distinct treatment might be attributed to the organisation's notable political connections. Embrace Dignity, established in 2010, was co-founded by Nozizwe Madlala-Routledge, a former Deputy Minister of Health and Defence, and Jeremy Routledge, a former Director of the Quaker Peace Centre (Embrace Dignity, 2000b). The presence of a former Deputy Minister among its founders begs the question of whether the organisation received preferential treatment due to its political affiliations. This leads to a speculative scenario: If another organisation like SWEAT were equally politically connected, would the NCOP have engaged in a debate about full decriminalisation of sex work rather than partial decriminalisation? This example underscores the significance of political connections in garnering support for policy change, hinting at a nuanced intersection of politics and advocacy. Furthermore, examining the Parliamentary debates on decriminalisation in 2016 offers valuable insights. Notably, Embrace Dignity did not participate in these discussions, while organisations aligned with the call for full decriminalisation were included. This selective participation in debates suggests that Parliamentarians were influenced by their own political agendas or strategic utilisation of political capital. Here, the concept of political capital becomes pivotal in understanding the dynamics at play. Political capital, as described by Casey (2008:2), is the resource that political actors accumulate, build

[20] As the researcher, I was unable to find any evidence of the second leg of the study tour.

up, and expend within the political arena. It operates within various domains, including the electoral arena, among officeholders, and within the bureaucracy. An appreciation of the concept of political capital is indispensable in comprehending the intricate nature of political exchange and relationships in the political landscape. In essence, the Embrace Dignity petition's distinct treatment within Parliament highlights the intricate interplay of politics, advocacy, and political capital, underscoring the multifaceted nature of policymaking and political decision-making processes.

Casey (2008:6) views political capital as "the most authoritative form of capital" based on "its collective nature and association with power." Casey (2008:6) refers to it as the markets of political capital. Political capital could be utilised to wield control over and among actors, mainly in the form of "coercive power, of any societal institution" (Casey, 2008:7). Casey (2008:7) notes how other forms of capital could be combined to create "capital for purposive political action" which included a "return of investment of political capital." Examples Casey (2008:7) gives include capital applied to economic actions but with the express purpose of gaining "some political payoff, whether it [was] to fund a project, party, candidate," and so forth. Nozizwe Madlala-Routledge had built up political capital that she could trade, and, in this case, it enabled the Embrace Dignity petition to appear before the NCOP. Another example of political capital was international funding, which bought political capital. In relation to the sex industry and sex trafficking, the US offered funding, but grantees were bound by conditions in their funding agreements that prohibited them from supporting a legislative model towards sex work. The President’s Emergency Plan for AIDS Relief (PEPFAR), for instance, "require[d] non-US grantees to oppose prostitution and sex trafficking and prohibit[ed] funds from being used against the criminalisation of sex work" (STOPAIDS, 2019:4). Richter and Massawe (2010:1) confirm that PEPFAR funding is "conditional on a pledge by recipient organisations that they would not advocate for the legalisation of sex work."

On January 28, 2003, during his second State of the Union address, US President George W. Bush announced a commitment of US$15 billion over five years to combat HIV/AIDS in severely affected nations of Africa and the Caribbean, emphasising the urgency of addressing the epidemic (Bendavid, 2016:256). Bendavid (2016:257) emphasises the need to understand PEPFAR in the context that it remains a "foreign aid program." In 2008 the funding was extended for another five years with the budget increasing to "US$48 billion between 2008 and 2013" (Duber, Coater, Szekeras, Kaji and Lewis, 2010:1). US$4.2 billion of this funding has been invested into SA with 120 South African organisations receiving PEPFAR funding between 2004 and 2014 (Richter, 2016). Navigating PEPFAR funding while advocating for sex worker rights presents various challenges. Conditions such as the historical emphasis on abstinence and fidelity-based approaches and the requirement to adopt an anti-prostitution pledge have constrained the scope of interventions for sex

workers (NSWP accessed 2024:2). NSWP (accessed 2024:3) also confirmed that "some US-funded projects have been investigated by American politicians to ascertain if their work violates the pledge." While organisation receiving funding were known to use terms such a "vulnerable women" rather than "sex workers" in their reporting (NSWP accessed 2024:4). Additionally, the legal and policy environments of recipient countries, where sex work may be criminalised or highly stigmatised, pose political sensitivities. Data reporting requirements and engagement with key populations further complicate advocacy efforts. However, organisations and advocates can leverage opportunities for policy dialogue, community mobilisation, and strategic partnerships to advance sex worker rights within PEPFAR-funded programs, emphasising evidence-based interventions and strengthening the capacity of sex worker-led organisations in HIV/AIDS response efforts. Therefore despite their funding restrictions these organisation would be able to highlight the effects of HIV/AIDS.

In 2017, the government launched the South African fourth National HIV Plan (2017-2022). This plan did not endorse the decriminalisation of sex work. According to activists, decriminalisation was a prominent feature in the draft 2017–2022 HIV plan they gave inputs into (Malan, 2018). However, somewhere between the draft version and the one Cabinet approved, "the concept inexplicably disappeared from the document" (ibid). This plan aimed to deal with sex work without decriminalising the industry. The sex-worker policy was discussed again at the 54th ANC National Conference in 2017. According to news reports, the ANC in Gauteng called for the partial decriminalisation of sex work at their conference in July 2017. However, the media reported in December 2017 that "the ANC [had] resolved to decriminalise sex work, despite rejecting a proposal from Gauteng delegates at the party's national policy conference in July" (ENCA, 2017a; Nyoka, 2017). The only reports about the resolution to decriminalise sex work came from the media, questioning why the ANC was willing to admit on public platforms that they would consider decriminalising sex work but unwilling to document this commitment officially.

The ANC report from the 54th ANC National Conference in December 2017 did not explicitly address the decriminalisation of sex work. The resolution read: "the calls to decriminalise sex work must be subjected to a high-level discussion and engagement with multiple relevant stakeholders, and to continue to engage society on this to determine the societal norm. Sex workers must be protected" (ANC, 2017:67). Due to the resolution taken at the conference, a debate was held in Parliament by the Multi-Party Women's Caucus (MPWC) on 5 March 2018 to discuss the SALRC 2017 report on adult prostitution (Azzakani, 2018). Interestingly, although the ANC political party's views did not necessarily represent the ANC government's opinion, decisions taken at the national conferences impacted the policy process. The SALRC report on adult prostitution laid the foundation for changes to the sex worker policy in SA,

serving as the cornerstone for debates surrounding sex work in the country. The debate in Parliament emphasised civil society's divided views on whether sex work should be decriminalised, and the controversial views still held by large parts of society towards sex workers. Despite the various arguments presented, the primary call was to decriminalise sex work as the best way to protect women within this industry (Morutoa, 2018). During this debate in Parliament, the Chairperson noted the importance of developing a policy "that [would] work for SA" (ibid). This statement stressed the unique context of SA, where an approach used in other countries may not be the best fit. However, the views at the Parliamentary session were split between continued criminalisation, partial decriminalisation, and decriminalisation, as shown in table 2. The importance of this showed how divided the NGOs, Chapter 9 institutions, and research institutes were on the best legislative framework to govern sex work in SA.

Table 2: Support for each legislative framework in debates in Parliament in 2018.

Criminalisation	Partial criminalisation (equality model)	Decriminalisation
Coalition to end sexual exploitation in SA	Social Justice Advocate	Multi-Party Women's Caucus
Straatwerk organisation	Embrace Dignity (KWANELE)	Amandla Mobi
Doctors for life	University of South Africa (UNISA - Dr. Marcel van der Watt	Nalane and Associates – Sexual and Reproductive Justice Coalition
Hand4Heart Foundation		Women's Legal Centre
Crystal Clear Ministries International		Legal Resources Centre
Hope for Women		Congress of South African Trade Unions
Cause for Justice		Mothers for the Future
		Sisonke Gender Justice
		National Sex Worker Movement of SA
		Centre for Applied Legal Studies
		SWEAT
		Commission for Gender Equality
		Amnesty International SA
		Love Justice SA / National freedom network (with regulations)
		Asijiki Coalition
		Alexandra Downing Watking and the Stipperole Team
		South African National AIDS Council

(Source: Morutoa, 2018)

In 2018, the Deputy Police Minister, Bongani Mkhongi, joined those calling for the decriminalisation of sex work and noted that the "police did not want to arrest sex workers but had to because of the law" (Hendricks and GroundUp staff, 2019). This announcement was noteworthy as it drew attention to the changing views within society towards sex workers and the consideration of sex workers' needs. The petition by Embrace Dignity was again tabled in the NCOP on 2 May 2018 and 30 May 2018. In the May meeting, the NCOP also considered the report from its study tour to Sweden (PMG, 2018). The committee adopted the

study tour report, noting the need to work with the MPWC and the relevant departments to provide public participation regarding sex-worker policy changes. The NCOP resolved that change in the sex-worker legislation could not be hurried; instead, there was a need to consider issues such as taxes and VAT (Ximba, 2018a). This resolution is significant as it represented the government's views and supported the need for further consultation on the sex-worker policy before any change could take place.

In other developments in the policy debate, the NCOP attended the 22nd International AIDS Conference in Amsterdam, the Netherlands, on 23–27 July 2018. At this conference, the NCOP signed a resolution to support the partial decriminalisation of sex work (Malan, 2018). It was unclear why the NCOP signed this resolution when the ANC had promised to decriminalise sex work at their National Conference in December 2017 (Nyoka, 2017). The signing of this resolution has brought to the forefront questions regarding unified decision-making within the government. While the ANC pledged a specific policy stance, the NCOP and SALRC appeared to incline towards divergent policy positions. This underscores the disparity between the ANC's role as the governing entity and its role as a political party, highlighting the differing perspectives it held on the matter of sex work. Hence, the developments in the NCOP and the SALRC report could represent the views of the ANC government. In a public engagement following this at the launch of the Booysen's Magistrate Court in Johannesburg on 01 March 2019, the ANC reportedly supported decriminalising sex work. At this event, the media reported that "Ramaphosa promised to decriminalise sex work" (Sicetsha, 2019). 2019 was an election year in SA. Policy changes were motivated by a political agenda and the desire to keep voters happy as they were vital to re-election. The different views regarding sex work in the election campaigns of the three top political parties were important in understanding the different political agendas.

The ANC's views were linked to their National Conference's resolution, namely, to support the decriminalisation of sex work – despite the SALRC report recommending otherwise. The Economic Freedom Fighters (EFF) referred to the legalisation of sex work. The Democratic Alliance (DA) on the other hand noted that they would "explore the possible legal models around sex work and adopt an alternative legal framework that [would] reduce exploitation, abuse and rape of young women and men" (Pilane, 2019). These campaign statements highlighted the contentious views around sex work in SA. In other words, the ANC had no clear stance on the best policy, while the EFF spoke about "legalisation," which was not a policy option given in the various debates in Parliament. The DA, however, leaned towards the need for more research concerning the best legal framework, therefore, not supporting any particular legislative model (ibid). The decriminalisation of sex work was brought up in Parliament once again on July 25, 2019, during a session of the MPWC. This parliamentary discussion revisited the recommendations made in the SALRC report,

rekindling the debate surrounding its findings. During this discussion, the need for the current MPWC to be acquainted with the SALRC's recommendations and the report stemming from Parliament's public hearing were emphasised. A proposal emerged suggesting the necessity of conducting public hearings on the SALRC recommendations in each province. Furthermore, discussions on sex work policy reform with the Department of Justice and Correctional Services were proposed (Bilankulu, 2019).

3.2.5 Trajectory of the Sex-Worker policy 1994-2020

The evolution of the legislation governing sex work in SA from 1994 to 2020 is intricately tied to the prevailing legal framework and the shifting political landscape. Pre-1994, the emphasis on regulating sexual interactions was primarily rooted in the apartheid-era policies aimed at maintaining racial segregation. As democracy gained ground in the 1990s, there was a notable shift in focus towards establishing the cornerstone for a fresh and inclusive democratic system that adhered to the principles of gender equality and aligned with international agreements. Within this evolving democratic landscape, the SALRC initiated an investigation into adult prostitution which was hoped to lead to the decriminalisation of sex work within this newly emerging context. The period spanning 1996 to 2010 began with an attempt to decriminalise sex work, although progress was hindered. Clients were also criminalised in 2007 because of judicial challenges that sought to have the illegality of sex work ruled unconstitutional. There was a period where sex work was not discussed publicly but it was seen to re-enter the public space again in the lead up to the 2010 world cup. The public's hostility and worries about trafficking during the world cup prevented its legalisation despite widespread support at the time. In 2010, Embrace Dignity entered the debate, advocating for the partial decriminalisation of sex work, referring to it as the "equality model." This inclusion fractured support for legislative change to the sex work policy, leading to divisions between those who advocated for continued criminalisation, partial decriminalisation, or full decriminalisation of the industry. These divisions were clearly evident in parliamentary debates during this period.

The Gauteng Provincial Legislature (GPL) organised "provincial commercial sex worker dialogues" in 2014, allowing sex workers to document the challenges they faced. The SALRC eventually published its report on adult prostitution in 2017, recommending either the continued criminalisation or partial decriminalisation of sex work. The first sex work plan was launched in 2016, aimed at improving access to healthcare for sex workers. In 2017, there was renewed optimism for decriminalising sex work due to discussions at the ANC Conference. Throughout this timeline, the campaigns for sex work decriminalisation remained persistent, although political support fluctuated and became divided, especially regarding the call for partial decriminalisation. The government's response oscillated between regression in support for decriminalisation and areas of improvement, instilling hope for eventual decriminalisation. These patterns

reflect how the government responded to public pressure and its electoral interests. Understanding these historical trends and events is vital for informed decision-making regarding the current political stance on the legislation governing sex work and provides critical insights into the potential for future policy changes.

3.3 Legislative Framework governing other controversial issues in SA.

In a parallel context, the legalisation of abortion in SA, despite strong moral and religious objections, serves as a relevant example of a contentious policy change that faced vehement opposition but was eventually enacted to ensure the safety and rights of individuals. Richter (2021:15) argues that the Termination of Pregnancy Act No. 92 of 1996 was passed not because society "condoned abortion" but because it recognised the necessity of providing safe and secure conditions for women who would seek abortions regardless of its legal status. This comparison underscores the importance of prioritising the safety and well-being of marginalised groups, whether in the case of sex work or abortion. Additionally, the relatively swift policy change in the case of abortion, occurring shortly after the ANC government took power in 1994, demonstrates that policy changes could be enacted more quickly when there is political will to address critical issues. It also emphasises the significance of international perspectives, as abortion was not as internationally contested nor linked to criminal activity.

Another example of a controversial yet regulated activity was gambling. iAfrikan Native Content Team (2019) stated that gambling was a contentious "activity all around the world." During apartheid, gambling was illegal; the review of gambling laws only occurred after the first democratic election in 1994. The iAfrikan Native Content Team (2019) observed how even though it had been illegal, "it [had] been a part of SA culture for centuries." The iAfrikan Native Content team pointed out that the rise of many illicit gambling operations highlighted the need for its legalisation. This illegal-sector development meant that the "government was losing much money in taxes," leading to a realisation that the industry would "keep running without regulation," with no guarantee of the industry's fairness (ibid). Gambling licences were issued from 1996 and ratified by the National Gambling Act of 1996, which enabled licenced owners to establish gaming houses, commonly known as casinos. Casinos could be established in any location in SA. The Gambling Act has since been reviewed to institute stricter industry control measures. However, the industry itself remains legal in SA (African Slots, accessed 2020). At its most extreme, gambling was considered an addiction requiring regulation to prevent harm to both the individuals involved and society at large. In a similar vein, restrictions on gambling aimed to protect the well-being of individuals. The criminalisation of gambling, like that of abortion and sex work, imposed limitations on individual rights and freedoms, particularly affecting women in the case of abortion and sex work. These examples raise questions about the inconsistencies in regulating activities involving the female body and women's rights, as well as their impact on the healthcare

system. Despite criminalisation, gambling, abortion, and the sex industry persisted, indicating the need for a re-evaluation of policies and legislation. The S vs. Jordan and others case (CCT31/01 2002) served as an attempt to push for consistent legislative change in the context of sex work.

The following section provides a summary of noteworthy court cases that have sought to challenge aspects of the criminalisation of sex work in SA. These legal challenges shed light on the intersection between the legal and political frameworks governing sex work. Within this context, we will focus on two prominent legal challenges and draw comparisons with similar legal challenges related to contentious activities. These comparisons highlight the inconsistencies within the legal framework applied to sex work, suggesting that sex work operates in a unique legal grey area. The limited impact of the S vs. Jordan and others case in 2002 underscores the minimal changes in sex work policy and their limited effects on sex workers.

3.4 Legal Framework: Case Law on Sex Work in SA

The legal framework in SA primarily addresses the legal status of sex work, revealing the disadvantages sex workers face within this domain, particularly the lack of legal change achieved. Notably, the S vs. Jordan and others case (CCT31/01 2002) marked a pivotal moment when civilians challenged the government's stance on sex work in the Constitutional Court. The case aimed to appeal against their conviction in the Magistrates Court for contravening the Sexual Offences Act, 1957 on the provisions relating to adult prostitution. This case contested the criminalisation of sex work, citing violations of sex workers' constitutional rights protected under Section 9 of the Bill of Rights (South African Constitution, 1996). In this case, the Commission for Gender Equality (CGE) addressed equality issues, while Sex Workers Education and Advocacy Taskforce (SWEAT) represented the voices of sex workers, shedding light on human rights abuses endured by them. During the S vs. Jordan and others case, the Constitutional Court upheld the existing legislation criminalising sex work, justifying it as necessary due to associations with social problems such as "violence, child trafficking, and drug abuse" (Thusi, 2015:239). By associating sex work with social ills and ignoring the human rights abuses presented to the court (by SWEAT) the court was reinforcing the idea that sex work itself was the source of harm (Spies 2015). The majority judgment did not recognise gender discrimination, as both male and female sex workers were prosecuted alongside their clients (Spies 2015). In contrast, the minority judgment viewed it as gender discrimination, as primarily female sex workers faced harsher penalties compared to their male clients (Spies 2015). Despite the setback, the court's engagement with these arguments underscored their importance in future democratic discussions and potential legal changes regarding sex work (Spies 2015:516-517). In the context of criminalisation, sex workers' organisations aimed to provide some defence against the daily threats of violence and precarity faced by sex workers.

The Constitution of the Republic of SA "provides for the implementation of the doctrine of separation of powers" (Thabo and Odeku, 2021:547). Within this doctrine the government is "separated into three branches, namely the legislature, executive and judicial branches" (ibid). This means the powers are separated between "the legislature and the executive, the judiciary and the independent constitutional institutions." Each organ of state having equal authority acting "independent from one another." In turn these constitutional powers "prevent them from usurping power from one another through a system of checks and balances" (Muswaka 2020:172). Thabo and Odeku (2021:548) explain how the legislative arm deals with the passing of legislation, the executive branch is "tasked with the duty to implement the law" and the judiciary "interprets and applies the law." The judiciary has broad powers of checks and balances on the other branches, enabling them to "declare any act or action of the executive or legislature invalid and unconstitutional." Despite this power the judiciary still operates in line with the provisions of the constitution (Thabo and Odeku, 2021:549). Regarding the S vs. Jordan and others case (CCT31/01,2002), the CCT respected the powers of the legislature and the executive in creating policies through their judgement. The judiciary's role was to "assess and set aside legislative and executive actions for their unconstitutionality" (Muswaka 2020:172). As the constitutionality of the criminalisation of sex work was upheld through the CCT judgement, the role of the CCT was fulfilled. Therefore, due to the doctrine of the separation of powers, the legislature had the prerogative to determine the legislation around sex work.

In a second case, Kylie, a sex worker, went to the Labour Appeal Court in 2006 (case no.: CA10/08:1-2) to appeal against her unfair dismissal. She had worked in a massage parlour and performed various sexual acts for compensation. Before she approached the court, the matter was referred for arbitration. However, due to her unlawful employment, they could not hear the case. Kylie then approached the courts. The court found that a "sex worker [was] not entitled to protection against unfair dismissal as provided in terms of section 185 (a) of Labour Relations Act" since the Constitution stipulated in section 108 that "courts ought not to sanction or encourage illegal activity" (Case No.:CA10/08:1-2). It found that although sex workers had rights, such as the formation of trade unions, the illegality of the profession meant sex workers could not "participate in any activities, including collective bargaining," as this would amount to "the furthering of the commission of a crime" (ibid). These findings meant that due to sex workers participating in an activity that was considered illegal, they were not entitled to action their labour rights—further showing why sex workers charged varying remuneration rates and why there was income inequality among sex workers. Due to their profession's criminalisation, they lacked legal recourse, particularly when their labour rights were infringed.

These two cases demonstrated how, legally, the criminalisation of sex work is not considered unconstitutional. These cases further highlight how the legislature and not the courts must create the policy

framework which regulates sex work. Kylie's case emphasises the lack of rights and protection offered to sex workers due to their profession being criminalised and in turn, sex workers being regarded as criminals. It is contradictory to allow sex workers to form a trade union but prevent them from collective bargaining. Sex work is legally examined in relation to its criminalisation rather than its impact (such as reinforcing gender inequality). Similarly, the criminalisation of same-sex marriages was brought before the CCT in 1998. The application was made because it also criminalised the "private conduct of consenting adults which causes no harm to anyone else. Its criminalisation had no purpose other than to criminalise conduct which failed to conform to the moral or religious views of a section of society" (Case No.: CCT 11/98:28). The CCT declared that criminalising homosexuality and same-sex marriages is unconstitutional. This verdict was then ratified through the Civil Unions Act passed in 2006 (Richter, 2021:13-14). Two fundamental aspects arise from this judgement and highlight the CCT's unfair treatment of sex work. Firstly, sex work is the criminalisation of activity between consenting adults which does not affect others. Moreover, the government took eight years from the time of this judgement to pass the Civil Unions Act in 2006, revealing the time taken to action legislative change on contentious issues. Therefore, even if a court case was won owing to its unconstitutionality, the subsequent policy change regarding sex work could still take time to be actioned.

In a second example, the illegality of marijuana was brought before the CCT proceeding extensive debates on decriminalising marijuana for medicinal and private use, including a private Members Bill by the Inkatha Freedom Party (IFP) in 2014 (Minnaar, 2015:150).[21] The CCT, in September 2018, endorsed a previous decision taken by the Western Cape High Court and expanded the decision to declare the illegality of marijuana unconstitutional. This endorsement meant that marijuana became legal for consumption and growth for home use and medicinal purposes but not for resale (Parry, Myers, and Caulkins, 2019:1804). This judgement contradicts the judgement in the S vs. Jordan and others case, where it is found that it was not the CCT's role but rather the role of the Parliament of SA to determine the policy approach taken on an issue. This discrepancy emphasises the unequal treatment of sex workers and the policy inconsistencies in the legal space. This example also highlights the utilisation of a private Members' Bill to change legislation in SA. Overall, there had been an unwillingness to decide on the matter of sex work and instead, it has been passed on from the legal to the political space. In so doing, it emphasises a fundamental reluctance to grapple with the topic of sex work.

[21] "Bills drawn up by individual Members are called Private Members Bills. A Committee concerned with Members' [legislative] proposals in each House decide[d] whether the Bill [met] certain criteria (which [would]include financial implications) and [could] be introduced into the House" (PMG. Accessed August 2021).

3.5 Conclusion

In conclusion, a few points bear repeating from the discussions above. In discussing the literature pertaining to the legislative framework governing the sex industry in SA, a key point is that the criminalisation of the sex industry has failed to eliminate the industry. Since 1994 there had been contradictory policy developments in SA where instead of changing the sex worker policy, the ANC, through the DOJ&CD commissioned a report on adult prostitution in SA; the final report only being published in 2017. Therefore, the ANC was delaying policy change regarding sex work owing to an apparent need for further investigation. This thesis explores the decision to commission a report rather than implement change. The thesis reveals that various stakeholder groups involved in the debate on sex work policy in SA have failed to reach a consensus, resulting in a policy stalemate despite calls for decriminalisation from civil society, Chapter 9 institutions, and sex workers themselves. This situation is particularly striking given the shifting societal attitudes and the readiness of the political environment for policy change. While the ANC has publicly discussed the decriminalisation of sex work in public spaces, the NCOP has leaned more towards partial decriminalisation. Debates in Parliament occurred in 2016 and 2018 following the release of the SALRC's report on Adult Prostitution, revealing ongoing disagreements on the best policy approach. Additionally, legal cases challenging aspects of sex work criminalisation have not succeeded in moving the policy towards decriminalisation. This contrasts with the treatment of other contentious policies in SA, such as gambling, marijuana, abortion, and same-sex marriage, which were handled differently. This thesis delves deeper into this complex policy landscape, exploring potential future trends that could drive policy change in the sex work domain. The next chapter focuses on previous research related to sex work, encompassing political, academic, and research efforts conducted by various NGOs and research organisations, both within SA and on a global scale.

Chapter 4 – Literature Review: Previous Research on Sex Work

4.0 Introduction

Research, whether conducted within the borders of SA or on the international stage, profoundly impacts the direction of policy change and the overarching legal framework that governs sex work within the country. The prevailing political and societal perspectives surrounding sex work are substantially shaped by the findings and extrapolations arising from research endeavours. However, it is crucial to acknowledge that the absence of research on critical facets of the sex industry has precipitated the propagation of myths and misconceptions devoid of empirical substantiation. This lamentable gap in research, giving rise to unfounded beliefs and preconceived notions about sex work, has endured over time. To underscore this point, Luiz and Roetz's (2000:21), seminal work in 2000 remains relevant. Their report poignantly characterises the sex industry as "an area clouded in myth, extreme prejudice, and pietism hypocrisy." Their astute observations transcended temporal boundaries, emphasising the persistent absence of concrete research on an industry considered "the world's oldest profession." This led to a lack of understanding of the industry, which was further compounded by the tendency of policymakers to yield to puritanical pressures, often choosing suppression over informed decision-making. The enduring relevance of Luiz and Roetz's (2000:21) insights underscores the critical necessity of research within the realm of the sex industry. It is through rigorous, evidence-based research that the multifaceted dynamics of this complex industry can be unveiled and comprehended. Consequently, their findings serve as a poignant reminder of research's pivotal role in dispelling myths, fostering informed policy decisions, and dismantling long-held biases. In essence, research is the beacon illuminating the path toward a more enlightened, equitable, and evidence-driven approach to regulating sex work in SA.

4.1 Research on Sex Work

The classification of research on sex work is a nuanced endeavour, given the divergent perspectives held by academic, civil society, and political stakeholders. To navigate this intricate landscape effectively, a comprehensive research analysis was undertaken, identifying distinct thematic clusters. These overarching themes revolve around the critical debate concerning the most appropriate policy framework for addressing sex work in SA. Consequently, the research was categorised into two primary domains: research sanctioned by the government and academic research driven by a keen interest in the complexities of decriminalisation. Further granularity was introduced within the academic research domain to ensure a holistic exploration of relevant dimensions. This involved the subdivision of this research into two main categories: studies focusing on sex work, HIV, stigma, and stereotypes, and research delving into the intricate relationship between sex work and sex trafficking. These thematic subdivisions encompassed a rich tapestry of studies conducted by

scholars, civil society organisations, and political entities. This organisation of the research allows for a more profound and nuanced examination of the multifaceted perspectives, evidence, and debates surrounding sex work policy in SA. It serves as a structured framework for navigating the diverse viewpoints contributing to the ongoing discourse on this complex and socially significant issue.

4.1.1. Research sanctioned by the government on Adult Prostitution in SA

Highlighting the exceptional nature of the government's approach to sex work policy reform in terms of the process and the Commission responsible highlights the complexities and sensitivities surrounding this issue. Given the historical sensitivity and moral objections surrounding sex work, the government decided to treat changes in this policy with a greater degree of caution. As a result, the government did not follow the standard process for changing a policy.[22] Typically, the government would create a green paper, which was published for public input and then reworked into a white paper, which formed the basis for the revised policy (Gumede, 2008:12). In the case of the sex work policy, the DOJ&CD tasked the SALRC with researching adult prostitution in SA. However, all the SALRC reports on this topic underwent the necessary public input process. The background and qualifications of the SALRC Commissioners are essential in assessing the credibility and impartiality of the research reports developed and the recommendations made. Furthermore, the diverse expertise among Commissioners contributed to developing a comprehensive research report on adult prostitution. Understanding their appointments helps evaluate compliance with legal mandates and considerations such as Commissioner accountability, term durations, and institutional evolution, which are vital when assessing the SALRC's work on complex legal and social matters like adult prostitution.

The SALRC is constituted as per the Act, Section 3(1)(a), namely that the Chairperson needs to be "a judge of the High Court of SA." The President appoints the remainder of the Commissioners based on "who appears to the President to be fit for appointment on account of the tenure of a judicial office or account of experiences as an advocate or as an attorney or as a professor of law at any university, or on account of any other qualification relating to the objects of the Commission" (SALRC, 1998:16). The number of appointed Commissioners increased in 2002 with a minimum of six and no more than eight Commissioners (SALRC, 2002/3:2). The term of office for the Commissioners were five years in line with the democratic cycle in SA.[23] Between 1996 and 2018, the Commission had four Chairpersons, with no Commissioners throughout the year 2012 due to the time gap between the president's appointment of new Commissioners and the expiration of the contracts of the outgoing Commissioners on December 31, 2011. The new

[22] Appendix A gives an overview of the standard policy creation process in SA in accordance with the Constitution of the Republic of SA 1996.
[23] It was referred to as the South Africa Law Commission until its name changed in 2002 to the South African Law Reform Commission (SALRC, 2002/3:2). This thesis refers to it as the South African Law Reform Commission (SALRC).

Commissioners were chosen in July 2013 and took office on August 12, 2013. The initial report on adult prostitution in SA was done in 2002, with a follow-up report in 2009 and a final report in 2017 (SALRC, 2002/3). The same chairperson completed the SALRC's first two reports, and the final report was completed by different Commissioners, which could also account for the varied points of view in the different reports. Specifically, there was a change from advocating for the decriminalisation of sex work to the criminalisation or partial criminalisation of the industry. From 2002 until 2011, Madam Justice Y Mokgoro served as the SALRC's chair (SALRC, 2018). She was also the President of the Africa Legal Aid (AFLA) from 1995-2005. The AFLA was "a civil society organisation, which provides legal aid and human rights education throughout Africa based in Accra, Ghana, with satellite offices in Maastricht (Netherlands) and Pretoria (SA)" (Constitutional Court of SA accessed 2023). The AFLA was an organisation that "worked to promote international justice and human rights in Africa." AFLA as an organisation "worked with victims and vulnerable groups" (Africa Legal Aid, accessed 2023). Justice Y Mokgoro's involvement with AFLA prior to being appointed to the SALRC in 2002 may have influenced her opinions on sex work and her advocacy for decriminalising the sex industry due to sex workers being categorised as victims or part of a vulnerable group.

In 2012 Justice Mandisa Maya took over as the Chairperson of the SALRC; she was also a Supreme Court of Appeal judge. Judge Maya had a "finely developed sense of the need to deal with social issues that disproportionately affect[ed] women and children, such as rape and sexual assault," the General Council of the Bar (GCB) noted about her criminal judgements and sentences. Her decisions showed that she was highly aware of the necessity to weigh all parties' interests, even those of individuals found guilty of such crimes (Judges Matters, accessed 2023). Justice Maya's rural upbringing "provided the judiciary with a critical diversity of thought" and invaluable insights into a big, complicated, and vulnerable part of our society. She encouraged other women to join the judiciary and aimed to help chip away at the edifice of patriarchy within SA (Judges Matters, accessed 2023). These valuable insights she would have brought to her role as the chairperson of the SALRC and it would have impacted her views around the sex industry. Her strong views around the need to dismantle patriarchy could explain her lack of support for decriminalising sex work. The SALRC published various reports on the topic under investigation. According to Commission protocol, the procedure started with the publication of an issue paper. The issue paper identified issues with a specific section of the law and invited submissions on potential remedies (SALRC, 2019-2020:25). The issue paper was then utilised to engage with the public on a particular issue. The next publication on the topic was referred to as a discussion paper which detailed "essential information on the investigation and the Commission's tentative proposals for reform" (ibid). The discussion paper included the existing legal position, the weaknesses in this legal position, a comparative survey and finally, a range of possible solutions. The

discussion paper often included a draft bill on the investigated issue (ibid). After an investigation, the Commission was compelled by the SALRC Act to submit a report to the Minister for consideration. The report detailed the matter under investigation with all recommendations and a draft bill for deliberation; this report did not have to be published (ibid, 27).

In line with the process outlined above, the following publications were done on the topic of sexual offences in SA:

- Project 108- Issue Paper 108: Sexual Offences against children 31 May 1997
- Project 107- Discussion Paper 85 – Sexual Offences: The substantive Law 12 August 1999
- Project 107- Issue Paper 19 – Sexual Offences: Adult Prostitution 12 July 2002
- Project 107 - Discussion Paper 10– - Sexual Offences -Processes and Procedures December 2001
- Project 107- Discussion Paper 0001/2009 Sexual Offences: Adult Prostitution May 2009
- Project 107 – Issues Paper 30 – Sexual offences: Pornography and Children – August 2015
- Project 107- Report – Sexual Offences: Adult Prostitution June 2015 Published in 2017
- Project 107: Discussion Paper 149 –Sexual Offences (Pornography and Children): 10 April 2019.

(SALRC, 2019/2020).

There are discrepancies in the reports released as part of Project 107, with a discussion paper appearing before the issue papers and another discussion paper following. Discussion Paper 85 and Issue Paper 19 both discussed prostitution, its prevalence in SA, public perceptions of it, and various prostitution-related policy stances. Both reports did not include recommendations as to which policy alternative would work best in the South African environment (SALRC, 2002:33).[24] Due to these discrepancies, the suggestions for changing the policy were only included in the final report that was finished in 2015 and published in 2017. According to the SALRC report on activities for the year 2019–2020, "all reports of the Commission are official documents, but not all are published" (SALRC, 2019/2020:27). This meant that the final report on sexual offences: adult prostitution, did not have to be published as these were recommendations to the Minister that no longer required public input.

The Gender Policy Statement was released in March 1999 by the DOJ&CD. The criminalisation of prostitution, according to this statement would "exacerbate the vulnerability of the predominantly female prostitutes to abuse by the predominantly male customers, pimps and corrupt law enforcement agents" (DOJ&CD, 1999:16). The Gender Policy Statement went on to explain that it was the "prostitute who is arrested and not the client" and how this situation had accelerated the "spread of HIV and sexually transmitted infections (STIs)" (ibid). The emphasis on sex workers rather than the client further highlighted the gender imbalance in the application of the regulation of the sex industry. Despite predictions that the Gender Policy Statement would call for the decriminalisation of sex work, this was not included in the statement. However,

[24] In the reports under Project 107, the SALRC uses the term prostitution when referring to women (or men) who provide sex for reward (SALRC, 2002:34).

it did note that the government needed to stop both trafficking in women and "exploitation of the women in prostitution" (DOJ&CD, 1999:17). Despite this, there was room for interpretation in the Gender Policy Statement as there were discrepancies on what was the best way to prevent the exploitation of women in prostitution. Some believed it required eliminating the industry, whereas others felt the industry's decriminalisation would be best.

Following the publication of the above document, the CGE published a report in 2013 which supports the decriminalisation of sex work as the best policy option for SA (CGE, 2013). The CGE report emphasises the link between decriminalising sex work and achieving gender equality in SA. The SALRC's final report on adult prostitution under Project 107 published in 2017 was the first publication by the SALRC to make policy recommendations based on research on sex work in SA. This report was finalised in 2014, as reported by SWEAT, who had access to a copy of the report in late 2014 (SWEAT, 2017). However, it was only approved by the Commissioners in 2015, after which it was submitted to the DOJ&CD, who finally published the report in 2017 after growing pressure from civil society. The report outlined two proposed policy approaches towards prostitution in SA. The first was the continued criminalisation of prostitution, with exit programmes; the second was the partial criminalisation (partial decriminalisation) of prostitution (ibid). The SALRC hoped that the responses given in the report would "prevent, deter and reduce prostitution" (SALRC, 2017:43), pointing to a bias towards eradicating the industry.

The SALRC final report (2017:385) refers to the decriminalisation or legalisation of sex work as the "non-criminalisation of prostitution and the legitimising of brothels and third parties." The SALRC felt this was not the best legislative model for SA as it "would not protect the human rights" of those in the industry or "necessarily promote the health and safety of persons" in the industry. Moreover, it would not "automatically recognise the services of prostitutes as legitimate labour" or "their right to freedom of economic activities within the sex industry." The report questions whether decriminalisation would empower prostitutes to remain or exit the sex industry. Ultimately, the SALRC 2017 report notes that decriminalisation would not "achieve a balance between, on the one hand, the rights and needs of prostitutes and the sex industry and, on the other, the rights and interests of the community" (SALRC, 2017:385). The SALRC (2017:385) believes that those advocating for the decriminalisation of sex work were trying to keep women in sex work without adequate strategies to help women exit the industry. The SALRC (2017:385) argue for "tangible social and economic assistance from government" combined with anti-poverty measures to give sex workers an alternative to sex work. The SALRC (2017:385) further argue that "if legal barriers were to disappear so too would all social and ethical barriers to treating women as sexual commodities." In other words, the SALRC highlights how referring to women as commodities was the main challenge with sex work.

The SALRC (2017:385) further speaks against decriminalisation by agreeing it is an "illusion that prostitution is a choice as it is manipulative and deceptive." This argument is taken further to note that buyers and pimps would use decriminalisation to hide the abuse involved and, simultaneously, award "rights on the abuser." The view that sex work "always involves bodily and psychological violations" should be termed "sexual abuse and harassment." The SALRC (2017:386) believes that the "sex industry would be unable to self-regulate precisely because of the widely documented harms associated with it," and that decriminalisation would not improve working conditions for sex workers nor address power relations within the industry (ibid, 386). The SALRC (2017:386) posits that in democratic societies, prostitution is typically condemned, as the sex industry is seen as a source of ongoing harm, abuse, and exploitation. The assumptions made by the SALRC in the concluding remarks of the final report on adult prostitution create a particular view of decriminalisation. It also highlights how the SALRC was trying to resolve not only the issues faced by those in the sex industry but how the sex industry affected communities. Decriminalisation not having been actioned in a developing country before meant that assumptions were being made on how it would play out within a South African context. In the eyes of the SALRC the sex industry was in and of itself abusive. Decriminalisation was argued to remove the harms related to the industry's criminalisation and shift the balance of power to the sex workers, but the SALRC (2017) felt that criminalisation would instead entrench the harms in the industry. The SALRC was in essence arguing that the balance of power would not shift to the sex workers but rather to the clients and pimps, which they felt would entrench the violence in the industry. To overcome some of the reservations raised by the SALRC regarding decriminalisation, activists have called for the industry to be decriminalised in conjunction with other strategies, such as exit and education strategies.

The DOJ&CD's support for the report was questioned, given the report's two-year delay in publication. Since civil society's main call was for sex work to be decriminalised in SA, it could be inferred that the DOJ&CD's slowness in publishing the report reflected a concern with civil society's reaction. Alternatively, that the department did not support the report's content and recommendations. However, the fact that civil society had to petition for the publication of this report raised concerns about the report's integrity in a situation where the SALRC was under no obligation to do so but where civil society needed the report to understand the recommended direction for policy change. After the publication of the SALRC report in 2017, the MPWC expressed their dismay at the report's call for either the continued criminalisation or the partial criminalisation of sex work in SA (Parliament, 2017). The Chairperson of the MPWC, Ms Rosalia Masefele Morutoa,[25] supported the full decriminalisation of sex work as the only model that would "respect the rights of sex workers" and "assist with the HIV crisis" in SA (ibid). Ms Morutoa calls the report patronising in its strategy of attempting to protect women while dismissing the views of people in the

[25] Ms Morutoa was the Chairperson of the MPWC from 2014–2019 (Parliament, 2017).

profession (ibid). The SALRC existed to advise Parliament on policy options to deal with pressing issues in SA; however, the report on adult prostitution was not well received by the MPWC and sex workers in SA. In addition, SWEAT felt that the SALRC had not achieved anything since starting its work 20 years earlier on this critical topic (SWEAT, 2017). The various critiques of the report reflected how feedback came both from civil society and within the government, highlighting the lack of support for the report's findings, both politically and by civil society.

There were various debates about why the SALRC called for the continued criminalisation or partial criminalisation of sex work in their final report on adult prostitution. Some believed the report was based on outdated research and was a misplaced attempt to convey reassurance in the face of the current GBV concerns (van der Merwe, 2017). In this view, sex work was viewed as being VAW; therefore, through the continued criminalisation of sex work, "our government is addressing this violence" (ibid). However, it is argued that the SALRC did not "understand the situation of sex workers" (ibid). The recommendation by the SALRC to continue the criminalisation of sex work contradicted the view given by the ANC in the Gender Paper published in 2012 (ANC, 2012a:26). The ANC stated the following regarding the three approaches outlined by the SALRC towards sex work (namely "criminalisation, regulatory (legalisation) and total decriminalisation"), that "the ideal approach by the ANC would be for the support of a position that would embrace the dignity of women" (ANC, 2012a:26). This view was however open to interpretation. Many still felt that sex work did not "embrace the dignity of women." In contrast, others believed such dignity would be achieved if the industry was decriminalised. Once again, a distinction between the ANC as a political party and the ANC as the government can be observed, leading to differing views on sex work based on their respective roles.

The Asijiki Coalition, formed in 2015, is dedicated to advocating for the decriminalisation of sex work and protecting sex workers' rights (Polity, 2015). Wasserman, a member of the Asijiki Coalition, represented the organisation's standpoint. In his presentation to the Asijiki Coalition AGM in 2017 he highlighted key findings from the 2017 SALRC report, which identified inherent exploitation in the sex industry, influenced by gender violence, inequality, and poverty. The SALRC 2017 report suggests that altering the legislative framework could risk exacerbating cultural issues, particularly in the context of the existing high rates of sex crimes against women. The Asijiki Coalition challenge the SALRC's findings that sex work itself was problematic, and that changing the legal framework could potentially harm both those in the industry and women in SA (Wasserman, 2017). The Coalition further critique the SALRC report on five main fronts. First, they perceive a bias favouring the criminalisation of sex work within the report. Second, they note a focus on arguments supporting the continued criminalisation of sex work while challenging those in favour of decriminalisation. They also found an illogical argument justifying continued criminalisation

(Wasserman, 2017:8-9). Third, the Coalition argues that there was no evidence to support the claim that criminalisation reduces sex work-related harms; in fact, they argue that some harms are attributed to the industry's criminalised status (ibid, 9). Fourth, the Asijiki Coalition contends that the SALRC 2017 report exhibits bias in favour of sex workers who support the criminalisation of the industry. Fifth, they criticised the report for inadequately addressing work and exploitation. The report's definition of sex exploitation as driven by poverty or social marginalisation, they argue, is insufficient. The Coalition aimed to demonstrate that supporting the decriminalisation of sex work did not negate the presence of exploitation but rather highlighted how decriminalisation could improve conditions for sex workers. Lastly, the Asijiki Coalition asserts that the SALRC 2017 report dismisses the argument that decriminalisation could enhance sex workers' access to healthcare. They also felt that the harms associated with the criminalisation of sex work, which were widely documented, must be considered within the report. While they argue it was imperative to explore alternative policy frameworks that could reduce harm within the industry and fostered inclusivity (Wasserman, 2017). In essence, the Asijiki Coalition's critique of the SALRC 2017 report underscored their commitment to challenging preconceived notions about sex work, advocating for the well-being and rights of sex workers, and urging for a more comprehensive and harm-reducing policy framework.

The SALRC 2017 report's recommendations led to calls for further engagement with sex workers (van der Merwe, 2017). Embrace Dignity welcomed the report as it called for the partial criminalisation of sex work (City Press Reporter, 2017). Debates took place in Parliament in 2018 following the report's publication, but the calls for a more comprehensive report considering the views of sex workers have not been actioned. The SALRC has embarked on an investigation into the repeal of colonial and apartheid legislation, and civil society has submitted applications regarding repealing the sex worker policy (Richter, 2012).[26] Cathi Albertyn, a Commissioner at the SALRC until her term ended in 2011, notes that the report she worked on recommended the "decriminalisation of sex work in SA." However, this recommendation changed in the final report published in 2017 (SWEAT, 2017). The SALRC challenge this claim, noting that Professor Albertyn had only worked on sections "three and four of the report" and that "the Commission only deliberated on recommendations after a report" was finalised (van der Merwe, 2017). This could explain why two discussion papers were published, one in 1999 and one in 2009, and the change in direction regarding the recommendations on sex work in SA.

The literature review further focuses on academic research interested in the politics of decriminalisation. It focuses on research done on sex work, HIV/AIDS, stigma, and stereotypes. The SALRC

[26] This was a report being compiled at the time of this research therefore the results of this investigation are not yet known. Submissions were due by 03 June 2021 and civil society made applications regarding the repeal of the sex worker policy as it represented s colonial and apartheid legislation (Richter, 2021).

report was argued to have not included the health-related aspects linked to the criminalisation of sex work. This thesis goes beyond the SALRC report by documenting both sides of the argument, those for and those against the decriminalisation of sex work and highlighting how sex workers were a significant population concerning HIV/AIDS prevention in SA. During the data collection for this thesis, interviews with organisations will further highlight the impact of the continued criminalisation of sex work in SA and shed light on the best legislative framework to govern sex work in SA.

4.1.2 Academic Research Interested in The Politics of Decriminalisation

The preceding section delved into government-sanctioned research concerning adult prostitution, whereas the subsequent section scrutinises research encompassing sex work, conducted by both civil society and academic organisations. This extensive body of research is segmented into two primary domains: the first category centres on research examining the intersection of sex work with topics such as HIV/AIDS, stigma, and stereotypes. The second area of study focuses on the intricate relationships between sex work and sex trafficking. The primary justifications for decriminalising sex work centring on health issues, notably the direct connections between sex work and the spread of HIV/AIDS. Decriminalisation could improve sex workers' access to medical treatment and stop the spread of contagious illnesses, according to supporters. Conversely, opponents of decriminalisation underscore a different set of concerns, primarily related to sex trafficking and the pervasive violence endured within the sex work industry. They argue that decriminalisation may inadvertently exacerbate these issues. This argument, rooted in research from both SA and the global context, serves as the basis for the ongoing discourse on the decriminalisation of sex work.

4.1.2.1 Research on Sex Work, HIV/AIDS, Stigma and Stereotypes

Research on sex work, HIV/AIDS stigma, and stereotypes is selected to draw attention to the various health arguments around sex work. The link between sex work and HIV/AIDS is significant, primarily due to unsafe practices, multiple sexual partners, and the economic vulnerability of sex workers. Stigma and discrimination can hinder their access to healthcare and safe sex resources, while the criminalisation of sex work can push it underground, making HIV prevention and healthcare outreach more challenging. To address this issue, targeted interventions are essential, including HIV testing, education on safe sex practices, condom distribution, and advocacy for legal reform to protect the rights and health of sex workers. The Global Network of Sex Workers Projects (NSWP 2015a) observe how sex workers and HIV-positive people share related stigmas and stereotypes. According to the NSWP (2015a), sex workers are seen as 'unclean', a danger to public health, and unable to care for themselves. If sex workers were HIV positive, they were marginalised and while they had human rights, these were not respected or progressively realised (NSWP, 2015a:1). This stigma occurring within the context of SA having the largest concentration of people living with HIV/AIDS

in the world (Simelela and Venter, 2014:249). The National AIDS plan for SA formed part of the national health plan for SA in 1994. Through the implementation of racist laws and the development of institutions like "political and statutory bodies for the control of the health care professions" and facilities, the South African government during the Apartheid era created a health care system that was sustained over time (ANC, 1994). These organisations and facilities were created and run specifically to uphold racial segregation and prejudice in health care. With more than 2,000 documented cases and 500,000 HIV-positive individuals as of the end of 1993, HIV/AIDS was rapidly becoming a significant public health issue (ibid).

The HIV/AIDS/STD Strategic plan for SA 2000-2005 documents sex workers under populations at higher risk of HIV/AIDS/STD (South African Government, 2000-2005:38). In SA, even though not much was known regarding the incidence of HIV among sex workers or the clients they served, both groups were connected to sexual networks that were affected by the wider pandemic (ibid). The strategic plan 2000-2005 acknowledged that "HIV/AIDS [was] the most important challenge facing SA since the birth of democracy" (ibid, 1). The plan aimed to "guide the country's response to the epidemic" (ibid, 8). "HIV/AIDS [was] both a regional and a national priority." The Inter-Ministerial Committee on AIDS (IMC), which at the time was the highest-level political group providing any direction and political control on HIV and AIDS, was replaced by the South African National AIDS Council (SANAC) in 2000 (Ngculu, 2007). SANAC, established in 2000, underwent a significant overhaul in April 2007, introducing a new three-tier structure aimed at enhancing its effectiveness. (ibid). An update on the creation and restructuring of SANAC, which would coordinate all national operations in the revised national partnership against HIV and AIDS, was provided to the cabinet at a sitting of parliament on May 2, 2007 (Government Communications, 2007). The government was pleased that the SANAC stakeholders unanimously supported the comprehensive National Strategic Plan (NSP) for HIV and AIDS and other STIs from 2007 to 2011. Cabinet approved the NSP as a strategic plan to guide the nation's response to HIV and AIDS for the next five years at the same sitting of Parliament (ibid). The NSP for 2007–2011 would serve as a roadmap for all sectors' responses to HIV and AIDS. Prevention, treatment, care and support, research monitoring and surveillance, and human hights and access to justice were the four core focuses in-line with the 2000–2005 strategic plan (Ngculu, 2007). The major goals of the NSP were to reduce new HIV infections and the consequences of AIDS on individuals, families, and communities. By 2011, it aimed to offer a wide range of care, support, and treatment choices while lowering the incidence of new infections by 50% (Government Communications, 2007).

The National Strategic Plan (NSP) on HIV, STIs and TB 2012-2016 was launched on 01 December 2011 (UNAIDS, 2011). SANAC extensively consulted with the necessary government line Ministries, civil society organisations, and the commercial sector to create the NSP. The NSP had five main objectives: to

reduce the number of new HIV infections by half; to ensure that at least 80% of those who were eligible for "HIV treatment are receiving it (at least 70% should still be alive and receiving treatment after five years)"; to reduce the number of new TB infections and TB-related deaths; to ensure that people living with HIV have their rights protected; and to reduce stigma associated with HIV and TB (ibid). In the plan sex workers were noted as a key population, however, regarding the decriminalisation of the industry, the plan emphasised that decriminalisation was "a matter that has been a subject of debate and how society should continue to deliberate on the matter until final resolution" (South African Government, 2012-2016:53). A proposal regarding the decriminalisation of sex work was originally included in the NSP on HIV, STIs, and TB 2012-2016. This clause was "removed by Cabinet before it was launched" (Scheibe, Richter, and Vearey, 2016:168). But according to the NSP report, "sex workers experience many health inequalities, including HIV," which were made worse by the "continued criminalisation of sex work and the lack of political will to reform criminal law in this regard" (ibid, 169). This analysis suggests several potential explanations for the sex-worker policy's continued inertia. It also raised concerns regarding the rationale behind Cabinet's decision to strike down a resolution to decriminalise sex work from the NSP in 2012, when addressing sex workers' health is vital.

The South African Health Monitoring Survey (SAHMS) conducted research in 2013-2014 with female sex workers (FSW) in SA. The SAHMS-FSW survey was the first attempt to "conduct behavioural and HIV disease surveillance" with female sex workers in SA's three largest metropolises, Johannesburg, Cape Town, and Durban. It provided information on the epidemiology of HIV, behavioural risk factors, and the coverage and uptake of targeted prevention and treatment programs in this crucially important affected population (SAHMS, 2013-2014:6). In their recommendation the SAHMS-FSW revealed unequivocally how critical it was for SA to find and implement efficient "HIV prevention and treatment programs for FSW" (ibid, 63). SANAC attributed the findings of the SAHMS research to the formation of the National Sex Work plan (SANAC, 2018). The South African National Sex Work Strategy (SANAC, 2013:4) was developed to "guide the development of the National Sex Work Plan." The strategy was developed due to the disease burden: "HIV prevalence among sex workers and sex worker clients is about 10 to 20 times higher than among the general population in sub-Saharan Africa" (ibid, 1). On March 11, 2016, the inaugural SA National Sex Worker HIV Plan 2016–2019 was introduced. This plan delineated precise objectives tailored to the needs of sex workers, with a primary focus on diminishing HIV/AIDS infections and curbing gender-based violence (GBV) endured by this vulnerable group. The plan set forth specific targets, including achieving a 95% condom usage rate among sex workers, reducing GBV cases by 50%, and aligning with the global 90–90–90 targets for sex workers (SANAC, 2016:8).

The National Sex Work Plan was a government plan to assist sex workers and reduce HIV transmission in SA and help achieve the 90-90-90 international target set by United Nations Programme on HIV/AIDS (UNAIDS). It included a programme for peer educators to dispense condoms and lubricants to sex workers (SANAC, 2016:20). However, police still viewed condoms as evidence of sex work, leading to the arrest of sex workers. This left the onus on clients to provide condoms, which increased the odds of sex workers having unprotected sex. This plan indicated that while the government had maintained the criminalised status of sex work, they recognised the importance of addressing HIV transmissions among sex workers. (HRW and SWEAT, 2019:4). According to the NSP for HIV, Tuberculosis (TB) and STIs 2017–2022 (SANAC, 2017:7), "approximately 150,000 female sex workers [HIV prevalence] range from 48%–72%, compared to 14.4% among adult women in the general population." It was however unclear whether the sex workers documented accounted for are all sex workers in SA, as some people would be more vulnerable than others. At the same time, it was fundamental to consider the percentage of sex workers concerning the overall population in SA, as noted above. In 2013, the UN initiated a 90–90–90 treatment target programme, a set of goals to help reduce HIV infections. The concept was that "by 2020, 90% of people who are HIV infected will be diagnosed, 90% of people who are diagnosed will be on antiretroviral treatment, and 90% of those who receive antiretroviral will be virally suppressed" (Gray, 2016). SA committed to achieving this goal by 2020 (ibid). In 2018, in achieving the 90–90–90 target, 90% of those with HIV were aware of their status, 68% were on treatment, and 87% were virally suppressed (Avert, 2020).[27]

Logie, James, Tharao, and Loutfy (2011:3) document how sex workers are vulnerable to being prejudiced against due to significant stigmas associated with sex work, HIV, race, gender, and transgender individuals. This stigma is characterised by "blame, labelling, disapproval and discriminatory treatment" (WHO, 2005:1). Konstant, Rangasami, Stacey, Steward, and Nogoduka (2015:S3) did a sex worker enumeration exercise in twelve places across SA, using focus groups and interviews to gauge the numbers and genders of sex workers. Estimates from the literature were merged with the outcomes of the exercise, and it was determined that between 131,000 and 182,000 sex workers, or 0.76 and 1% of adult females, work in SA. Peer educators and ethical considerations were essential to the exercise's success. Through this exercise they argue the ill-treatment sex workers receive is due to sex work being criminalised. They note how sex workers have had "an extremely vulnerable work life" and that the abuse they face includes regular violence, public stigma, discrimination, and limited access to justice. The WHO (2005:1) documents how policies around sex work in SA make sex workers "easy targets for harassment and violence." In addition, the criminalisation of sex work creates a setting where sex workers are "considered immoral deserving of

[27] In 2020 the statistics show that "92 percent are aware of their HIV Status," "70 percent are on HIV treatment" and "64 percent are virally suppressed" (Avert, August 2020). The criminalisation of sex work could have impacted on these figures and the inability to meet the 90-90-90 target.

punishment," and some sex workers even believe that "violence is 'normal' and part of the job" (ibid). In a context where sex work is criminalised, sex workers are unlikely to report violence against them due to the fear of being arrested, dismissed, or subjected to further violence from law enforcement officials (ibid).

The United Nations Programme on HIV/AIDS gap (UNAIDS Gap) Report (UNAIDS, 2014:6) highlights how addressing the violence against sex workers could reduce HIV/AIDS infections.[28] The International HIV/AIDS Alliance (2008:5) showcase how, through marginalisation and stigma, individuals were prevented from "accessing information, support and services that would help to protect them from HIV/AIDS." The International HIV/AIDS Alliance (2008:10-12) report describes various types of violence that sex workers experienced, noting that perpetrators are not limited to clients and brothel owners. Sex workers also experience violence from the community through verbal or physical violence and police violence through extortion and rape. Sex workers often experience violence from family members, partners, and other sex workers. The International HIV/AIDS Alliance also believe that the violence encountered by sex workers could be linked to the fact that sex work is criminalised (International HIV/AIDS Alliance, 2008:10-12). Criminalisation reduces sex workers' access to health care, resulting in low uptake of the health benefits available. The low uptake of health benefits is associated with a fear of stigma and discrimination from healthcare providers (UNAIDS, 2012:10). More than one research report linked the stigma faced by sex works to its criminalised status, rather than the industry itself. This contradicts the finding of the SALRC report and reflects a discourse that the SALRC did not include in the final report on adult prostitution.

According to Coovadia, Jewkes, Barron, Sanders, and McIntyre (2009:822-823), there were "two competing discourses on sexuality" in SA during the apartheid era, which contributed to the rise of HIV/AIDS in the country. The first discourse related to the church and the idea that "sex is only for procreation and within marriage" (Coovadia, et al., 2009). Within this discourse, sex is not spoken about, especially to children and teenagers. Within an African context, Mgbako and Smith (2011:1189) remark how many African governments refer to sex work as being incompatible with African culture. As Coovadia, et al. (2009) explain, the second discourse mainly occurs within African cultures, where sex is viewed as a "normal, healthy and an essential feature of life." In this discourse, sex is spoken about with children and teenagers and is seen as a normal part of life from a young age. Coovadia, et al. (2009) also explain how the migrant labour system as documented above affected sexual practices, particularly for men who left their families. These men sometimes having sex with other men, finding a new female partner, or engaging with sex workers. Thus, men in urban areas and women in rural areas often had "second families" (Coovadia, et al., 2009:822-823).

[28] The goal of the UNAIDS gap report is to answer the question: "how do we close the gap between the people moving forward and the people being left behind?" (UNAIDS, 2014:4).

All these aspects must be considered when reviewing the spread of HIV/AIDS in SA. It is unfair to simply blame sex workers for spreading HIV. At the same time, all aspects of the sex industry must be considered to reduce the spread of HIV/AIDS. Despite the abovementioned aspects, HIV/AIDS prevalence was high among sex workers. The World Health Organisation (WHO) include sex workers in their list of key populations at high risk for HIV infection (WHO, 2018). The UN's GAP Report (UNAIDS, 2014:1) states that sex workers are 12 times more likely to be HIV positive than the rest of the population.

A sex worker has "an almost thirteen times higher risk of acquiring HIV infection than other women of reproductive age" (Avert, 2018; Richter, et al., 2013:246). The increased risk of infection is primarily due to the frequency of sexual interactions and clients paying relatively high rates for unprotected or anal sex, which left the women even more vulnerable to HIV. The use of alcohol and drugs also increases the probability of unprotected sex (Richter, et al., 2013:246-247). Slabbert, Venter, Gay, Roelofsen, Lalla-Edward, and Rees (2017:18) document how "at least one-third of all sex workers are HIV positive by the age of 24" and how this "number increases as they get older to 80%." Overall, sex workers and clients account for "6–20% of all heterosexual transmissions of HIV in SA." Baral, Beyrer, Muessig, Wirtz, Decker, Sherman, and Kerrigan (2012:542) studied the prevalence of HIV among female sex workers in SA and found that the HIV prevalence rate was 59.6%. However, the high number of HIV infections in SA did not occur only among sex workers; their clients were also responsible (Baral, et al., 2012:542).

Decriminalising sex work is critical in achieving the 90–90–90 treatment target for SA. However, the rate of HIV/AIDS infections in SA needs to be understood on a structural level. Statistics SA records an HIV prevalence rate of approximately 13.1% in SA in 2018; the overall number of people in SA living with HIV was roughly 7.52 million in the same year (Statistics SA, 2018:1). Hence, among adults aged 15–49 years, people with HIV made up "an estimated 19% of the population" (ibid). Although sex workers are at high risk of contracting HIV, the estimated number of sex workers in SA in 2015 was between 131,000 and 182,000, which meant that they accounted for between "0.76% and 1% of the adult female population" (Konstant, et al., 2015:S3). In 2016, the *South African Health Review* (SAHR) examined the health system and the needs of the underserved, including sex workers. Other underserved areas included rural areas.[29] The *SAHR* (2016) notes that "SA [would] not reach the UN Joint Programme on HIV and AIDS 90-90-90 targets unless adequate attention and political [were] invested in sensitive, appropriate and evidence-based responses to sex work health" (Scheibe, Richter and Vearey, 2016:165). Classing sex workers as underserved – together with rural areas – highlights the need to ensure that sex workers receive health care services, particularly

[29] The *South African Health Review* is "an accredited peer-reviewed journal of critical analysis and commentary by specialists on key issues relating to health systems policy and practice" (Sabinet African Journal, accessed 2020). The journal aims to "provide an annual and longer-term review of health policy developments in SA" (Sabinet African Journal, accessed 2020).

those living in rural areas. The *SAHR* 2016 (ibid, 173) also recommend the decriminalisation of sex work. The authors state that "the Department of Justice (DOJ) should propel the law reform process and ensure that sex work is decriminalised." This recommendation is made in 2016 before the SALRC report on adult prostitution is released by the DOJ&CD which did not support the decriminalisation of sex work.

The SAHR 2016 recommends decriminalising sex work under leadership and governance.[30] This recommendation draws attention to the need for government to take a leadership role in guiding the process of policy change around sex work. The SAHR 2016 notes a "lack of political will" as one reason policy reform had not occurred. The review also recommends in-service training in the health sector (Scheibe, et al., 2016:173). This point emphasises how merely changing the sex-work policy alone would be insufficient to change the health situation for sex workers; there was also a need for training to combat the stigma faced by sex workers in SA. Research shows that in countries, where sex work is decriminalised, there has been a reduction in HIV infections among sex workers. In Lancet research done with information from 27 European countries, including data on HIV prevalence among sex workers from the European Centre for Disease Control, sex-work laws from the US State Department's Country Reports on Human Rights Practices and country-specific legal documents, the rule of law and gross domestic product per capita, adjusted for purchasing power, from the World Bank, and the prevalence of injecting drug use among sex workers, we estimate cross-sectional, ecological regression models (Reeves, Steele, Stuckler, McKee, Amato-Gauci and Semenza, 2017:134). Male sex workers were included in the statistics from two nations, but their numbers were so minor that the results here primarily spoke to the predominance of female sex workers. In the findings of this research, when comparing nations that criminalised all forms of sex work to those that had legalised part of it, in 17 of them, there was a considerable difference in the HIV prevalence among sex workers (ibid).

In their study from 2009, Shannon, Strathdee, Shoveller, Rusch, Kerr, and Tyndall (2009:659) investigate "condom use negotiation with clients among female sex workers." The research used "baseline data from a 2006 Vancouver, British Columbia, community-based cohort of female sex workers." According to their research, there is a "need for environmental-structural HIV-prevention efforts" to promote condom use in the sex industry. They highlight how the government is implementing initiatives to help sex workers and stop the spread of HIV. However, these efforts are thwarted by laws that made performing sex work a crime. Because of the discrepancies between official policy and studies, sex workers could not profit from the government's attempts to fight HIV/AIDS (Shannon, Strathdee, Shoveller, Rusch, Kerr, and Tyndall, 2009:659). Essentially, the government tries to address the health-

[30] The other categories are - Financing; Health workforce; medical products, vaccines, and technologies; information and service delivery (Scheibe, et al 2016:173-174).

related aspects of sex work without changing policies. Although the government is aware of the role sex workers play in the spread of HIV/AIDS in SA it is hesitant to modify its policies, which would have negatively impacted the effectiveness of these measures (ibid). Even though the MPWC is obliged by the "resolution of the Women's Parliament in 2015 and 2016 to advocate for the decriminalisation of sex work" (Morutoa, 2018), there was no actual commitment to modify the sex-worker policy. The NSP 2012-2016 confirms that criminalising sex work has negative health effects. Despite this affirmation being in a government document, the sex workers' policy has remained unchanged. Given that the government is aware of the difficulties faced by sex workers and that these difficulties have been thoroughly documented, this raises the question of whether more research on the subject was necessary. Scheibe, et al. (2016) remark on a lack of political will to push for policy change points to the need for a political champion to push for this change in SA.

The approach adopted by the DOJ&CD, the SALRC, and the Cabinet raises concerns, especially considering the significant healthcare challenges faced by sex workers and their substantial contribution to the HIV/AIDS pandemic in SA. Despite these pressing issues, the South African National Sex Worker HIV Plan 2016-2019 appears to reflect a government strategy that avoids substantial policy changes, instead implementing programs that only superficially address the multifaceted challenges encountered by sex workers. This plan aimed to achieve several key objectives, as outlined in the South African National Sex Worker HIV Plan (2016-2019:14-15), including "reducing HIV transmission among sex workers and their clients, providing a comprehensive range of services such as peer education and healthcare, addressing human rights violations, promoting the overall health and well-being of sex workers, advocating for legal reforms, and extending support to sex worker organisations" (National Sex Worker HIV Plan, 2016-2019:14-15). Through the NSP 2016-2019, advocating for policy change, it highlights an awareness that policy change is required to attain the objectives of the NSP. These objectives are also in line with the calls made by civil society and outline the changes that it envisions could be achieved through the decriminalisation of sex work. The SALRC report (2017:208) indicates that the NSP would be useful in "reducing the spread of STIs and HIV," even though it is "implemented independently of the legislative framework governing prostitution." The SALRC (2017:208) further argues that "guidelines for health care workers should be established [for] their interaction with vulnerable groups." The SALRC supports the attempts by the government to deal with sex worker issues independently of legislative change. The justification given in the SALRC report is that policy changes in other countries have "rendered women more vulnerable" (SALRC, 2017:208). Holman (2008:118) supports the stance of the SALRC by claiming that even in countries that have legalised sex work and thus had "strict policies on condom use," the "policies are virtually impossible to enforce." The result of policies not being enforced means that men, despite the risk, offer more money to have sex without a condom.

Because most women are desperate, they are "willing to forgo their health to increase their price" (Holman, 2008:118). Holman (2008) argues that policies on condom use alone would not reduce HIV/AIDS infections as social circumstances still impact condom use.

In contrast, the UN Gap Report (UNAIDS, 2014:6) claims that globally, in countries that criminalise sex work, if efforts are made to "address and reduce violence against sex workers," HIV transmissions would likely be reduced. The populations most at risk of HIV infection in SA included "marginalised groups such as sex workers, men who have sex with men, truckers, and adolescents" (Simelela, et al., 2014:251). Hence, sex workers are not the only group in SA at risk of HIV infection. The need to address violence experienced by sex workers is also vital to reducing HIV/AIDS as policies alone, would not be successful. Despite this, the starting point will address the violence and stigma resulting from criminalising the industry. In line with this, Mgbako and Smith's (2013:1426-1429) focus on how criminalisation stigmatised sex workers and left them vulnerable to police abuse while denying them access to justice. Gardner (2009:336) argues that the stigma attached to sex work leaves "sex workers vulnerable to all crimes of VAW" and that the violence experienced by the police is not exclusive to SA. In other African countries, such as Kenya and Zimbabwe, sex workers experienced similar violence from the police. The UN GAP Report (UNAIDS, 2014:7) also gives examples of how police in Kenya "use the possession of condoms as evidence of sex work" and hence for arrest. In line with the level of violence experienced, "the 17th of December marks the International Day to end Violence against Sex Workers" (UNAIDS, 2014:7). The need for such a day highlights the extent of the violence faced by sex workers, both in SA and internationally. Violence against sex workers is also documented in Fiji, where sex work is criminalised, resulting in the "round-up, detention, beating and torture" of sex workers (ibid). Fiji is another country with high levels of violence against sex workers linked to the industry being criminalised. However, Holman (2008:118) argues that sex work is "inherently abusive." Homan (2008) uses how women undergo regular health checks in countries where sex work is legalised, but their clients are not subjected to these checks; hence, the women are still at high risk for HIV/AIDS. Holman (2018) is therefore linking the abuses in the sex industry to the policy inconsistencies and not necessarily to the legislative framework applied.

Mgbako, Bass, Bundra, Jamil, Keys and Melkus (2013:1425) discuss why sex work should be decriminalised. They base their arguments mainly on the failure of criminalisation, noting that this model has instead, in practice, been ineffective and costly. According to Mgbako, et al. (2013:1425), the criminalisation of sex work costs the South African government, on average, at least ZAR14 million to cover the annual costs of policing sex work. Gardner (2009:336) supports this argument and adds that the globalisation of the sex industry has made the industry harder to police. Those favouring the decriminalisation of sex work argue for

better utilisation of such funds to protect women. It was confirmed in a Parliamentary debate in August 2016 that the current legislative framework has "proven difficult to implement and enforce"; therefore, it has been unable to achieve its purpose of "reducing the levels of sex work" or the "reduction of violence against sex workers." Instead, the legislative framework has denied sex workers "their human and constitution rights" and prevented access "to legal protection, rights and [led] to harassment and abuse by police" (Morutoa, 2016a). Historically there has been a focus on arresting women as sex workers rather than their clients, even after changes to the legislation which criminalised clients and sex workers. In their submission to the debate in Parliament in March 2018, KWANELE (Embrace Dignity) argued that although the law has changed to criminalise the purchase of sex, "thousands of women are still being arrested while there is only evidence of 11 men being arrested" (Meji, 2018a).[31] In official documents from 2011 by the National Prosecuting Authority (NPA), "police are urged to make arrests based on the clothing a woman wears, the streets she frequents and whether she is a 'known prostitute'" (Hynes, 2015:25). The NPA document draws attention to the gender disparities and gender inequality seen in the policing of the sex industry. A change in the sex-worker policy would help with achieving the gender equality goals in SA, as outlined in the CEDAW resolution, which aimed to end the discrimination and reduce the inequality against women (UNIFEM, 2006:6). Between 2011 and 2015 "the Women's Legal Centre documented 414 arrests of sex workers in SA" (Morutoa, 2016a).

In contrast to Mgbako, et al.'s (2013) argument that decriminalisation would improve access to health services, Raymond (2003:316) argues that it would not promote women's health. Raymond (2003) takes this argument further by noting how it would not enhance women's choices and that "women in systems of prostitution do not want the sex industry legalised or decriminalised." Raymond (2003:325) draws these conclusions from a study involving five research sites within two countries (Philippines, Venezuela) and three states in the United States. The study found that sex workers interviewed did not want sex work to become legitimate; among the women interviewed, none "want their children, family or friends to have to earn money by entering the sex industry." The unique context of rising unemployment in SA needs to be considered in attempting to apply these research results to SA. Salfati, James and Ferguson (2008:505) document how "women involved in street (outdoor) prostitution were 60 to 100 times more likely to be murdered than are non-prostitute females." Dworkin (1993:9) explains how the men who killed sex workers often felt righteous, as if they had "just gotten rid of a piece of dirt, while society [told them] that [they were] right." Gutiérrez (2014:98) indicates how "a growing number of men sought prostitutes more to exert power over another than

[31] "Kwanele is a survivor movement, which is incubated at Embrace Dignity, and led by survivors. The movement was established in 2017 by predominantly poor black women from disadvantaged and marginalised backgrounds who live in SA." The purpose of the movement is to "mobilise survivors of the system of prostitution to create a public survivor voice and speak about the harms of prostitution to transform societal mind set and attitudes. " (Embrace Dignity, 2020a).

to achieve sexual pleasure." This observation outlines sex workers' vulnerability to violence and stigma largely due to its criminalisation. Whorephobia is a term utilised to showcase the discrimination experienced by sex workers. The NSWP (2015a:2) defines whorephobia as the portrayal of "sex workers as disempowered, 'helpless victims', unable to make decisions or take care of themselves, and alternately, as criminals, 'deviants,' sexually dangerous, and 'immoral'." McNamara (2017:27) supports this definition and defines whorephobia as "the discrimination against and violence towards sex workers, which extends to their forced victimisation." Therefore, the term whorephobia encompassed the stigma, violence and even murder inflicted on sex workers. Luiz and Roetz (2000:37) maintain that the government was responsible for regulating the industry and "ensuring that it functions in an orderly manner" while offering protection against abuse. Luiz and Roetz (2000:37) summarise this as the government becoming a benevolent pimp. These researchers confirm the violence and femicide experienced in the sex industry, society, and the government's role.

In their report on VAW in SA, POWA examines women's marginalisation in SA. The report observes how when GBV is being discussed, "sex workers are often excluded" (POWA, 2010:9). WHO similarly indicate how sex workers are susceptible to violence, including physical violence, sexual violence and "emotional or psychological violence" (WHO, 2013:23). This violence is from clients, "pimps or brothel owners," and intimate partners. (Mgbako, et al. 2013:1429-1431). POWA (2010) attributes this violence mainly to the criminalisation of sex work, which prevents sex workers from reporting abuse. At the same time, secondary victimisation includes police demanding sex and sex workers being arrested or forced to work in isolated areas, making them more vulnerable. Finally, sex workers are regarded as vectors of disease, a stigma that often prevents them from seeking adequate medical care (POWA, 2010:11). The policy position thus assists in the generation of stereotypes towards sex workers. The SALRC report (2017) argues that the legalisation of sex work in other countries has not removed the stigma from sex work. In their view, it rather makes "women more vulnerable because they sacrifice their anonymity to be recognised as legal prostitutes" (SALRC, 2017:xxi). Although the SALRC recommends the partial decriminalisation as a policy option for SA, they note how this legal framework could result in an "increase in stigma and discrimination" —but primarily for the buyers of sex (ibid). The SALRC also claim that the legalisation of sex work implies that it is acceptable for certain women to prostitute themselves, especially "poor, vulnerable and women of colour" and the acceptance of sex work as a profession meant the acceptance of "a separate, expendable, throwaway class of women" (ibid, xxii). The arguments made by the SALRC contrast with the most persuasive argument made for the government to implement change in the sex-worker policy, which is linked to the human rights of sex workers and their access to health services. Failure to uphold the human rights of sex workers raises issues around the treatment of a sex worker's body, and whether they are treated as worthy human beings. The alternative argument is that sex work is associated with trafficking. The fear being that the

decriminalisation of sex work would lead to an increase in trafficking. This fear is explored in the next section as a critical argument utilised to justify the continued criminalisation of sex work.

4.1.2.2 Research on Sex Work and Sex Trafficking

Concerns about human trafficking continue to dominate and polarise discussions regarding sex work in SA. A rights-based approach to sex work hadn't been seriously considered because of concerns that decriminalising sex work would promote "the trafficking of women and children into the sex industry" (Yingwana, Walker, and Etchart, 2019:75). Yingwana, Walker and Etchart (2019:75) argue that evidence-based research which supports the decriminalisation of sex work is overshadowed by a moral frenzy about sex trafficking, even though this claim hadn't been supported by evidence. The NSWP (2019:2) argue that the conflation of sex work and trafficking results in incredibly destructive legislation which alienates sex workers in the industry, keeping them from uniting for better working conditions, and prohibiting them from claiming their legal employment rights as well as their general human rights. Yingwana, et al. (2019:84) aim to shift the discourse away from this oppression model towards a "sex work, exploitation, and migration/mobility model" which was based on an "understanding of sex workers' lived experiences" linked to evidence. This model aims to convey the everyday realities of those selling sex (Yingwana, et al. 2019:85).

Yingwana (2018:197) notes how "migrant/mobile sex workers are often conflated with human trafficking" and how within SA sex workers are a very mobile population. The mobility is largely cross-border with "migration flows usually from rural to urban areas." This cross-border mobility in SA could be attributed to the history of urbanisation linked to its colonial history of migration. Yingwana (2018:197) also links migration to those in the sex industry not wanting to be "identified by family and friends." The conflation of sex work and trafficking Yingwana (2018:227) argues, impacts the attempts to combat trafficking in the sex industry, due to difficulties arising that make it challenging to recognise and address incidents of trafficking in the sector. At the same time, it enrages proponents of sex worker rights and anti-trafficking campaigners creating the incorrect perception that defending the rights of sex workers inherently made one in favour of trafficking or that opposing human trafficking immediately made one against sex work. Yingwana (2018:227) believes that naturally, advocates for sex workers' rights are opposed to human trafficking as well since it infringes on the constitutional rights of those in the sex industry. These misconceptions affected the relationship between sex work and Anti-Trafficking Organisations and the ability to address trafficking in SA adequately. This is in a context where Yingwana (2018:227) argues labour exploitation and other human rights abuse are far more common.

When analysing the various approaches to sex work, it is crucial to look at the linkages between sex work and human trafficking since they show how these approaches view sex work through the lens of other harmful societal evils. The African Centre for Migration and Society (ACMS), Institute for Security Studies (ISS), and Centre for Applied Legal Studies (CALS) (2014:3) believe that no systematic research is currently available to offer thorough insights into the prevalence or patterns of trafficking into or out of SA or the Southern African region. Past research on trafficking is highlighted here to provide information on how sex work and trafficking could be related, including debates among scholars over whether there is a connection between the two issues. The Global Alliance Against Traffic in Women (GAATW) conducted a global study published in 2018 on the relationship between sex work and trafficking in various countries. The study highlights how the "UN Trafficking in Persons protocol … makes it clear that trafficking and sex work are distinct phenomena" (Yingwana, 2018:5). In interviews with sex workers in SA for their study, GAATW found that:

> The participants and interviewees agreed that even though trafficking does take place in sex work, it is not as prevalent as other forms of human rights violations they experience in the industry. Consequently, the obsession with trafficking by government officials, NGOs and international organisations detracts attention from these more widespread but less salacious abuses (Yingwana, 2018:216).

Gould (2014:183-184) uses data from a "Cape Town study undertaken with sex workers between 2006 and 2008" on indoor and outdoor prostitution, collected through "telephonic surveys, in-depth interviews and focus groups" to examine the link between prostitution and trafficking in SA. Data from a "separate survey of sex workers during the World Cup in SA in 2010" is also utilised. Gould (2014:183) emphasises how the research's findings could "provide the basis for a critique of Western rescue missions and the larger anti-trafficking movement." The research found insufficient proof to support the claim that prostitution in SA is primarily based on coercion and force. In addition, no evidence supports the claim that "rural women and girls and those from poor backgrounds are attractive targets for trafficking" (ibid). The research also suggests that there is a lack of evidence to support claims that "organised criminal groups control the industry," that sex workers are "typically controlled through drugs and addiction," and that "foreign sex workers are trafficked" into SA (ibid, 199). Overall, Gould (2014:200) explains how the fear around trafficking in SA is mainly caused by a need to comply with the Palermo Protocol's commitment to reduce trafficking.[32] In addition, SA had been listed on the U.S. State Department ranking list as a country with high levels of trafficking (van der Watt, 2018a:3). International influence is therefore argued to fuel the fears around trafficking in SA.

[32] The Palermo Protocol is adopted by the UN in Palermo, Italy, in November 2000, as an attempt to "prevent, suppress and punish trafficking in human beings" (European Commission website). The Palermo Protocol was "ratified by SA [on] 20 February 2004" (van der Watt, 2018a:3). After this ratification, in line with a commitment to deal with trafficking in SA, the Prevention and Combating of Trafficking in Persons (PACOTIP), Act No. 7 of 2013, was passed (Act No. 7 of 2013) in SA.

Van der Watt (2018a:6) challenges the arguments by Gould (2014), stating that these claims "diminish the estimations about the scope of the problem." Van der Watt (2018a:6) cites Dempsey (2017), who argues that studies "incorrectly code cases as not being trafficking." In turn, this challenges the statistics regarding trafficking in SA, as argued above the numbers were inaccurate due to incorrect coding. In her research report, Holman (2008) focuses on the extent of sex trafficking, growth patterns and international responses with a focus on the United States. She concludes that "legalising prostitution does not reduce abuse" and cites the experiences of Sweden, Australia, and New Zealand – all countries that have, in some way, legalised prostitution. She claims that the legalisation of prostitution or sex work did not decrease the demand but instead resulted in a higher "demand for prostitutes and thus a greater demand for trafficking victims" (Holman, 2008:115). Holman (2008) refers to sex trafficking as modern-day slavery. This argument is linked to the moral panic regarding sex work due to the belief that the legalisation/decriminalisation of sex work increased sexual trafficking. Deady (2011:523) compiles a synopsis of sex work or prostitution from the American colonial era (1492–1763) until the 1900s. She explains how sex work led to the white slave trade during the late nineteenth century. The synopsis illustrates a historical link between sex work and the start of sex trafficking (ibid).

Raymond (2003:315-316) argues against the decriminalisation of sex work, calling decriminalisation a "gift to pimps, traffickers and the sex industry," noting that it would in his view help promote sex trafficking. His main arguments were centred on the growth in sex trafficking, child prostitution, and the sex work industry more generally. He claims that decriminalising sex work did not protect the women involved; instead, it in his view, it intensified the market for their services. Gutiérrez (2014:100) supports this argument by outlining how through decriminalising or legalising sex work, society would be teaching boys that "women are 'objects' at their disposal" and that if they had money to pay, there are places where they could have all the rights. Holman (2008:115) adds to this argument by highlighting that through the legalisation of sex work, there would be an increase in the demand for "prostitutes and in turn, trafficked women." An example she gave to support her argument is that of the Netherlands, where studies she argues has shown that up to 80% of women in brothels were "trafficked from other countries." Holman (2008:116) scrutinises the argument made by Katri Sieberg (2001) where she argues that if the sex industry were to be legalised, the control of the sex industry would shift from organised criminals to the government and the latter, through tax, would generate additional income for the government. In Katri Sieberg (2001) argument, as quoted in Holman (2008:116) she emphasises that legalisation of the sex industry would also lead to an increase in the black market, within which the sex industry operates and in turn would allow organised crime to traffic people into the country to meet this demand. Holman (2008) contends that an increase in the black market would make it difficult to tax the industry as a large part would remain in the black market to avoid paying taxes. Therefore,

it could be reasoned that organised crime or government would never fully control the industry. If the above arguments were true, then legalisation would not benefit the sex workers but rather organised crime due to increased demand for sex workers and government through the increased taxable revenue, which means that sex workers themselves would be at a disadvantage.

Mgbako, et al. (2013:1442) challenge the argument that legalising sex work would increase trafficking in women. To support this, they claim that "South African sex workers are opposed to both trafficking into prostitution and the involvement of minors in sex work." They also argue that decriminalisation would enable women to seek help and to "report cases of trafficking" (ibid). Holman (2018:121) supported this argument by highlighting how the number of trafficking victims in Sweden had reduced since the change in policy framework on sex work. In this argument, Holman (2018) creates a link between sex work and sex trafficking based on the view that a reduction in one helps reduce the other, linked to the demand for sex workers. This implies that changes in the legislative framework in Sweden has also assisted in decreasing the number of sex workers. While it is also important in any country to consider the economic climate, the unemployment rate, and the effect of these issues on the number of women, men or students who exercise their agency by becoming sex workers, a similar change in legislation in a country with a different socio-economic climate could have a very different outcome to the number of sex workers or traffic victims. Research endeavours to elucidate the interplay between sex work and human trafficking while also attempting to challenge any established connections. Notably, international pressure has been identified as a factor exacerbating the perceived links between sex work and trafficking. Consequently, the research landscape is confronted with a significant knowledge gap concerning external influences, particularly financial support, which might introduce bias into these studies. This potential bias could skew findings towards reinforcing a connection rather than impartially exploring the South African reality. In contrast, research that counters these associations primarily portrays sex work as a consensual activity distinct from trafficking, which inherently involves non-consensual elements. This counter-narrative underscores the necessity for expanded investigations into the extent of trafficking in SA. Such inquiries should aim to discern whether sex work and trafficking can be considered separate phenomena within SA.

4.2 Conclusion

In discussing the previous research on sex work, the bias of the SALRC report on adult prostitution towards arguments and evidence that supports their call for the continued criminalisation of sex work were noted. The SALRC report focused on the harms caused by the sex industry but neglected to address the harms caused by its continued criminalisation. After the publication of the SALRC report there were calls for further engagements with sex workers. While this thesis does not engage with sex workers directly, it gleans some

of their experiences through interviews with organisations that work directly with them and engagement with studies conducted directly with sex workers. In so doing it creates a more complete picture of the experiences of sex workers in SA. Within the academic research interested in the politics of decriminalisation, it is seen how the stigma and stereotypes concerning the sex industry are mainly the results of the industry being criminalised. Although the rate of HIV infection among sex workers is high, within the context of HIV rates in SA, sex workers make up only a small percentage of that population. The literature highlights the effects of the criminalisation of sex work on access to sufficient health care to deal with HIV/AIDS in SA. The research on sex work and sex trafficking points to insufficient research to make a clear connection between the two. This area of research is limited, with a need for additional studies specifically on sex work and its link to sex trafficking. This thesis, however, only focused on trafficking relating to its impact on the legislative framework to govern sex work in SA; it did not confirm a link between sex work and trafficking. Overall, this chapter contextualised the current study against the existing literature to demonstrate the importance of this research.

Chapter 5: Theoretical Framework and Methodology

5.0 Introduction

Kruger (2004:138) creates a link between sex work and feminism based on two common facts. Firstly, many sex workers were women and secondly, "the fact that the majority of sex workers are women…justified considering sex work (prostitution) from a feminist perspective ensuring women's voices on the subject should be heard." At the same time, the government's reneging on sex worker rights spoke to the broader context of feminism and women's rights. Considering this, a feminist lens was utilised in this thesis to gain insight into the fight for sex worker rights in SA. In particular, I observed how liberal and radical feminists give insight into the arguments for and against the decriminalisation of sex work. African feminism was considered due to the SA context utilised by this thesis and the need to consider the unique context and history of SA. In broad terms, liberal feminism favours the sex industry and the protection of the people within the industry; in contrast, radical feminism called for the sex industry to be abolished. However, in SA, the intersectionality of race, gender, and class shed further light on the layered oppression many women face in the sex industry (Hawk, 2016).

In linking intersectionality to both these strands of feminism, a more nuanced exploration and understanding of the real-life conditions and multiple realities of female sex workers is highlighted. That said, as the primary theoretical framework of the thesis, it is essential to explore the debate between liberal and radical feminists to contextualise the decriminalisation argument better. To understand feminism's applicability to an African context, African feminism is explored. Moreover, in further problematising the simplistic binary, the thesis also engages with aspects of Foucauldian theory that deals explicitly with how the body was understood as a site of contestation. A Western versus African understanding of the body was explored in understanding the body. In doing so, the thesis used a feminist reading of Foucauldian theory to highlight how when applied to sex work, it reveals an understanding of attempts to control the body through criminalisation. The treatment of a male body versus a female body within society creates a sexual double standard due to women being shamed for sexual interaction while men were rewarded. The aim of using this theoretical framework was to understand women's knowledge based on their experiences (Alcoff, and Potter 1993:1). In so doing, "women will have their understandings of the world legitimated," in turn creating a particular way of reading history (ibid, 2). This thesis helps explain the stalling of change in the sex work policy as a specifically women-centred matter.

The second half of this chapter outlines the methodological approaches of the thesis, including the limitations of the approaches utilised. To this end, the interview guide, descriptions of the research participants and organisations, and interview expectations are outlined. The chapter also considers the study's

ethical concerns, including the chosen data analysis technique for the semi-structured interviews, namely thematic analysis (TA). Considering both the theory and method approaches described above, it should be clear that the thesis uses a feminist-centred research approach. Reinharz (1992:241) defines feminist research as "research where the lives of women are important." Feminist research, therefore, examines the individual lives of females "as people whose experiences are interwoven with other women" (Reinharz (1992:241). As most sex workers are female, this thesis affirmed their lives and experiences as women. In line with this feminist research approach, the methodology selected for this research (semi-structured interviews) is therefore appropriate as it allows for the focus on both the individual and structural aspects affecting sex workers by "hearing women's experiences" and understanding "women in their context" (ibid, 244-245).

This research made use of feminist epistemology and feminist narrative research. Ardovini-Brooker (2002:2-3) defines feminist epistemology "as a means of summarising, to some extent, and integrating women's knowledge and experiences." Feminist methodology is research about women by women, which aims to fill in the gaps not previously covered by traditional epistemology. In turn, Ardovini-Brooker (2002:2) speaks about a gynocentric epistemic, which is "knowledge centred on women's realities" through which "a new knowledge is brought forth." Jenkins, Narayanaswamy, and Sweetman (2019:415) highlight how this helps to "create spaces and opportunities to reveal lived realities of power inequalities and difference and provide evidence that can be deployed in working towards addressing these ingrained inequalities." In line with these goals, feminist methodology is ideal for this research due to its aims of highlighting the power inequalities for women in the sex industry and look at ways of addressing these inequalities. In conducting feminist research, Jenkins et al. (2019:415) stress the need to "reflect feminist values," and "empowering all who participate." These feminist values are often deployed to challenge the continued marginalisation of poor women and girls from decision-making, resources, and opportunities in the same way, this research aims to understand why sex work has not been decriminalised and why those in sex work (mainly poor and marginalised women) are not given access to the necessary resources.

Feminist epistemology is the realisation that while "gender hierarchies influence the production of knowledge," it is also impacted by race, class, sexuality, culture, and age (Alcoff and Potter, 1993:3). Therefore, it is how "gender interacts with other systems of identification and hierarchy" (ibid). In line with this, it is essential to understand the sex industry in relation to the intersection of gender, race, and class. The lack of authority expressed by marginalised groups result in only these groups finding the knowledge generated empowering (ibid, 7). Feminist epistemology has been linked to how communities and not individuals are the "primary generators, repositories, holders and acquirers of knowledge." It is also how

gender intersects with knowledge production at the point where the "community must decide between competing beliefs" (ibid, 9).

Within traditional epistemology, most of women's knowledge is referred to as old wives' tales (ibid, 11). An analysis of women's lives can provide a foundation for posing fresh, critical questions that pertain not only to women but also to men and the interconnected relationships between them. (Harding, 1993:55). In the same way, the knowledge about the sex industry is about women and men and how the two interrelate; for example sex workers would not exist without the client. In turn, a change in the sex worker policy would affect men as much as women in the sex industry. Historically "women are assigned work that men did not want to do, particularly concerning the care of people's bodies" (ibid). Therefore, men were assigned more mental work. Women's work, in turn, became invisible (ibid). Sex work, by extension, is also invisible as it is about caring for men's sexual needs and is hence not seen as 'work.' It is important to acknowledge the "effects that different kinds of politics have had on the production of knowledge" (ibid, 56). In a SA context, it remains necessary to acknowledge the role of apartheid in generating knowledge, particularly knowledge linked to women. The circumstances within which sex workers operate are also associated with the subjection of women as political subjects.

Butler (2011) argues that for feminist theory, developing a language that fully or adequately represents women is deemed necessary to foster the political visibility of women. She further highlights how the "relation between feminist theory and politics" has been challenged from within "feminist discourse" (ibid). However, an understanding of sex and gender is vital to an understanding of what is meant by a woman (Butler, 2011:1). Cranny-Francis, Waring, Stavropoulos, and Kirkby (2003:1) define gender as the division of the sexes into male and female while drawing attention to the privileges men have over women. They refer to gender as a "set of hierarchically arranged roles in modern society." That the differences between genders, is known as binary opposite, where "masculine is [viewed as] positive" and "feminine is [viewed as] negative" (Cranny-Francis, et. al, 2003:2). For Butler (2011:6) "the distinction between sex and gender serves the argument that whatever biological intractability sex appears to have, gender is culturally constructed; hence, gender is neither the casual result of sex nor as seemingly fixed as sex." Butler (2011:6) took this argument further by highlighting that "if gender is the cultural meaning that the sexed body assumes, then a gender cannot be said to follow from a sex in any one way." Cranny-Francis, et. al. (2003:2) observes how gender is "two halves" as they term it "binary" where they "each define the other." Oyewumi (2002:2) supports the claim that gender is socially constructed, explaining how this means that the term woman is therefore not universal. Cranny-Francis, et al. (2003:3) supports the notion that gender is socially constructed and refers to it as "a set of meanings that sexes assume in particular societies." Therefore, gender is the social meaning attached to sex, mainly constructed through traditional family values. Oyewumi (2002:2) points out that there

were "other forms of oppression and equality present in society," which means that the use of gender is evaluated relating to how issues of gender could not be understood outside of race and class. In turn this led to "the need to theorise multiple forms of oppression" especially in cases where "inequalities of race, gender and class" were visible (Oyewumi, 2002:3).

For De Beauvoir (2010:330) "one is not born, but rather becomes, woman," noting that this is done within a cultural context, making a woman a cultural construct. De Beauvoir (1956:26) examines how a female body is seen in relation to a male body particularly as the body of a male had meaning in and of itself while the female body received meaning directly through its relation to the male body. As a female they were "determined and differentiated in relation to man" while man were not viewed "in relation to her." De Beauvoir (2010:27) highlights how the other is determined by "the one positing itself as one" but for the "other not to turn into the one, the other had to submit to this foreign point of view." De Beauvoir (2010:27) questions where the "submission of woman came from?" The other, De Beauvoir (2010) noted is historically a smaller group, but women have always been equal in terms of population numbers. Despite this, men dominated women and men defined women as "the sex" whereby men viewed women "essentially as a sexed being" (De Beauvoir, 2010:26). Oyewumi (1997:xii) outlined how within "western constructions, physical bodies are always [viewed as] social bodies," which in practice means that there is "no distinction between sex and gender." He clarifies that this is despite endeavours being made "by feminists to distinguish the two." In western feminism, gender is understood in relation to the "western nuclear family," namely a mother and father (couple) with children and the gender roles allocated within the nuclear family (Oyewumi, 2002). The term woman is based on gender and sexual roles given to the female body. In utilising the term gender, it is essential to understand its conceptualisation within African feminism.

Oyewumi (2002:8) outlines how understandings of gender within African societies were more fluid. Due to social categories not resting "on body type and positioning" but were instead "highly situational." Oyewumi (2002:2) questions its use due to it being a "socially constructed" term, while he also questions the "social category woman" as it was "not universal" and at the same time "other forms of oppression are equality present in society." The idea of a nuclear family, Oyewumi (2002:4) argues, is a "specifically Euro/American form" which remains "an alien form in Africa." Oyewumi (2002:4) showcases how the challenges resulting from "feminist conceptualisation [starting] with the family" was that it "never transcend the narrow confines of the nuclear family." Women are understood in the context of the nuclear family with no variations in race and class. Further, "white feminism" is trapped in the family, blind to race or class. For Oyewumi (2002:5), this starting point resulted in "issues of sexuality automatically com[ing] to the fore in any discussion of gender." Her example was a mother first being defined as the "wife of the patriarch" whose role was never

"independent of her sexual ties to the patriarch." Oyewumi (2003:2) argued that the Western definitions of gender could not "exist without sex". The biology of sex existed based on bodily distinctions. However, within African cultures, "many social categories … do not rest on the bodily distinctions of gender." The example given is of the "female husband" (Oyewumi, 2003:2).

Oyewumi (1997:xiii) notes how within European societies, the categories of "man and woman" are fundamental. Oyewumi (1997:xiii) explains how women as a social category are always understood to be "powerless, disadvantaged and controlled and defined by men." This is linked back to the underlying concept of the "Western nuclear family" compromising the "subordinated wife, a patriarchal husband and children" (Oyewumi, 2002:3). Gender underpinning the construction of the nuclear family and in turn, represents the "primary source of hierarchy and oppression" (ibid, 4). Key to this is the concept of the "patriarchal nuclear family." Amadiume (1987:15) documents how within "Victorian gender ideology," it is seen that "gender corresponded to sex." Within this ideology, "male attributes and male status refers to the biologically male sex – man – as female attributes and female status refers to the biologically female sex – woman." While within the African culture, "igbo gender" distinguished between "biological sex" and "gender." Within this context, it meant that women could take on the identity of a "son" and a "husband" (Amadiume, 1987:15). Amadiume (1987:16) points out how through the separation of sex and gender it enables analysis to "highlight occasions or situations when women can be male and vice versa" and the "relationship of gender to power." Within African cultures, the assumption that "male is superior" was "alien" (Oyewumi, 2002:7). This highlights how patriarchy is a Western philosophy that was utilised to build oppressive structures that encouraged polarisation among genders and indirectly among African people. Evidence of this is observed by Frenkel (2008:3), where "in most histories of colonial conquest, the colonising power refused to negotiate with women or acknowledge women as leaders in a public context." As Frenkel (2008:3) maintains, this led to women leaders being side-lined "from higher structures of power." While patriarchy had its roots within western cultures, it has since been incorporated into African cultures.

Despite the different experiences of women in SA, all women were seen to face "exclusion and disadvantage" caused as a "result of apartheid or the broader patterns of patriarchy found in present-day SA" (DTI, 2011:27). However, not all women were impacted by the apartheid regime in the same way. Within patriarchal societies, the "male is superior, and women are considered inferior in every way" (Rakoczy, 2004:30). The superiority of men is reinforced by religion. The family is also central to "socialising the young to accept sexually differentiated roles" (Kambarami, 2006:3). Despite its controversy, Amadiume (1987:10) still makes use of the term feminism but defines it as "a political consciousness by women, which leads to a strong sense of self-awareness, self-esteem, female solidarity and consequently, the questioning and challenging of gender inequalities in social systems and institutions." This research was done in line with

"advancing a feminist agenda," as Parry (2000) outlines. Thus, research on sex work highlights the "lived experiences of a marginalised group," namely sex workers. Doing this, it aims to "unearth subjugated forms of knowledge," which directly challenges the "dynamics of power and patriarchal forms of knowledge." In so doing, it aims to correct the "rectilinear binary discourse that reproduced patriarchal thinking" (Parry, 2000:6). This challenged how women's work was often not classified as work, and that indeed their work was important and worthy. This thesis aimed to go beyond the focus on sex workers and included women because this research challenges the exclusion of knowledge about women in traditional epistemologies.

5.1.1 Feminist Theory

5.1.1.1 Liberal Feminism (Sex Positivism)[33]

Even though it has Western roots, feminism provides insightful lenses for analysing sex work in SA. The intertwining of gender, racism, class, and sexuality is taken into consideration from an intersectional feminist viewpoint, which offers a complex understanding of sex work in the context of apartheid's long-lasting effects. It enables discussions on legal frameworks, GBVF impacting sex workers, and the contrast between agency and exploitation. Feminism also promotes collective action and stresses the significance of social services and healthcare that are easily available, which can enable sex workers in SA to address concerns with discrimination, healthcare access, and legal reforms. Feminism essentially offers a framework for completely addressing the myriad difficulties sex workers in SA experience and advocating for their rights. Sutherland (2004:140) places the two views regarding sex work under the "Anglo-American feminist discourses," therefore from the perspective of a Western and universalised discussion of feminism. This discourse divides the debates around sex work into radical (abolitionist) feminism and liberal feminism (sex-positivist). The first strand of feminism being liberal feminism. Talbot (2015:260) describes liberal feminism as first-wave feminism, which began in the 19th (1801-1900) and 20th (1901-2000) centuries. Central to this strand of feminism is the desire to "achieve equality of opportunity and legal rights between the sexes" (ibid, 260-261). This component of feminism affirms all people's equality, regardless of their categories; therefore, everyone should be assessed based on their qualities. The beliefs held by liberal feminism means that women should not be "discriminated against based on gender," as this contradicts the focus of liberal feminists on "individual liberty" (ibid).

Another term for feminists fighting for the rights of sex workers is sex radicals (Sutherland, 2004:141). These feminists argue for women's rights to choose to partake in sex work as an occupation; they "insist that women should be allowed to use their bodies for any purpose they consider appropriate"

[33] In this section liberal and sex-positivist feminists are used interchangeably, largely in line with the authors' utilisation.

(Clements. 1996:57). This strand of feminism is also known as the sex work approach as it favours the rights of sex workers and the ability of women to use their agency when deciding to partake in sex work (MacKinnon, 2011a). Gerassi (2015:4) explains how this group of feminists broke away from previous views of sex work with an emphasis on "women's right to [make] an autonomous choice [when] engaging in sex work." Hence, within liberal feminism, sex work is seen "as an expression of agency" (MacKinnon, 2011a:273). Liberal feminism supports legalising/decriminalising sex work as a viable occupation. Bell (2009), a liberal feminist, emphasises how liberal feminists' challenges sex work's connection to how religions had, over the years, defined women's bodies and the morality and regulation of the female body. Bell (2009:1) argues that sex work could be a space for "human beings to explore their sexual desires safely." She believes that sex workers should not be censured due to "society clinging to puritan ideas of what is moral" (Bell, 2009:1). Hence, liberal feminists' reasons that sex work could be a viable career option and a space for women to investigate their sexuality – which was traditionally constrained. Deady (2011:522) refers to prostitution as "the world's oldest profession;" even before the "creation of western civilisation," the "sexualisation of women is commodified." During 1492–1900 "women themselves become a resource, acquired by men" (Lerner, 1986:212).[34] Comte (2014:201) documents how society sought to keep women in a "reproductive role," with strict ideas about their sexuality and expected behaviours. For men to explore their sexuality was acceptable. However, if women attempted to do the same, society branded them as "easy or whores" (Comte, 2014:201). Comte (2014:201) maintains that for sex-positivist feminists, the primary purpose of criminalising sex work is to control women's sexuality and keep women within the "restrictive frame of monogamous heterosexual sexuality." Legislation disguises this goal as an attempt to protect women (Comte, 2014:201).

Liberal feminists challenge the arguments made by radical feminists and express the need for women's sexuality not to be constrained. Liberal feminists view sex work as work and argue that women do not sell themselves but rather their sexuality in the same way that entertainers are "paid for their actual labour and not a product of their labour" (Bell, 2009:2). Therefore, according to liberal feminists, women in sex work are paid for the sexual act, which is the product of their labour. Essentially, they are selling a skill that happens to be sexual (Bell, 2009:2). Pateman (1999:54) observes how a "prostitute does not sell herself … or even sell her sexual parts but [rather] contracts out the use of sexual services." In this view, sex workers contract their services just as other people contract their labour, in the same way as waitresses, entertainers and people who work in retail. Hoigard (2015:14) explains how for sex work to be considered "normal work," the "body must be separated from the self;" hence, the woman is not selling her body but only "sexual services like others [sell] services." This argument goes together with women in sex work taking on a different identity,

[34] Some communities commodified women before this period.

name, and wardrobe to identify the persona they put on when doing their occupation. Similarly, contract theory's view sex work as a "private arrangement between a buyer and a seller" (Pateman, 1999:53-55).[35] Nonetheless, contract theory acknowledges the need for "some reform in the industry as it currently exists." Contract theorists maintain that with the "freedom of contract and equality of opportunity" for both sex workers and clients, sex work could become a form of therapy (ibid). That sex work, as a contract between two consenting adults, can be beneficial to both parties in the contract.

MacKinnon (2011a:271), a radical feminist, maintains that "no one defends trafficking." Despite supporting sex work, liberal feminists support this view (Bell 2009:2) and feel that "forced prostitution and sex trafficking needs to be eliminated." Liberal feminists support consensual paid sex between adults; hence, liberal, and radical feminists oppose forcing women into prostitution. Bell (2009:3) emphasises how sex work can give women a job that "offers good pay and flexible hours under the right conditions." Bell (2009:4) concludes that if sex work is placed under the control of those who working the industry, women can finally begin to claim their sexuality, express, and explore their sexual desires, and work legitimately in a field that offers excellent pay and flexible hours. This argument differs from radical feminists, who document how most women in prostitution remain poor. Liberal feminists thus focus on how criminalising sex work can cause more damage than trafficking. Weitzer (2005b:944) contends that whereas radical feminists focus on the violence sex workers experience, it is essential to reflect on the fact that "street prostitutes are substantially more vulnerable to victimisation than indoor workers." It is also crucial to focus on the different levels of job satisfaction among sex workers who work in the hierarchy of the sex industry, namely, either on the streets or in a brothel (indoors) (ibid).

Estes (2001:2) recognises how many liberal feminists compare "sexual desire to physical needs, like hunger." Similarly, as a man would buy a meal to satisfy his hunger, a man paid for sex "to state his sexual appetite" (ibid). Pateman (1983:563) counteracts this argument by stressing how a man could die of hunger but nobody has "yet died from want of sexual release." Additionally, Pateman (1983:563) implies that food is not always available. However, "every person has the means to find sexual release at hand." Weitzer (2009:225) believes that men who use sex workers justify the usage of their services as being for sex, whereas he argues that "the real need is emotional." Due to some clients' emotional needs, certain sex workers offer services that includes "kissing, cuddling, and sensual massage;" that is termed the "girlfriend experience" (ibid). Pateman (1999:60) argues that even if sex workers had employment contracts with a pimp or brothel, the actual contract is the prostitution contract between a woman and her client. The client "contracts to buy

[35] Contract theory is the study of contracts, "the theory's affirmative claim, in brief, was that contract law should facilitate the efforts of contracting parties to maximise the joint gains" (Schwartz and Scott, 2003:541).

the sexual use of a woman for a given period" (Pateman, 1999:60). The interaction being linked to the client's need for sex or some emotional need, with which a sex worker can assist. The fundamental agreement thus occurs between the client and the sex worker (ibid). The discussion on the motivations and needs of clients and sex workers highlights the complexities within the sex industry.

In the preceding discussion, different perspectives on the motivations behind engaging with sex workers were presented, with a focus on the emotional and sexual aspects. Now, let's delve into how these diverse perspectives intersect with the legal system, Weitzer (2009:230) outlines the need for a "major shift in the research agenda" around the sex industry with a focus on "actors and structures that have received insufficient attention." He cites the example of the legal system (ibid). This thesis focuses on the legal system by scrutinising the developments in the policy on sex work in SA, specifically, the obstacles that have prevented significant change in this policy. Weitzer (2009:230) argues that research on the "legal prostitution systems would help differentiate dimensions of sex work that are intrinsic to this occupational sector from those that were context specific." Comte (2014:205) highlights how research by radical feminists demonstrates how sex work amounts to violence under all conditions. By contrast, he argues, liberal feminists aim to explore gender relationships and "experiences of oppression, or agency" women in the sex industry face (ibid). This distinction suggests that liberal feminists are more open to exploring all aspects of sex work as they are not limited by the belief that sex work is merely VAW. Liberal feminism, which champions individual liberty and equality, would likely support the decriminalisation of sex work in SA. This perspective views sex work as a legitimate occupation and advocates for the rights of individuals to make autonomous choices about their bodies and livelihoods. By challenging traditional moral frameworks and promoting gender equality, liberal feminism aims to empower sex workers and protect their rights. However, it may encounter resistance from more conservative elements in society. Nonetheless, liberal feminism provides a valuable framework for addressing the rights and needs of sex workers within the context of social justice and human rights.

5.1.1.2 Radical Feminism (Abolitionist)

Radical feminism, as the second strand of feminism explored, includes early feminists who fought to end prostitution and pornography, also known as abolitionist feminisms. Radical feminism emerged in the late 1960s and early 1970s, founded on a postmodern approach, maintaining "that the 'oppressed' status of women was caused by the very liberal society that initially liberated women" (Talbot, 2015:261). Talbot (2015:261) outlines how the shift from liberal to radical feminism indicate a move away from "fighting for equality" towards fighting for "gender superiority." Talbot (2015:261), drawing on MacKinnon (1989a:163), associates this with policies mainly based on the power imbalances in a society where men ruled women. As discussed,

laws were designed initially by a Parliament dominated by men in SA. Even though there has been shifts, many laws remain the same despite more women entering Parliament in SA. Radical feminists seek to challenge the maintenance of gender-biased legislation by emphasising the rights of all genders.

Radical feminism does not view prostitution as work but rather as a form of oppression of women who land in the industry (MacKinnon, 2011a). This thread of feminism favours the abolition of sex work; in addition, it utilises the term prostitution because sex work, in their opinion, is not seen as a form of work or a viable career choice (ibid).[36] The key contributors to this feminist discourse are Barry, MacKinnon, and Dworkin. (Ahmed, 2011:229). According to Vanwesenbeeck (2017:1638), abolitionist feminists want to abolish sex work because of the violence in the industry. At the same time, domestic violence also occurs within marriages, but nobody calls for the abolition of marriage because of such violence (ibid). This contradiction highlights flaws in the argument that sex work should be ended due to violence. Radical feminists link pornography to prostitution because they both involve the female body; both activities considered part of the sex industry. The link between pornography and prostitution is that both activities erode the foundation of the traditional Western family (Silver, 1993: 3). Gouws (2010: 13) explores the emergence of radical feminism during the second wave of feminism, which concentrates on "women's autonomy, the body, and the private sphere as the main locations of oppression and 'choice' as a form of empowerment." Gouws (2010:13) emphasises how these views complicate the feminist debates, particularly as they seek to incorporate issues of "women's identities of race, class, gender, and disability."

The main goal of radical feminism is to end prostitution and abolish the sex industry because, in their view, "the prostituted woman always acts under coercion and is subject to sexual violence" (Ahmed, 2011:229). Radical feminists believe that prostitutes need to be liberated from the oppression of prostitution. The radical feminist movement joined "evangelical Christians and neo-conservatives" in the formation of neo-abolitionists or neo-liberals, which created a joint movement to end sex work through the banning of prostitution (Ahmed, 2011:229). Comte (2014:197) distinguishes between the arguments of radical feminists and neo-abolitionists, explaining that radical feminists view women in prostitution as victims who should "not be criminalised" and instead assisted in exiting the industry. By contrast, neo-abolitionists took "it one step further and ask for the criminalisation of clients." However, Vanwesenbeeck (2017:1631) notes the harm that results when neo-liberal feminists "reduce sex work to trafficking," which leads to "increased policing and persecution" and, in turn, adversely affects the sex workers themselves.

[36] The term prostitute is generally used in this section, because this group of feminists use the word prostitution and not sex work as they do not believe that prostitution can be construed as a form of work.

A radical feminist named Dworkin (1993:3–4) made it plain what she thought about prostitution, referring to it as "in and of itself an abuse of a woman's body." She also equates sex work to gang rape. MacKinnon (1993:13), a radical feminist, identifies prostitution as the "denial of a women's humanity," explaining how, within prostitution, "women are tortured through repeated rape." Comte (2014:198) indicates how radical feminists view "prostitution as rape;" according to radical feminists, this is not just the purchase of the body but rather "their use as sexual objects." Pateman (1983:564) equates prostitution with a "public recognition of men as sexual masters," wherein the process "puts submission on sale as a commodity in the market." Radical feminists also connect prostitution and patriarchy, emphasising how prostitution increases patriarchy's control over women. In his reflection on how prostitution "reduces women to their sex" and "dehumanise them," Comte (2014:198) emphasises how the "patriarchal system" used "early sexual abuse to train women to be sexual objects for men." The patriarchal system in turn securing women's subjugation by keeping them in poverty due to them growing to believe their purpose is to satisfy a presumptive "masculine sexual need." Sutherland (2004:142) notes that while radical feminists claim women are "forced to submit to male domination" under the patriarchal system, women who engage in prostitution eventually allow their subordination.

Clements (1996:56) summarises the radical feminist views on prostitution as the "subordination of women in a somewhat disguised form." According to MacKinnon (1993:13), women are "prostituted precisely to be degraded and subjected to cruel and brutal treatment without human limits." In the opinion of Leidholdt (1993:145), "buying a woman's body is as much a violation of her human dignity as selling it." Leidholdt (1993:142) also maintains that because of their extreme poverty, many women turn to prostitution to "eke out a subsistence living," which is only "a temporary solution to their extreme poverty." MacKinnon (2011a:278) states, "nobody chooses to stay in prostitution to stay poor." These defences sprang from this school of feminism's which aim to outlaw prostitution, which it sees as a violation of women's human rights and an unproductive practice. Radical feminists hold that prostitution causes more harm than good to the women who engage in it; as a result, these women frequently turn to alcohol and drugs to cope with the trauma they encounter (MacKinnon, 2011a). Comte (2014:34) describes how radical feminists equate sexuality with the core "identity" of women. Women "experience sexuality in the most intimate parts of the body," which is detrimental to both the "integrity of the body" and "the integrity of the identity itself." According to Gutiérrez (2014:99), sex work is unlike any other employment because it involves the "sale of the body itself, not the sale of an activity or a product." She further emphasises how "women are the raw material" of the sex business and also refers to prostitution as "paid rape."

Farley (2005) stresses the importance of focusing on the physical violence within prostitution as well as the emotional effects of prostitution, such as post-traumatic stress disorder (PTSD). Hoigard (2015:08) observes how in research on prostitutes, it is documents how they need "to try to separate their bodies from their souls" during the act performed with their bodies. One prostitute in the study by Hoigard (2015:08) stated, "it is not me, my feelings or my soul he fucks, I am not for sale." In support of this view, Hoigard (2015) describes women's difficulty in reconnecting with their bodies because of this dissociation between their souls and bodies into two separate entities. Hoigard (2015) emphasises how the disconnection with their bodies in the long-term left these women feeling "worthless, dirty and disgusting." Estes (2001:2) maintains that for a "prostitute, money is her primary objective and not merely a deciding factor." She further explains how a prostitute would not engage with the sexual act itself if there was no monetary gain; therefore, she did not engage in the act for her "own sexual desire." She argues that a "client used the prostitute's body as a means for sexual gratification" and that this was "his primary motivation" (Estes, 2001:2). Hoigard (2015:08) highlights how in research with women who engaged in prostitution, they define the use of "their bodies and vaginas as rental apartments for unknown men to invade." Hoigard (2015) adds that regardless of opinions about "the best way to approach prostitution," research with prostituted women indicates that all of them "show the same patterns of division, pain and scars in their souls." Radical feminism views sex work as inherently exploitative and rooted in patriarchal structures, presenting obstacles to its decriminalisation in SA. This perspective prioritises efforts to address gender-based violence and economic marginalisation, viewing legalisation as legitimising the objectification of women. Consequently, radical feminist influence may impede the decriminalisation process by framing sex work as a form of violence against women rather than a matter of individual agency and labour rights.

5.1.1.3 Overview of Liberal and Radical Feminisms in SA

Drawing from the above discussion of feminism, the application of feminism to sex work is a given. Sullivan (1991:11) points to the salience that feminists give to a gendered analysis of the sex industry, including feminist analysis:

> Makes visible some of the power mechanism which operates both within and in the sex industry. Feminist approaches [could], therefore, be used to identify and address some of the power structures that sex workers [were] subject to and to explain why they [were] unjust.

Sullivan's (1991) argument demonstrates the similarities between feminists' primary focus on gender issues and how sex work is typically described in terms of gender. Generally speaking, women are at the centre of sex work and feminism. Sullivan (1991) reflects on the usefulness of feminism as a framework for comprehending sex work. The various feminist movements holding varying opinions about the definition of sex work and the strategy that should be taken regarding the sex work policy. Both feminist movements,

however, see sex work in terms of binary thinking, which Elbow (1993:22) defines as the tendency to perceive things "in terms of opposites." Regarding sex work, feminists see it as either women's freedom (liberal feminists) or women's subjugation (radical feminists). These two feminism movements "represent the dominant feminist positions in the ongoing debates in this area" (Sutherland, 2004:141). These theories are largely from a western perspective; however, they were selected for this research due to their use in understanding the different views around the sex industry.

Weitzer (2005b:946) notes how radical feminists see prostitution as "violence, oppression, and human rights abuse," But he questions if all forms of prostitution should fall under this description. He observes how radical feminists frequently extrapolate all types of prostitution from a sample that did not represent all prostitutes and where the "sample criteria" were unclear. He argues that the sample's bias led to conclusions that could not be relied upon to describe the experiences of all "prostitutes accurately." Weitzer (2005b) maintains that radical feminists when referring to prostitutes, use emotive language which emphasises the "shock value" that such feminists want to portray. In his opinion, radical feminists choose examples that illustrate their viewpoints, which may not represent all prostitutes. An example of emotive language utilised by radical feminists is Hoigard's (2015:09) use of the term "whore customer" when referring to clients who use prostitutes. Hence, the terms used by radical feminists are viewed as controversial when referring to sex workers and their clients.

MacKinnon (2011a:286) challenges the claim that sex workers have different experiences at different levels of the industry and maintain that regardless of whether "prostitutes" work on the street or in a house and irrespective of why or how they enter the industry, the "measured level of PTSD … is equivalent to that of combat veterans or victims of torture or raped women." MacKinnon (2011) makes this statement based on the findings of various studies. However, Weitzer (2005b) reasons that these studies were often not representative of all prostitutes and did not represent the industry. Although radical feminists seek to group all sex workers as sharing the same experiences, Weitzer (2005b) feels that they do not support these claims with enough evidence. Weitzer (2005b:946) also challenges whether radical feminists' defining all "prostitution as violence, oppression and human rights abuse" is indeed relevant to all "types of prostitution." Weitzer (2005d:217) claims that most research on prostitution focused on "street-based prostitutes," whereas the "majority of prostitutes are indoor workers." According to him, this bias has "skewed the picture of this world." Weitzer (2005d:221) observes how certain studies reflect that for some women, their "self-esteem may increase after one begins sex work." This point emphasises how different studies with different groups of sex workers had further findings that were often in direct contrast to each other.

In addition, some researchers may choose to focus on the worst cases. In contrast, other studies might focus on different aspects of the industry. According to Vanwesenbeeck (2017:1634), the "emotional health" of sex workers is "to a large extent, shaped by stigma-related factors such as being discriminated against, difficulties combining work and home, and fear of being found out." Such stigma indicates that it is not the work that causes sex workers emotional distress but rather the criminalisation of sex work. The unlawfulness of sex work results in sex workers being viewed "as victims rather than workers" and a focus on "rescue and rehabilitation discourses" (Vanwesenbeeck, 2017:1634). The shame linked to sex work creates a "barrier to health care access" (Vanwesenbeeck, 2017:1634). This shame again demonstrated that it is not the industry that causes harm to people in sex work, but rather the shame attached to the industry, primarily because it is criminalised. Some radical feminists, according to Weitzer (2005b), include "intimate partner violence" in their statistics of violence against prostitutes. This inclusion, he argues, skews the statistics on prostitution as it increases incidents of violence; however, this type of violence is experienced by women in general and is not unique to women in prostitution (Weitzer, 2005b). Weitzer (2005b:936) maintains that radical feminists associate prostitution and violence and are unable to see them apart; hence, they use terms like "prostituted women" and "survivors" to emphasise that "prostitution is something done to women, not something that can be chosen." Farley (2005:953) challenges Weitzer's (2005b) claim that samples in studies by radical feminists are not accurate; she also states that the sample in her research is "described in detail." However, she explains, "funding is limited" for this type of research, which results in all prostitutes not being included and a need to "interview whomever one [could] access" (ibid). Therefore, the lack of research funding compromises the data it generates, meaning it couldn't be applied to all sex workers. In turn, this questions the credibility of arguments made by radical feminists.

Pateman (1999:59) argues that a prostitute sells "sexual services," as if she sold "her body or vagina," and in turn, "herself," then "she would no longer be a prostitute but a sexual slave." The separation from the body is complicated. On the one hand, it is argued that it enables a sex worker to "sell her services" only; on the other hand, it is argued that it has emotionally adverse effects on the sex worker by affecting their self-worth. MacKinnon (2011a:281) defines sex as something that is "chosen and wanted," an act where sex itself is the "reward" and where the "real thing is neither bought nor sold." She explains that "survival sex" means it is "coerced by the need to survive." Mackinnon (2011a:278) clarifies how women enter prostitution at a young age, "often well below the age of majority" and that the "age of entry may be dropping." Hence, MacKinnon (2011a) highlights how children who enter prostitution are primarily unable to decide whether they want to join the industry and mainly did so due to circumstances or actual force. Weitzer (2009:219), in contrast, states that various studies indicate that it is not typical for women to enter sex work between the ages of 12 and 15 and that most entered sex work when "they were 19 or older." These findings challenge the

argument that women enter the sex industry reluctantly because of their age and inability to understand what they were doing.

Abolitionist feminists, according to Vanwesenbeeck (2017:1637), see the "commodification of love, desire, and sexuality as something altogether unworthy and undesirable." Radical feminism is also known as the "sexual exploitation approach," linked to the opinion that "prostitution is the oldest oppression, as widespread as the institutionalised sexual inequality of which it is analysed as a cornerstone" (MacKinnon, 2011a:273). Radical feminists consider women "prostituted through choices precluded options restricted, possibilities denied" (ibid, 273-274). These views relate to women choosing prostitution due to a lack of other options; they enter an industry where they argue it is known that profits are not received mainly by the women themselves (ibid). Radical feminists do not support the legalisation/decriminalisation of prostitution, as it would "maintain the sexual and economic exploitation" of women and cause the industry's growth (Comte, 2014:200). Most sex-worker movements and NGOs in SA support the liberal feminist (sex-positivist) view of sex work and were lobbying to decriminalise sex work in the country. Yingwana (2017:187) notes how liberal and radical feminists make "a clear distinction between voluntary (adult consensual) sex work and forced sexual exploitation." In summary, liberal feminists often support sex workers' rights and autonomy while fighting for their protection and better working circumstances, frequently through legislative reforms. Radical feminists, on the other hand, consider sex work as a destructive byproduct of patriarchy and advocate for its elimination as part of a larger campaign to eradicate GBV and injustice. These viewpoints represent continuing discussions within feminism about the nature of sex work and the most effective method for handling its complexity.

Mgbako and Smith (2011:1079) make a compelling case that the prevailing discourse surrounding sex work in Africa oversimplifies the complex reality faced by sex workers. They aptly point out that sex workers should not be pigeonholed into simplistic categories as victims or agents, criminals or labourers, products of exploitation or liberation. Their call for a middle ground (Mgbako and Smith, 2011:1187) is not only a pragmatic approach but also a morally sound one. By seeking a middle ground that "weds the two groups," we can transcend the binary perspective that often dominates discussions of sex work (ibid). This middle ground involves developing regulations and initiatives that acknowledge the complexity of sex work rather than sacrificing on safety or rights. It requires protecting the safety and wellbeing of all women working in the sex business while also tackling the structural issues that force certain people into prostitution. This strategy supports the broader objective of ending exploitation and coercion in the sex industry. Crucially, establishing this middle ground underscores the commitment to preventing any woman or girl from being forced into sex work. By recontextualising violence against sex workers as part of the broader issue of VAW,

we acknowledge that sex workers, like all women, deserve protection from violence and discrimination (Mgbako and Smith, 2011:1187). Moreover, this balanced approach empowers those who choose to remain in the trade to realise and demand their rights (Mgbako and Smith, 2011:1187). It acknowledges that some sex workers may exercise agency and actively choose their profession. By safeguarding these individuals within a legal and social framework that respects their rights and dignity, we can begin to dismantle the structures that enable exploitation. In short, Mgbako and Smith's (2011) appeal for a compromise in analysing and resolving sex work in Africa is a thorough and inclusive strategy. It is an essential step in establishing a society in which all women, regardless of whether they engage in sex work, are safeguarded, respected, and given the chance to express their agency and rights.

5.1.1.4 African Feminism

Since Africa has never been isolated from the rest of the globe, outside beliefs have influenced or interacted with the continent. Despite the influence of outside beliefs, Mikell (1997:4) outlines the reality that "African feminism owe its origins to different dynamics than those that generated Western feminism." These origins are linked to "African women's resistance to Western hegemony" and its "legacy within African culture." Mikell (1997:4) highlights how African feminism is "slowly emerging" and the form it takes is "distinctly heterosexual, pro-natal and concerned with many 'bread, butter, culture and power' issues." African feminism is linked to the "traumatic colonisation by the west" which impacted women's marginalisation. Mikell (1997:4) points out how the different origins between Western and African feminism "cause considerable fiction" between women from the west and those from Africa. While African and Western feminists have different focuses, "western women emphasise female autonomy" while "African women emphasise culturally linked forms of public participation" (Mikell, 1997:4). African feminism according to Mikell (1997:4) emerges because of "women's responses to political leaders who have attempted to partially manage recent crisis by further limiting and exploiting women." Oyewumi (2003:2) explains that while "feminism is primarily concerned with the liberation of women" this is challenging in African cultures since "the category woman cannot be isolated." Instead in African cultures "'womanhood' do not constitute a social role, identity, positions, or location." Therefore, as individuals, they rather occupy "a multiplicity of overlapping and intersecting positions, with various relationships to privilege and disadvantage." To understand African feminism, it is important to understand their understanding of gender. Oyewumi (2002:2) explains how due to the work of feminists, "gender has become one of the most important analytic categories" both within "academic enterprise" to describe work and the "political business of prescribing solutions."

Kambarami (2006:13) argues how within African cultures, men controlled female sexuality. The following examples were given to defend this claim included the "payment of lobola, arranged marriages,

rape and levirate marriages." At the same time, Kambarami (2006:3) showcases how women's subordination was further reinforced by beliefs that education was not crucial for women as inevitably marriage would secure their future. Hassim (2006:270) supports these claims around patriarchy, observing how "at the heart of women's marginalisation is the patriarchal order that confined women to the domestic arena and reserved for men the arena where political power and authority resided." Historically, literature documents the role religion played in preserving patriarchy, concerning "sexual taboos and inhibitions," especially regarding "adultery, pre-marital sex and illegitimacy" (Fortier, 1975:279). Hence, pre-marital sex and adultery have traditionally been linked to "shame, guilt, legal sanctions, even capital punishment" for women (ibid, 279-280). Judge (2020:2) records gender as a regulatory system within which it "shapes the conditions under which it is acceptable to have sex, to procreate and to form families and communities of belonging." This system denounces the "roles, power and authority that one is allowed to hold within a religious community or structure." Judge (2020:2) links the challenges of "gender and sexual hierarchies" to "physical or sexual violence." In turn, due to sex work being sex outside of the confines of marriage, it challenges the acceptable conditions for sexual intercourse resulting in it being associated with shame and guilt. The notion of what women should do with their bodies and what is acceptable is primarily derived from religion. Religion traditionally characterising sex as an act within marriage solely for procreation. Sex outside marriage or not for procreation is termed deviant sex (Lucas, 1995:48). Lucas (1995:48) calls attention to how the policy on sex work has been based on the view that sex work is "primarily about sex – sex outside the confines of marriage, deviant sex, sex without the intent to reproduce, paid sex".

African feminism, rooted in resistance to Western hegemony and shaped by the continent's history of colonisation, presents a unique perspective on sex work in SA. While it emphasises issues of gender equality and women's empowerment, it also acknowledges the complexities of gender roles within African cultures. African feminists challenge patriarchal norms that control female sexuality, including through practices like ilobolo and arranged marriages. They critique the relegation of women to the domestic sphere and advocate for women's autonomy and agency. However, African feminism's focus on culturally linked forms of participation may conflict with Western feminist approaches that prioritise individual autonomy. Nonetheless, African feminism's emphasis on challenging patriarchal structures could support efforts to decriminalise sex work by addressing underlying power dynamics and promoting women's rights.

5.1.1.5 Intersectionality of Gender, Race, and Class

Butler (1990:1) outlines what she refers to as the "juridical systems of power" which regulates political life and she argues, "produces the subjects they subsequently come to represent." Viewing women as "the subject of feminism" is an example of representational politics. For Butler (1990:2) the political problem "within

feminism is that "the term women denote a common identity" making the term troublesome mostly due to it being the "site of contest" and "a cause for anxiety." She explains how gender intersects with "racial, class, ethic, sexual and regional modalities of discursive constituted identities." For Butler (1990:3) gender cannot be viewed individually from "political and cultural intersections" through which it is both "produced and maintained." The mix of "class, race, ethnicity and other axes of power relations" come together to create an individual's identity (ibid). The idea of the "unity of woman" is cited to "construct a solidarity of identity" (ibid). Butler (1999: xv) generates the theory of performativity within which "gender [is explained as] a performance" where through the repetition of this performance, the gender identity is created. For Butler (1999:178) gender is a performance within a cultural setting; without this performance gender would cease to exist. Due to this performance, the meaning of gender is shifting, representing an identity "constituted in time" and therefore temporary (ibid, 179). Therefore, the meaning attached to gender is changed based on the context or cultural setting within the configuration. This means that within a context of racial, class and gender oppression, different forms of gender identity would be developed.

Intersectionality and Bhabha's (1994) hybridity theory, although originating from different contexts, converge in their exploration of the multifaceted nature of identity, particularly within the sphere of cultural identity and the experiences of marginalised communities. They jointly emphasise the fluidity and complexity of identity, recognising that individuals possess intersecting identities that shape their lives and that cultural identities are not fixed but evolve through historical and social influences. Furthermore, both theories underscore the agency of individuals in shaping their identities and resisting oppressive forces, while also situating their analyses within postcolonial and global contexts. These theories can offer complementary frameworks for comprehending the dynamic, context-dependent nature of identity, particularly in the context of cultural identity and the experiences of marginalised groups. According to Bhabha's hybridity theory, cultural identity is created by fusing many cultural components. By absorbing and modifying the cultural practices and symbols of the coloniser, colonised peoples created their own cultural identities, which led to hybridity, per Bhabha (1994), which he believes is the outcome of the colonial encounter. This mixed identity is constantly changing and neither fixed nor stable (Bhabha, 1994:159). Bhabha (1994:159) also explains how the colonised could assume a "colonial identity", which was done through the "repetition of discretionary identity effects." This meant that the culture developed could be a "mixed identity" or a form of colonial identity. The imitating of "collective colonial ideologies" was also taking place, an example being patriarchy, which was adopted by communities (Bhabha, 1994: 240).

Davis (2008:70-71) explains how intersectionality is the bringing "together of two of the most important contemporary feminist thought" which covers the "issues of difference." The first thread aiming to

"understand the effects of race, class and gender on women's identities, experiences and struggles for empowerment" (ibid, 71). It was mainly linked to the "marginalisation of poor women and women of colour." Under this thread, they adopt the triple jeopardy' approach linked to class, race, and gender (ibid, 71). The triple jeopardy approach extending the previously used double jeopardy approach, which explored the "dual discrimination of racism and sexism" (King, 1988:46). The inclusion of class as an additional category of exploitation, brought in issues of poverty and the effects this has on women, particularly women of colour. Intersectionality addressing how "race, class and gender interact" to understand the "social and material realities of women's lives" and in turn "produce and transform relations of power" (Davis, 2008:71). Intersectionality forms part of a "postmodern project of conceptualising multiple and shifting identities" and in turn represents a "commitment to the situation of all knowledge" (ibid, 71). The second thread can "provide a novel twist to an old problem," enabling them to "make unexpected connections between unlikely events in wats that the audience could not have imagined before" (Davis, 2008:72). The term intersectionality was "coined by civil rights activist and professor Kimberlé Crenshaw" (Hawk, 2016). This term was utilised as explained by Crenshaw (1989:140) "because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated." This perspective underscores the importance of recognising the unique intersection of race and gender in shaping the experiences of Black women, highlighting the limitations of approaches that fail to consider these interconnected dynamics. Intersectionality can create a connection "between critical feminist theory on the effects of sexism, class and racism" and the "critical methodology inspired by postmodern feminist theory" (Davis, 2008:73). The concept of intersectionality isn't new to feminist theory however intersectionality provides a "new platform" for different theoretical approaches in feminism" (ibid, 74).

Intersectionality started as an attempt by black feminists to find a way to understand their unique experiences. It is not just race, class, and gender issues but the intersections of these classifications that results in "multiple forms of subordination" (Cole, 2009:170-171). This phenomenon, commonly referred to as "triple discrimination," is frequently encountered by Black women (ibid, 171). Cole (2009:171) explains how "early articulating multiple disadvantaged statuses." It is important to not view these categories independently of each other within research as "categories such as race, gender and class are experienced simultaneously." The intersectionality could also speak to "privileged identities" such as "middle-class blacks or white women" (ibid). Therefore, the intersection was not always a form of discrimination. In the case of sex workers in SA, it fundamentally refers to multiple experiences of discrimination by sex workers for being a female from a lower class, i.e., poor, and black. Due to the racial past in SA, social identities have been complicated. Moolman (2013:93) explains how, in present-day SA, "social identities are inextricably linked to 'the past'

yet are also informed by the substantial political and economic changes and ideals in the Constitution (1996)." Moolman (2013:93) emphasises how social identities in a SA context could not be understood without examining historical discourses of race and apartheid.

Intersectionality is crucial for understanding the issues surrounding sex work in SA. It recognises that sex workers have multifaceted identities influenced by factors like gender, race, class, and more. This perspective helps reveal differential vulnerabilities, structural inequalities, and the compounding impact of violence and discrimination on sex workers. It informs policies and advocacy efforts, ensuring they are inclusive and tailored to diverse experiences. Moreover, intersectionality empowers sex workers by acknowledging their agency and unique challenges, ultimately leading to more equitable approaches that safeguard their rights and well-being. This perspective acknowledges that not only the gender of a sex worker but also their race, and class help understand the varied experiences of women in sex work. This viewpoint emphasises how although sex workers may have similar experiences, they could also have unique or varied experiences due to their specific gender, race, and class. Intersectionality is a "framework to understand the impact of multiple identities on the oppression of women" and to establish more "hierarchies for women" (Gerassi, 2015:5). These were essential aspects to consider when exploring sex work in SA, a country with a history of racial oppression as the experiences of women in SA were not the same. It was essential to acknowledge the triple stigma experienced by black women in SA, firstly due to being a woman, secondly, being a black woman, and third, coming from a poorer socio-economic class. According to Beran (2012:24), among women in sex work, those burdened with issues of racism and classism were the "most silenced and violated of all women." Beran (2012:25) observes how most of the women are poor; if a woman were financially stable or had the "economic status of a professional," she would have no reason to enter sex work for economic reasons. Therefore, Beran (2012:26) indicates how most women in sex work would be poor or from lower economic classes. Given the intersection of race and class, many women in sex work are black women (ibid). Race being an essential factor to consider in SA. According to 2017 statistics, 80.8% of South African women were black Africans; 8.9% were coloured; 2.4% were Asian/Indian, and 8% were white (Statistics SA, 2017:2). If sex work in SA reflects this racial breakdown, at least 80% of women in sex work would be black women. Thus, race and class experiences are imperative to understanding women's experiences in sex work in SA. It is also important to acknowledge that women within sex work have different experiences of the sex industry linked to where they fell within the sex industry's hierarchy.

Clements (1996:52-53) divides prostitutes into three categories. Firstly, "the poorer prostitutes," the streetwalkers. This category of sex workers is often open to abuse and constitute 10–20% of prostitutes. Street prostitutions are also termed survival sex, meaning people sold "sex out of dire necessity or to support a drug

habit" (Weitzer, 2009:218). The other end of the spectrum is the affluent prostitutes who work in much safer conditions, known as call-girls or escorts. The middle group comprises of "women who work various off-street settings, including massage parlours, brothels, hotels, and bars" (Clements, 1996:53). Trotter (2008:674) divides sex worker further based on the history of sex work in SA. Trotter (2008:674) notes that there are street walkers which solicit curb-crawlers, truck stop girls whose clients are long-distance drivers, those working in brothels, whose clients are local men, escorts to service wealthy men and then dockside prostitutes working on the dockside. The key to these categories is the clients that the sex workers serviced. These categories underscore the social context or structure within which women decided to become sex workers, such as poverty, patriarchy, and unemployment. Within the South African context, "the spatial pattern of segregated communities during apartheid still limit employment opportunities for the poor" (The Presidency SA, 2019:9). Different categories of sex workers would therefore have different experiences of the sex industry, while there would also be a severe disparity in their income. While categorising sex workers into different groups is crucial for a nuanced understanding of sex work in SA. These categories reflect diverse experiences, vulnerabilities, and root causes among sex workers. Recognising the impact of intersecting identities, such as gender and race, is essential for addressing systemic discrimination. Legal implications, healthcare needs, and stigma reduction strategies vary across categories. This approach ensures tailored policies, representation, and support services, ultimately promoting the rights and well-being of all sex workers.

The apartheid period in SA impacted the power that women had. Meintjes (1996:53) speaks about how "their capacity to mobilise has given African women in SA an aura of power and mystique." At the same time, this is in a context where Meintjes (1996:53) argues, "women are also conceived as the most exploited and oppressed members of society." "Women's oppression recognised [as being] triple oppression", namely class, race, and sex (ibid, 57). Meintjes (1996:57) highlights how, under apartheid, the focus was on class and race, and sex was side-lined until the issues of class and race were resolved, pointing to how the fight for racial equality during apartheid meant that issues of gender were not prioritised. Steyn (1998:43) emphasises a need for feminism in post-apartheid SA to encompass women's "great diversity of interests." Feminism in SA needs to be modified "according to the specific circumstances that prevail within the country" (Steyn, 1998:43). For feminism to encompass the unique circumstances in SA, it needs to consider "the deep racial and class divisions" in the country (ibid). The common denominator that connects all women in SA and being a shared social problem that unites all women in SA – beyond issues of class and race – namely patriarchy (ibid). Hassim (2005:176) argues for the "elimination of patriarchy" as the common thread that unites women; while acknowledging that despite this, "it [patriarchy] fails to account for the particular intersections between class, race and colonial forms of domination, and the oppression of women" in Africa. In turn, African

feminists' reasons that within an African context, "the notion of 'patriarchy' is consequently an imported and imposed concept" (Bakare-Yusuf, 2003:10), that is utilised to build oppressive structures that encouraged polarisation among genders and, indirectly, among African people. This argument is based on the relationships between the sexes within the African context historically and how the "European social categorisations" were forced on an African context (ibid, 11). Bakare-Yusuf (2003:5) mentions how "gender is not linguistically coded in many African languages." Through this, the historical role of gender in African cultures is questioned, pointing to it being an imposed concept which has since been accepted. This acceptance is seen in how African feminists form "part of a global feminist movement against patriarchal oppression in all its manifestations" (African Feminist Forum, 2007:5). African feminists note how "patriarchy varies in time and space, meaning that it changes over time, and varies according to class, race, ethnic, religious and global imperial relationships and structures" (African Feminist Forum, 2007:4).

Andrews (2001:694-695) outlines the racial grouping of women in SA as a hierarchy. In the hierarchy, African women are at the bottom, with Indian and coloured women in the middle and white women on top. However, Andrews (2001: 695) argues that no woman is spared from all forms of oppression; it just happens in different quantities based on their position in the hierarchy. Despite the differences, women have the connection that all women in SA share: is the culture of patriarchy that keeps all women "second-class citizens" relative to men. As Andrews (2001:697) reasons, it is the elements of patriarchy that "cements [women's] inferior status", and "this legacy would continue to haunt women for many generations." Patriarchy is entrenched within cultural values, resulting in all women in SA being subjected to patriarchy within their racial category. Despite the similarity of the "shared subordination and oppression of women," it is still vital to acknowledge that their everyday lives differ "according to their material circumstances" (ibid). These circumstances include whether they are "middle-class women, working-class women, black and white, Christian, Hindu, Islamic." These factors also impact how women view and experience their daily lives (Meintjes, 1996:59). Due to these different experiences it leads to feminism being fractured along racial, class, sexual, and religious lines. At the same time, Meintjes (1996:49) attributes the "experience of segregation and apartheid" as having created divisions amongst women based on "race, class and ethnic background" which results in even "working-class women from different race groups [having] little in common." To deal with these different experiences, Walker (1984: xi) created the term womanism. This was to acknowledge black women's experience, which differed from white women who were the prominent voices within feminism.

Feminist research helps frame a sex worker's experiences within their context. Due to the social and racial context of SA, a more significant majority of sex workers in SA would be black women. However,

according to Hassim (2006:29), feminism is "an ideology primarily articulated by white (academic) Western women." Which explains why its "applicability to the experiences of black women" is often questioned. Hassim (2006:39) reflects on how the feminist movement in SA has "emphasised the interconnectedness of gender, race and class oppression" due to the history of apartheid. In contrast, feminists in SA aims to "enhance women's capacity to address sexual and reproductive issues" and stives to "place the right to freedom of sexual choice on the political agenda" (ibid). Feminists in SA consider the "range of women's struggles that centre on their bodily integrity and autonomy" (ibid). Therefore, the SA feminists have utilised feminist ideology to understand women's fight for sexual autonomy. However, due to the racial history in SA, women are classified into separate groups based on their race.

The discussion of the feminist Foucauldian theory in the subsequent section is a deliberate choice, despite its Western origins, due to its profound relevance in shedding light on critical aspects of the sex work debate. This theory, rooted in issues of power and discipline, particularly concerning the body and attempts to regulate it, provides a valuable lens through which to understand the intricacies of sex work discourse. At its core, the debate surrounding sex work predominantly centres on the female body and the mechanisms employed to exert control over it. Foucauldian theory proves instrumental in dissecting this dynamic, as it allows for a nuanced examination of how power operates within the sex industry. Moreover, Foucault's theory offers a powerful tool for analysing the historical dimension of sexuality and the evolving control mechanisms related to it. The concept of self-surveillance articulated by Foucault's theoretical framework becomes particularly pertinent in comprehending how sex workers navigate the intricate web of laws and regulations imposed on the sex industry. This concept underscores the agency of sex workers and the strategies they employ to comply with, subvert, or challenge the legal frameworks governing their profession. It's essential to acknowledge the potential limitations of applying a Western-based theory within an African context. However, in this case, the Foucauldian lens appears appropriate for analysing the dynamics of power and surveillance within the sex industry in SA. By leveraging this theoretical framework, the research aims to unveil the complex interplay of forces that influence the treatment of women and their bodies throughout history, ultimately contributing to a more comprehensive understanding of the sex work landscape in SA.

5.1.2 Feminist Foucauldian Theory

Michel Foucault's (1977) theory of power is a well-known theoretical foundation in postcolonial studies. To rule and control individuals and institutions, power must work in society, according to Foucault's theory of power. Power, in the view of Foucault (1977), is a ubiquitous force that pervades all social relationships and is not possessed by either people or organisations. Foucault's theories on power are centred on the themes of "biopower" and "governmentality." He claimed that power is ingrained in society structures and institutions

rather than being only about direct coercion. The work of Foucault emphasises how power works via systems of knowledge, conventions, and laws in the setting of the female body. He looked at the historical roles that institutions like the law, psychology, and medicine have had in defining and managing female bodies, frequently reinforcing gender hierarchies and norms (Foucault, 1977:177). The study of Foucault emphasises the notion that power affects bodies not just physically but also through creating knowledge about them. Social conventions and expectations around femininity and the female body are subsequently shaped by this information. Medical discourses, for instance, have long pathologised female sexuality and reinforced ideas about female "hysteria" or "infirmity" (ibid). Understanding how cultures control and discipline the female body, whether via the criminalisation of certain sexual practices, the medicalisation of women's health, or the policing of reproductive rights, requires an understanding of Foucault's theories. His writings urge a critical assessment of the ways in which knowledge and power interact to influence how people see the female body and to support or undermine established power systems. The Foucauldian theory is utilised to understand power and discipline as they are enacted on the body. King (2004:30) highlights how "the body is an over-determined site of power for feminists as well as for Foucault." Middleton (1998:ix) confirms this by outlining how "whether we recognise it overtly or not, the body is central to the exercise of power."

At the same time, while Foucault did not specify gender concerning the body, the female body is regulated differently (Deveaux, 1994:225). Bartky (1997) scrutinises the social requirements for the female body; for example, a woman is expected to look a particular way, including "body size," how they "adorned" the body, jewellery, and make-up, and how a woman carries herself. These expectations reflect how a woman must be a particular way and be judged for going against what is considered socially acceptable. Bartky (1997:136) refers to this as "disciplinary practices" that a woman must adhere to, to ensure that she looks and acts a certain way. Jones et al. (2003:128) explain how although the male and female bodies had similar attributes, different societies or social contexts taught people to "think differently about their bodies." These social definitions of "normal and abnormal behaviour" govern how people feel about their bodies and what they can or cannot do with their bodies. Women feel they must do whatever it took to provide for their families. Similarly, if a woman is living in poverty, she is expected to sell her body. This expectation is seen in SA, where female sex workers often have many dependants who rely on their incomes for their everyday needs. The dependants put extra pressure on women in sex work, meaning they are more likely to engage in riskier sexual practices to take care of their families. Middleton (1998:14) outlines the "sexist male gaze", which has been utilised to regulate "compliance to the norms of conventional femininity." Oyewumi (1997:2) refers to it as the "gendered gaze" linked to how the body is "always in view or on view. " The gaze is one of difference or differentiation.

The idea that cultural norms and power dynamics impact how people are looked at, objectified, and categorised depending on their gender is included by the concept of the "gendered gaze," which draws from Michel Foucault's theory of power and knowledge. It emphasises how gender is a socially produced identity rather than a fixed characteristic and that it is maintained by discourses, language, and activities that resemble surveillance. The "gendered gaze" frequently fosters heteronormativity, views people as things to be seen, and reinforces gender stereotypes. This idea has been crucial to feminist theory because it illuminates the ways in which knowledge and power interact with gender dynamics in society to affect how people accept or reject traditional gender norms (ibid). Within Western discourse, the "body is perceived by sight"; their differences are based on "sex, skin colour and cranium size" (Oyewumi, 1997:2). Oyewumi (1997:2) refers to it as the "power of seeing." Oyewumi (1997:3) uses the term "worldview" to refer to the focus on the visual and "world-sense" to incorporate cultures that "privilege senses other than the visual or even a combination of senses." As King (2004:34) explains women's only offence is being different to men, "woman's crime of being other of embodying all that man fear and despise yet desire finds fitting "punishment" in clothing that draws erotic attention to the body by simultaneously constraining and 'correcting' it." King's (2004) explanation showcases how a women's body is differently constrained. In her critique of how feminism makes use of Foucauldian theory King (2004:31) critiques "the classical ways of thinking about the subject as a rational, unified being with a fixed core or essence." Foucault, therefore, assists feminists in challenging "paradigms of western thought taken for granted since the Enlightenment" (ibid). Therefore, despite Foucauldian theory being a theory based on western thought, it is utilised to help understand the power dynamics of the body. The body is seen as the site of power, oppression, and sexuality in the same way as sex work is directly linked to the power of the body, the power women have to use their body for sex work as well as the power men have through the access and control of the female body in sex work. Foucault is "concerned with the development of a bottom-up model, where the body is one of the sites where power is enacted and resisted" (Mills, 2003:82). Within a patriarchal context Glapka (2018:215) refers to this "male gaze" as "patriarchal surveillance" of the female body.

Halperin (1989:257) explains how even though there is no documented history of sex, sexuality was "culturally constructed," which gave "sexuality a history." Foucault describes sexuality as a "set of effects produced in bodies, behaviours and social relations by a certain deployment of a complex political technology" (ibid). For Foucault, "sexuality is indeed a unique modern production," and it is assumed that "sexual behaviour reflects or expresses an individual's sexuality" (ibid, 258-259). Historically, in classical Athens, a distinction was drawn between people who were the penetrator and those who were penetrated, which was consistent "with superordinate and subordinate social categories" (ibid, 260). This distinction means that people being penetrated are viewed as being less than those who did the penetration. Therefore,

women and gay men are inferior due to being penetrated (ibid, 260). This point connects to how society has historically viewed the male body as superior to the female body.

King (2004:30) applies Foucault's theory of discipline and punishment to elucidate the societal perception of the female body as simultaneously inferior and threatening to men, rendering it exposed to disciplinary techniques. Jones et al. (2003:137) delve into the role of religion in governing sexuality, dictating acceptable sexual behaviours, and condemning others as evil. Historically, a woman's worth was tied to her reproductive capability, relegating her to a passive, submissive role. King (2004:31) further highlights how women were portrayed as driven by emotion and enslaved to their reproductive organs. Meanwhile, Jones et al. (2003:138) underscore how religion emphasised female purity until marriage, after which a woman's body became her husband's property, with deviations branded as sinful. This conditioning exclusively targets the female body, reinforcing gender power structures. Notably, the control of female sexuality serves a dual purpose: it restricts women's sexual agency while perpetuating male dominance. This dynamic underscores the intricate connection between sex work and traditional gender power structures. Aligning with the early wave of Foucault's theory, referred to as the "docile-bodies thesis" (Deveaux, 1994:223), the effects of power on bodies are examined. This thesis proves particularly germane in exploring the control and regulation of the female body within the realm of sex work, shedding light on how societal norms enforce conformity and submission, thereby reinforcing the intersecting power dynamics within the sex work industry. Foucault's concept of docile bodies (Deveaux, 1994:223) offers insights into how power operates in the context of sex work and its broader implications for gender dynamics, further accentuating women's subjugation to male authority in society.

Consistent with the early wave of feminism, Foucault's initial conceptualisation explores the impact of power on bodies, commonly referred to as the "docile-bodies thesis" (Deveaux, 1994:223). This concept is closely related to the notion of biopower, wherein the state assumes the role of regulating the population's behaviours and attributes (Foucault, 1978:140). Foucault (1978:140) traces the origins of biopower to the emergence of various disciplinary institutions like "universities, secondary schools, barracks, and workshops." Pylypa (1998:21) illuminates this biopower as the manifestation of power in everyday practices and routines. Within these daily practices, individuals engage in self-surveillance and self-discipline, effectively subjecting themselves to external norms (ibid). This process, as articulated by Baker (2012:89), involves the body's internalisation of institutional norms, resulting in a form of self-regulation. Foucault contends that this utilisation of the body constitutes it as a "site of political power" (Baker, 2012:89). Furthermore, Foucault (1978:140-141) asserts that biopower plays a pivotal role in the development of capitalism, as it involved the integration of bodies into the machinery of production, necessitating their

passivity to ensure their availability and docility. This led to the emergence of "biopolitics," characterised by techniques of power present at all social levels and employed by diverse institutions, with the goal of sustaining economic processes (Foucault, 1978:141). Simultaneously, biopolitics contributed to segregation and social hierarchisation (Foucault, 1978:141). A striking historical example of the use of biopolitical was seen in the apartheid regime's segregation of African communities, ensuring docility and a steady supply of inexpensive labour to meet the demands of the capitalist economy. In Foucault's (1977:136) examination, the classical era marked the body's initial recognition as a source of power. It becomes evident that considerable attention was devoted to the body—a body subjected to control, sculpting, and education, one that obeyed, responded, honed skills, and enhanced its capacities. To Foucault (1977:136), a docile body is one "that may be subjected, used, transformed, and improved." Illustrations of this phenomenon are observable in the colonial period when differential privileges were granted to those who assimilated the practices of colonisers. Foucault (1977:137) elaborates on the distinctive aspect of this process, highlighting the "subtle coercion" applied to the body, gaining control at the level of its mechanisms—movements, gestures, attitudes, and speed—exerting infinitesimal power over the active body. Consequently, a strategy of coercion influencing the body's components, gestures, and conduct was devised, as Foucault (1977:138) elucidates, whereby the "human body enters a machinery of power that scrutinises it, dissects it, and reorganises it."

Foucault (1977:138) elucidates the emergence of a "political anatomy" intertwined with a "mechanics of power." This concept revolves around the notion that controlling another person's body entails directing it to fulfil one's desires while adhering to selected methods, pace, and efficiency. Consequently, discipline leads to the creation of "subjected, practiced, and 'docile' bodies" (ibid, 138). Foucault (1977:146) regards discipline as a strategy for reshaping hierarchical structures and the distribution of bodies within an interconnected network. In the context of class, Foucault (1977) illustrates how this concept manifests in reality. Moreover, Foucault (1977:148) posits that the role of discipline is to "transform the confused, useless, or dangerous multitudes into ordered multiplicities." He underscores the historical dominance of religious institutions in the realm of discipline, emphasising their expertise in rhythm and routine tasks. Individuals, according to Foucault (1977:194), are both the hypothetical atoms of an "ideological" societal framework and tangible products of the specific power technique he terms "discipline." Foucault (1977:149) perceives power as a creator of reality, shaping domains of objects and rituals of truth, with individuals and the knowledge about them integral to this production. Additionally, Foucault (1977:215-216) elucidates how institutions like workshops, armies, and schools serve as disciplinary entities, while the police function as a "state apparatus" tasked with ensuring discipline's dominion over society as a whole.

Baker (2012:89) employs this concept of power to analyse how "the law may gender the female body." In this context, the portrayal of a prostitute's body assumes specific attributes: firstly, it is framed as female, and secondly, it is presented as "in opposition to appropriate manifestations of womanhood," representing a "deviant form of female behaviour." Furthermore, the body is "traditionally regulated" through legal frameworks, resulting in the historical transformation of the prostitute's body into a locus for the manifestation of power, knowledge, and sexual discourse (ibid). The concept of biopower holds paramount importance in the study of sex work as it centres on the body as the site of subjugation (ibid, 22). Understanding sex work and its legislative governance necessitates recognising the centrality of the body. In its initial wave, Foucault's theory addresses how the "body is disciplined" through the Panopticon, a concept delineated by Foucault (1977:201-202) as a mechanism that "dissociates the see/being seen dyad," effectively automating and depersonalising power. Foucault introduces the term "panopticonism" to describe the perpetual scrutiny by officers in prisons, leading to what he terms "self-surveillance." This phenomenon extends to society at large, where individuals develop self-surveillance tendencies due to a constant sense of being observed (Deveaux, 1994:225). In contexts where sex work is criminalised, sex workers are perpetually under the gaze of law enforcement and society, prompting them to practice self-surveillance to avoid legal repercussions.

Foucault's concept of "biopolitics" elucidates how, under modernity, the body is managed and controlled through various forms of legislation, encompassing regulation of bodily movement and actions (Jones, Bradburg, and Le Boutillier, 2003:131). These principles find application in legislation related to sex work and any efforts to govern or restrict sex work, which inherently seek to regulate individuals' actions and bodies. According to Foucault (1977:204), the Panopticon functions as a laboratory of power, enhancing efficiency and the ability to scrutinise human behaviour through its mechanisms of observation. The idea of surveillance is intertwined with societal changes, with Foucault (1977:193) noting how power becomes more anonymous and functional, emphasising surveillance over ceremonial displays. Surveillance, as Foucault (1977: 175) observes, evolves into a significant economic force, operating as an internal component of production machinery and a distinct instrument in the exercise of disciplinary authority.

Foucault (1977:177) astutely observes that the power embedded in the hierarchical surveillance of disciplinary systems doesn't possess the characteristics of an object or a transferrable property; instead, it operates akin to a piece of machinery. This unique function allows disciplinary power to exhibit a dual nature: it is indiscreet, omnipresent, and perpetually vigilant, leaving no shadows unmonitored; yet, it is also discreet, functioning continuously and primarily in silence (ibid, 177). Foucault establishes a profound connection between knowledge and power, asserting that it is through the daily practices associated with societal norms

that "knowledge and desire" are generated, which subsequently wield power (Pylypa, 1998:24). Pylypa (1998:24) further elucidates that power operates through both the creation of knowledge and the cultivation of a desire to conform to the rules prescribed by this knowledge. In the context of sex work, society often brands sex workers as "immoral," and the acceptance of this prevailing "knowledge" underpins the stigmatisation they endure. A transformation in societal perspectives regarding sex work would engender a new body of "knowledge" that could gain acceptance and, consequently, alter the treatment of sex workers. According to Foucault (1977), power is a complex web of relationships that exist across society rather than a top-down or bottom-up paradigm. He's intrigued by the way power is distributed, decentralised, and exercised at many societal levels. In addition to people, groups, and communities, Foucault (1977) acknowledges that power is not simply concentrated in the hands of the state or other institutions. Furthermore, Foucault (1977) underlines the significance of knowledge in power relations. He contends that systems of knowledge may be used to defend and legitimate types of power and that knowledge and power are connected. On the other hand, criticising conventional wisdom may be a strategy for opposing long-standing power systems. This perspective offers valuable insights into the dynamics surrounding the treatment of sex workers and the potential for societal transformation through shifts in knowledge and perspectives.

In essence, the concept of the "prostitute body" is understood as the locus of sexual power (Pylypa (1998:90-91). Walkowitz (1980) highlights the legal establishment of distinct standards of chastity for men and women, demonstrating how historically, the attributes of a sex worker's body have been shaped by legal mandates. The legal constraints imposed on "prostitutes" grant the state authority over their bodies. Historically, as Baker (2012:93) exemplifies, this authority allowed the state to subject women to venereal disease examinations. In the contemporary context, the criminalisation of sex work perpetuates control over the female body, as women suspected of engaging in sex work can be detained, often leading to experiences of sexual violation. Jones et al. (2003:139) succinctly encapsulate Foucault's notion of self-surveillance as a blend of external enforcement and internal self-policing. They define this surveillance as rooted in culturally learned information instilled in individuals. This perspective extends to the treatment of individuals dealing with illness, where institutions like hospitals categorise them as "patients." Unfortunately, this categorisation often reduces patients to mere "bodies," stripping them of their identities as individuals with thoughts, emotions, and feelings (ibid, 134). This observation parallels the treatment of individuals deemed "diseased," including sex workers, who are frequently regarded as bodies in need of "discipline" and control. The perception that women's bodies are inherently "more docile than the bodies of men" in society is further reflected in the punitive measures targeting sex work.

The second wave of Foucault's theory aligns with the emergence of an agnostic model of power, where various facets of power are inherently contested, indicating that the existence of power also engenders resistance to it (Deveaux, 1994:223). In power relations, Foucault emphasises the possibility of resistance and contestation. He challenges us to investigate other sources of power and how it is shared and disputed in diverse social circumstances. His theories offer fresh perspectives on the way power functions and the way people and communities may interact with it. The third wave of Foucault's theory delves into the realms of sexuality and gender identity, closely linked to his assertion that prevailing categories of sexual identity are products of the shift to a modern power regime (ibid). Jones et al. (2003:126) elucidate how Foucault further advances this argument, expanding beyond Marx's class-based analysis to consider issues of sexual, ethnic, and gendered categories employed in modern societies to govern their populations. Higgins (2019:36) underscores Foucault's exploration of institutions such as prisons, schools, and mental hospitals, revealing that they serve as mechanisms for ensuring conformity by teaching individuals to discipline themselves and adhere to socially recognised norms conveyed through dominant forms of discourse. At the core of Foucauldian theory lie questions of power. He investigates how the docile body is cultivated through the acceptance of societal norms, emphasising that power resides in the acquiescence to these norms (Foucault, 2000:279). One of Foucault's most important realisations is that power may be generative as well as oppressive. He contends that in addition to restricting and confining people, power also fosters and moulds their activities and habits. In this view, people and organisations can use power in a variety of ways, including by opposing and confronting prevailing systems of authority. Foucault's views illuminate the dynamics of power as they relate to the body in the setting of sex studies. Foucault's prolonged stay in Tunisia, a developing nation, had a significant influence on his ideas while being criticised for its Eurocentric perspective. Witnessing various revolts and governmental responses during this period significantly influenced his theories of power, rendering their applicability to a South African context more justifiable. The theory section here scrutinises the dual perspectives within feminism regarding sex work and their relevance to SA, given its unique history of gender and racial oppression. Foucauldian theory offers valuable insights into the body and the diverse methods of its control. As sex work inherently involves the use of the body, any policies aimed at regulating it ultimately seek to control individuals' actions with their bodies.

Foucault's primary focus on power and discipline, intricately linked to the body, holds pivotal importance for catalysing change (Middleton, 1998: ix). In the context of this thesis, Foucauldian theory is strategically employed to decode the power dynamics operating on the body, potentially informing future policy alterations. The body is conceptualised as a locus of power, oppression, and sexuality. As Foucault (1977:177) articulates, the power within hierarchically structured disciplinary surveillance isn't owned as a tangible entity or transferred like property; rather, it operates akin to machinery. While it indeed possesses a

pyramidal hierarchy, the entire apparatus generates "power" and orchestrates the continuous placement of individuals within this enduring field. Pylypa (1998:23) astutely notes that although individual bodies wield power, substantial change can only manifest through collective bodies. It becomes evident that the government tends to heed the loudest voices, and when individual powers coalesce within a larger collective advocating for policy reform, their combined influence can capture the government's attention. The key to the impact of this collective noise lies in a unified message. Pylypa's (1998:23) observations underscore the fluid nature of power, indicating that collective action can indeed drive change. The perception that the power to alter sex worker policies resides solely with the government has hindered policy evolution. For Foucault, the interplay between knowledge and power is profound, implying that for communities to effect policy change, they must first recognise the power they possess. While the government enacts laws, the true power is vested in the normalisation, acceptance, and adherence to these laws. The potency of the criminalisation of sex work hinges on community acceptance and the subsequent treatment of sex workers.

5.1.3 Application of the Theoretical Framework

The theory section delves into two robust theoretical frameworks that provide a comprehensive lens through which to analyse the stagnation of sex work legislation in SA. The first framework scrutinises feminist theory, encompassing both liberal and radical strands, and underscores the intricate intersections of gender, race, and class. The second framework delves into the feminist Foucauldian theory. These theoretical underpinnings serve as critical tools for dissecting the complexities surrounding the impasse in sex worker policy reform. In the forthcoming analysis chapters (Chapters 6-9), our attention zeros in on the persistent obstacles hindering the transformation of the sex worker policy, as elucidated by participants in the interviews. These interviews reflect a rich tapestry of perspectives, with some interviewees aligning with the radical feminist viewpoint on the sex industry and others adhering to the liberal feminist stance. Amidst these diverse perspectives, interviewees consistently underscore the profound interplay between gender, race, and class dynamics, particularly in their insights into why individuals enter the sex industry. Moreover, these dialogues elucidate a spectrum of strategies that hold the potential to usher in policy change. Both feminist theories, whether rooted in liberalism or radicalism, and the feminist Foucauldian lens, furnish us with invaluable vantage points for comprehending sex work, the regulatory paradigms shaping it in SA, and the underlying reasons for the impasse in sex worker policy reform. Feminist theory casts a revealing light on the evolution of distinct legislative frameworks, often aligned with either radical or liberal feminist conceptions of the sex industry. Crucially, these legislative frameworks represent the wielded "power" over individuals' bodily autonomy, given that sex work directly engages with the human body. In essence, it signifies the power to dictate what individuals may do with their own bodies. This aligns seamlessly with Foucault's profound conception of power residing within the body and its conformity to societal norms. Moreover, the historical

treatment of sex workers is inexorably tied to enduring norms surrounding sex work, as well as the entrenched perception of its supposed "moral wrongness." The ensuing section encompasses the research methodology employed to amass the essential data for this thesis. It offers a comprehensive overview of the research methods employed, the ethical considerations paramount to this study, the data analysis techniques applied, and candidly acknowledges the research's limitations.

5.2.1 Methodology

This research used a qualitative approach rather than a quantitative approach to gather data on policy change in SA regarding the decriminalisation of sex work and the discourse about whether it should be decriminalised. In this method, the "findings are more in-depth since they make greater use of open-ended questions" (Ololube and Kpolovie, 2012:51). The chosen research methods were document analysis and semi-structured interviews, with approximately 20% document analysis and about 80% semi-structured interviews. The data collected using these two methods was utilised to answer the research question: "Why has the decriminalisation of sex work in SA stalled?" The utilisation of semi-structured interviews enabled the research to gain narrative data on women's experiences through stories from women or about women. Wigginton and Lafrance (2019:11) highlight how no research methods could be classified as specifically feminist but could be used to generate data in line with feminist research. Luiz and Roetz (2000:29) found that "due to the illegality of prostitution in SA … the research team would have problems gaining access to prostitutes and their clients." The sex industry is criminalised in SA, affecting access to sex workers for research purposes and affecting the credibility of studies that dealt directly with sex workers. Hence, this thesis focused on organisations that worked directly with sex workers and politicians who could directly impact policy change in SA. The choice of the research participants was partly due to ethical considerations found in research working directly with sex workers combined with issues of access to research participants. Using organisations working with sex workers in SA enabled the researcher to gain insight into the lives of many sex workers in SA. The chosen research methods therefore aimed to show a broad narrative of the experiences of sex workers and understand issues regarding the delays in policy change.

5.2.1.1 Document Analysis

As the researcher, I utilised both primary and secondary documents to understand the area being studied and address the research question. According to Mogalakwe (2006), original records are often produced by an individual who had first-hand witnessed the events. Primary documents in document analysis are original, firsthand sources created or produced during the time or events being investigated. These documents, which include letters, diaries, photographs, speeches, and official records, offer immediate insights into historical events and the perspectives of individuals or organisations involved. They are prized for their authenticity

and are essential for understanding the context and experiences of the past. Researchers often rely on primary documents to gain direct access to the thoughts, emotions, and viewpoints of historical actors, making them indispensable sources for document analysis and historical research. On the other hand, secondary records are frequently written by someone who is given an "eyewitness account" of the occurrences. Document analysis could be based on "public, private or personal documents" (ibid, 222-223). Bowen (2009:27) describes document analysis as "a systematic procedure for reviewing or evaluating documents;" these documents could be either in print or viewed electronically. Bowen (2009:27) explains how these "documents contain text (words) and images that have been recorded without a researcher's intervention" therefore also referred to as secondary sources. Bowen (2009) clarifies that documents (data) need to be "examined and interpreted to elicit meaning" and, therefore, to produce knowledge. He indicated that the documents used in the research needed to have "been recorded without the researcher's intervention" (ibid, 27). According to Bowen (2009:29) it was best to use document analysis in conjunction with other research methods to "validate the data obtained during the study." Bowen (2009) gave five uses of document analysis. The first was to understand the "historical context" of the research and gain insight into "the historical roots of specific issues." Second, information obtained from documents could assist in formulating research questions for interview purposes. Third, "documents provide supplementary data," and fourth, "documents provide a means of tracking change and development." Finally, documents could be utilised to "verify findings [and corroborate evidence] from other sources" (ibid, 29-30).

The qualitative methods this study used supported and validated each other. Mogalakwe (2006:228) highlight how "no social research method is exclusive of other research methods." Different research methods could be combined to "enhance the analysis's reliability and validity" (Mogalakwe, 2006:228). The use of more than one research method has been termed triangulation (cross-validate), "triangulation is generally considered to be one of the best ways to enhance validity and reliability in qualitative research." (Babbie and Mouton, 2001:275). When choosing documents to be analysed for the study, Mogalakwe (2006:224-225) outline three criteria. The papers must, first and foremost, be "authentic," which meant that they needed to be "genuine and from impeccable sources" (ibid). The second requirement was that the documentation be "credible," i.e., that the "evidence is typical of its kind." Third, the document must be "representative," which refers to whether it "represents the totality of the relevant documents" (ibid). The advantages and drawbacks of employing document analysis in a qualitative research study were emphasised by Bowen (2009). The advantages of this study approach included that it was "less time-consuming" and hence "efficient." The necessary documentation was often easily accessible via the Internet or other channels. Online document acquisition is less expensive than other research techniques that call for manual data collection. Since there is no direct interaction with the papers during their receipt, the data was "unaffected by the research process,"

which reduced "concerns related to reflexivity." Because of this, the papers obtained were frequently thought to be "stable" and accurate, "especially when exact references are given." Additionally, these records could span a substantial period (ibid, 31). According to Bowen (2009), document analysis has several flaws as a qualitative research approach. One was that documents are frequently created for a specific purpose and might not contain all the research information needed. Furthermore, several documents are not easily accessible or accessible to the public. As a result, the analysed documents must be chosen carefully to avoid appearing biased by the researcher (ibid., 31–32).

5.2.1.2 Semi-structured Interviews

In qualitative research, interviews are the "dominant mode of data collection" (De Vos, Strydom, Fouche, and Delport: 2011:343). According to Birmingham and Wilkinson (2003:43), "detailed information about a topic or subject" is obtained through an interview. Unstructured, semi-structured, and structured interviews were the three different styles of interviews. Unstructured interviews, usually called in-depth interviews, were ones in which the researcher set the topic, and the interviewee determines the overall direction of the interview (ibid., 45). The researcher has better control over the interview process while using semi-structured interviews. Additionally, the interviewee still has enough freedom to "shape the flow of information." Within structured interviews, the researcher has total control over the interview and the questions (ibid., 45). For this research, semi-structured interviews were utilised as the chosen research method. These interviews gave the interviewee the flexibility to influence the interview process and contribute fresh information while allowing the researcher to direct the questions and data gathered. Semi-structured interviews are appropriate, according to De Vos et al. (2011:352), when "one is interested in complexity or process, or when an issue is controversial or personal." I, as the researcher, developed a research interview guide that "guided but [did] does not dictate" the research process (ibid., 351-352). Representatives from NGOs, Chapter 9 institutions, research institutes, and consultants who worked with sex-work NGOs or Chapter 9 institutions were interviewed. Politicians in the GPL involved in legislative change were also interviewed at the time of the study. For this study, I, the researcher, did not interview sex workers but rather those who assisted sex workers or were involved in advocating for legislative change in SA. However, some interviewees from NGOs were, former or current sex workers. This research method enabled me to gain detailed insight into women's experiences in the sex industry, information that was both from women and about women in line with feminist research.

5.2.2 Sampling Technique

Multi-stage purposeful sampling was the sampling technique utilised to select the research respondents for this research. In the beginning, "critical case sampling" was used, with a focus on people who could "bring to the fore the phenomenon of interest" and enable me to learn more about the subject (Omona, 2013:180-

181). The second half of the sample was obtained through snowball sampling. As the researcher, I requested interviewees to recommend other organisations or individuals who worked with sex workers in SA and would therefore be able to give insight into the topic (ibid). The interviews with NGOs, Chapter 9 institutions, research institutes and consultants working with NGOs and sex workers were terminated after 19 interviews due to sufficient information being gathered. This was when the interviews had reached data saturation.[37] Similar sampling techniques were used for the interviews with members of the GPL. Those chosen for the interviews could discuss the subject knowledgeably. In the GPL, the two main political parties at the time of the interviews were the ANC (the ruling party) and the DA (the official opposition). I, as the researcher, approached both parties due to them having a significant role in enforcing policy change. The Members who were approached all had expertise and knowledge. However, I ultimately decided on individual members to be interviewed according to who was willing and available to participate in the research process.

Choosing to interview members of the Gauteng Provincial Legislature (GPL) over those from other provinces or the national legislature was strategic, aiming to gain a comprehensive understanding of sex work policy dynamics in SA. Gauteng's central role in governance and policy discourse, along with its diverse population, provided valuable insights into both regional and national policymaking trends. Prioritising engagement with Gauteng legislators allowed for a deeper exploration of regional dynamics while recognising the significance of the national legislature in shaping federal policy. While the decision not to interview sex workers was influenced by both ethical concerns and the research focus. Ethical considerations, possibly guided by concerns over legality and vulnerability, may have led to caution in approaching this group for interviews. Additionally, the deliberate choice to focus on organisations and governmental bodies aimed to explore systemic responses and policies rather than individual experiences within the profession. This highlights the complexity of the decision-making process in selecting research subjects, balancing ethical considerations with research objectives.

5.2.3 Profiles of Members of the GPL interviewed.

5.2.3.1 The Interviewees

Interviews were conducted with GPL (MPLs) Members due to Gauteng's past efforts to change the sex-worker policy. Eight people were interviewed; five were ANC MPLs and three were DA MPLs. Table 3 outlines the MPLs at the GPL that were interviewed for this research, as well as their specific designation.[38]

[37] Data saturation is the point at which all data has been collected on the topic and additional data tended to become repetitive (Saunders, Sim, Kingstone, Baker, Waterfield, Bartlam, Burroughs, and Jinks 2018).

[38] The political term of office ended in May 2019. This meant that some of the Members interviewed had since changed positions, and a few had left the GPL.

The interviews were done physically, or submissions were made electronically. The electronic submissions were done with MPLs owing to their tight schedules.[39]

Table 3: MPLs interviewed at GPL.

Interviewee:	Name:	Designation:	Date of interview:
1.	Godfrey Tsotetsi	ANC / Chairperson: The Oversight Committee on Premier's Office and Legislature (OCPOL)	February 2019
2.	Thokozile Magagula	ANC Chief Whip Gauteng / Chairperson of the Multi-Party Women's Caucus	February 2019
3.	Mike Madlala	ANC / Chairperson of Committees	April 2019
4.	Lebogang More[40]	DA / MPL – Petitions Portfolio Committee	May 2019
5.	Nkhumeni Ramulifho	DA / MPL – Education Portfolio Committee	May 2019
6.	Anonymous, DA MPL	DA MPL – Health Portfolio Committee	June 2019
7.	Ntombi Mekgwe	ANC / Speaker of the GPL	May 2019
8.	Mpapa Kanyane	ANC / Deputy Chairperson of Committees	March 2020

5.2.3.2 Interview Guide for Members of GPL

The purposes of the interviews were manifold. The first was to understand the policy creation and change processes in SA. The second objective was to understand how public authorities felt about sex work. The third was to understand the lack of change regarding the sex-worker policy and the possible obstacles to changing this policy. Finally, to understand the interviewees preferred policy option and examine whether they supported the partial decriminalisation of sex work and the associated reasons for this support.

An interview guide was developed which included the following interview question areas:[41]

Question area 1: Can you give me an overview of your understanding of how policies are generally changed in SA and what needs to take place before a policy is changed? Considering whose inputs are considered during the process?

Question area 2: Can you outline your views on sex work (such as whether it should be viewed as work or not)? What policy recommendation will you propose for SA, considering the different policy approaches taken in other countries? What are your views on the call for the decriminalisation of sex work in SA?

Question area 3: In your view, how has the sex-worker policy evolved or not evolved since 1994? And, if not, why has the sex-worker policy not seen any significant change to date?

[39] The researcher is aware of the limitations of electronic submissions but in cases where further clarification was needed this was attained from the MPL.

[40] Lebogang More passed away due to Covid-19 complications in June 2021.

41 This can also be found in Appendix E.

Question area 4: In your view, what will need to take place to see a change in the sex-worker policy in SA? What form do you think such a change, if any, will need to take?

Question area 5: What do you think the benefits or disadvantages will be of the decriminalisation of sex work versus the continued criminalisation of sex work in line with the current policy in SA? Will you, consequently, recommend partial decriminalisation or partial criminalisation as a possible policy option? Please give reasons.

5.2.4 Profile of the Organisations Interviewed

Table 4 provided an overview of the various organisations that were involved in the interviews and give background and credibility to the data.

Table 4: Profile of Organisations Interviewed

Organisation	Profile
Lifeline Johannesburg	LifeLine Johannesburg, as per information from their website accessed in 2020, offers counselling services and establishes connections with individuals, equipping them with essential tools to enhance their ability to manage stress effectively and enhance their emotional well-being. It's noteworthy that during the interview, they were actively involved in a sex-worker program.
Sisonke	Sisonke, as outlined by the NSWP in 2020, functioned as a sex-worker-led movement operating for sex workers. With offices established in four provinces and collaborative partnerships with organisations, their central mission revolved around empowering sex workers to voice their concerns on matters of significance to them. Notably, Sisonke had a direct and active engagement with sex workers.
Cradle of Hope	The Cradle of Hope, self-described as a 'ministry,' dedicated its efforts to assisting 'women and children in desperate need.' Situated in Krugersdorp, West Rand, Johannesburg, this organisation extended support to women and children 'regardless of race or religion,' with a focus on providing a 'hand up' rather than a 'handout.' Notably, many of the women they aided were grappling with issues such as drug addiction, involvement in sex work, or a history of sex work, as detailed on The Cradle of Hope Website accessed in 2020. Krugersdorp served as a location where sex work was prevalent, and the community faced challenges linked to sex work and its association with drug abuse. In 2018, following multiple community protests, "Police Minister Fikile Mbalula reshuffled station commanders in the drug and prostitution-ridden area of Krugersdorp on Gauteng's West Rand" (Sithole, 2018). These protests erupted in January 2018 as community members sought to compel the police to act against sex work and drug abuse in the Krugersdorp vicinity, prompted by the abduction of a young lady (Mange, 2018).
SWEAT	SWEAT, with a documented 20-year legacy of organising sex workers, championing their rights, and providing essential services to South African Sex Workers, as gleaned from the SWEAT Website accessed in 2020, stands out as the pioneering organisation exclusively dedicated to the welfare of sex workers founded post-1994.
SONKE Gender Justice	Sonke Gender Justice, a nonpartisan and non-profit organisation, was founded in 2006 with a broad mission. It operated within Africa, with a primary focus on enhancing the capabilities of governments, civil society, and citizens to advance gender equality, combat domestic and sexual violence, and mitigate the spread and consequences of HIV and AIDS. Notably, Sonke Gender Justice actively engaged with sex workers and advocated for the decriminalisation of sex work in SA (Saferspaces, accessed in 2020).
Embrace Dignity	Embrace Dignity, a South African feminist and abolitionist human rights advocacy NGO founded in 2010, holds a unique distinction. It was primarily initiated and led by former sex workers. The organisation actively lobbied the South African government for a shift in sex work policy, advocating for a transition from criminalisation to partial criminalisation, also known as the equality model. It is important to note that Embrace Dignity predominantly represents the perspectives and experiences of former sex workers (Embrace Dignity Website, accessed in 2019).

Organisation	Profile
KWANELE	KWANELE, identified as a movement for black women survivors of prostitution in SA, (Morutoa, 2018). The organisation served as a platform to amplify the perspectives and experiences of former sex workers concerning sex work in SA
Asijiki Coalition	In August 2015, the Asijiki Coalition emerged as a collaborative effort involving several organisations, including the "Sisonke Sex Worker Movement, Women's Legal Centre, the Sex Worker Education and Advocacy Taskforce (SWEAT), and Sonke Gender Justice. " The primary objective of this coalition was to champion the decriminalisation of sex work and to safeguard the "human, legal, and health rights of sex workers" (Polity, 2015). Notably, this organisation played a pivotal role in the context of the present research, serving as the overarching body for sex worker organisations advocating for the decriminalisation of sex work.
Triangle Project	The Triangle Project, situated in Cape Town, operated as an LGBTIQA+ human rights organisation spanning the Western Cape Province. It played a multifaceted role by offering direct services such as psychosocial and health support to LGBTIQA+ individuals, fostering community activism and outreach initiatives, conducting research, and offering coordinated advocacy and policy development efforts for LGBTIQA+ people and their human rights, (Triangle Project Website, accessed 2020). The rationale for selecting this organisation stemmed from its engagement with LGBTIQA+ sex workers, aiming to comprehensively address various facets of the discourse surrounding sex work in SA.
Commission for Gender Equality (CGE)	The CGE, operating as a Chapter 9 institution, was established in 1996 in accordance with Chapter 9 of the Constitution of the Republic of SA, designated as a "State Institution Supporting Constitutional Democracy" (Constitution of the Republic of SA, Act 108 of 1996, Chapter 9: 187: 95). It's notable that the CGE held a robust stance in favour of the decriminalisation of sex work.
African Centre for Migration and Society, University of the Witwatersrand (ACMS)	ACMS, recognised as Africa's foremost academic institution specialising in the study of human mobility, operated as an independent, interdisciplinary, and globally oriented institution devoted to examining the intricate dynamics linking human migration, political factors, poverty, and societal change. Established in 1993, ACMS' dedication to the exploration of these complex interactions distinguished it in the field, (ACMS Website, accessed 2020). It's worth noting that ACMS had previously conducted research on sex work in SA
Global Resources Epicenter Against Trafficking (GREAT)	GREAT, a registered Canadian charity, operated as a multifaceted resource and coordination centre dedicated to combatting human trafficking (GREAT Website, accessed 2020). The selection of this organisation was motivated by its potential to offer valuable insights into the intersections between sex work and trafficking in SA.
Wits Reproductive Health and HIV Institute (WRHI)	The Wits Reproductive Health and HIV Institute (WRHI), founded by Professor Helen Rees in 1994, played a pivotal role in assisting the nascent South African government in shaping and executing novel national policies concerning sexual and reproductive health (WRHI Website, accessed 2020). Significantly, the WRHI had previously conducted research pertaining to sex work in SA.
STOP Trafficking	STOP, a registered Non-Profit Christian Organisation, held a primary mission of countering human trafficking through preventative measures, which encompassed activities like fostering awareness, engaging in activism, supporting frontline efforts, and implementing the Prevention Versus Cure strategy (STOP Trafficking Website, accessed 2020). The organisation was chosen to contribute its perspectives on the intersection of sex work and trafficking in SA, ensuring a comprehensive exploration of the sex work debate.
Mothusimpilo Outreach Project	The Mothusimpilo-Carletonville project was initiated with the goal of establishing a community-based program aimed at curbing the transmission of HIV. Launched in 1995, this program specifically engaged with sex workers in the Carletonville mining region (Williams, 2000). The organisation's direct involvement with sex workers made it a valuable source for insights into their perspectives on the most effective policy approaches.
Cause for Justice	Cause for Justice, functioning as an NGO, held a vision centred on the establishment and preservation of a South African society characterised by the equitable dispensation of justice to all citizens. This encompassed safeguarding and advancing the constitutional rights and freedoms of every individual within society (Cause for Justice Website, accessed 2020). The organisation adopted a proactive approach to identify and champion causes aligned with their core values, advocating to protect the rights and freedoms of South Africans. Their areas of focus included child protection, combatting sexual

Organisation	Profile
	exploitation, and advocating for the legalisation of prostitution, all of which were active areas of engagement at the time of this study (Cause for Justice Website, accessed 2020).
Straatwerk	Straatwerk, operating as a registered non-profit organisation with a pronounced evangelistic mission, concentrated its efforts on engaging with prostitutes. Their approach involved a combination of initiatives aimed at offering support and guidance to women involved in prostitution, with the overarching goal of leading them towards a transformative experience in Jesus Christ and facilitating opportunities for training and fellowship (Straatwerk Website, accessed 2020). The inclusion of this organisation was crucial to ensure comprehensive coverage of all facets of the sex work debate in SA.

5.2.4.1 The Interviewees

The interviews in this study were conducted with staff working at NGOs, Chapter 9 institutions, research institutes and consultants working with NGOs or Chapter 9 institutions. Before data saturation was reached, 19 interviews were conducted. This indicated that I, the researcher, had spoken with sufficient stakeholders who could summarise the various discussions and points of view relating to the decriminalisation of sex work (Saunders, Sim, Kingstone, Baker, Waterfield, Bartlam, Burroughs, and Jinks, 2018:1894). I thus stopped the interview process after nineteen interviews as the information started to become repetitive. The interviewees are summarised in Table 5.

Table 5: Profile of Interviewees from Organisations

INTERVIEWEE	ORGANISATION(S)[42]	ROLE	DATE OF INTERVIEW
Interviewee 1: Clara Singende	Lifeline Johannesburg Sisonke Sex Worker	Worked on a sex worker campaign. Board Member	March 2019
Interviewee 2: Melodie van Brakel	Cradle of Hope	Chief Executive Officer (CEO)	March 2019
Interviewee 3: Ishtar Lakhani	SWEAT	Advocacy and Human Rights Defence Manager	April 2019
Interviewee 4: Marlise Richter	SONKE Gender Justice	Head of Sonke's Policy, Development and Advocacy Unit	April 2019
Interviewee 5: Mickey Meji	Embrace Dignity KWANELE Former Sex Worker	Advocate Manager Founder	April 2019
Interviewee 6: Cherith Sanger	University of the Western Cape SWEAT Sex Worker rights advocate Consultant	Lecturer Former Advocacy and Human Rights Defence Manager	May 2019
Interviewee 7: Constance Mathe	Asijiki Coalition Sex Worker	Co-ordinator	May 2019

[42] These are the organisations that the interviewees represented at the time of the interviews.

INTERVIEWEE	ORGANISATION(S)[43]	ROLE	DATE OF INTERVIEW
Interviewee 8: Matthew Clayton	Triangle Project	Research, Advocacy and Policy Manager	May 2019
Interviewee 9: Anti-Trafficking Organisation – anonymous	Anti-Trafficking Organisation	Anti-Trafficking Organisation	May 2019
Interviewee 10: The Commission for Gender Equality	The Commission for Gender Equality	The Commission for Gender Equality	June 2019
Interviewee 11: Ntokozo Yingwana	SWEAT Sisonke Works for African Centre for Migration and Society, University of the Witwatersrand Sex worker rights activist	Former Advocacy and Human Rights Defence Manager, 20–08-2014 Board Member Doctor of Philosophy (PhD) Candidate	June 2019
Interviewee 12: Research organisation – anonymous	Research organisation	Research organisation	June 2019
Interviewee 13: Dr Marcel van der Watt	GREAT UNISA National Freedom Network (NFN) SAPS UNISA Participates in provincial and national human trafficking task teams in SA. Consultant in ongoing investigations and intelligence-gathering activities. (GREAT Website, Accessed 2020).	Director of Research Lecturer Case Manager and Director Hostage negotiator and investigator at the Hawks and working at the Family Violence, Child Protection and Sexual Offences Unit (FCS) for ten years. PhD graduate, dissertation on trafficking; Department of Police Practice.	June 2019
Interviewee 14: Naomi Hill	The Wits Reproductive Health and HIV Institute (WRHI)	Programme Manager and Chief of Party	July 2019
Interviewee 15: Corinne Sandenbergh	STOP Trafficking	Piloting an Exit Programme	July 2019
Interviewee 16: Yodwa Mzaidume	Mothusimpilo AIDS Project	Mothusimpilo AIDS Project	July 2019

[43] These are the organisations that the interviewees represented at the time of the interviews.

INTERVIEWEE	ORGANISATION(S)[44]	ROLE	DATE OF INTERVIEW
Interviewee 17: Cause for Justice	Cause for Justice	Non-Government Organisation (NGO)	July 2019
Interviewee 18: Dr Mariette Slabbert	Consultant	Political work; UN, World Health Organisation and SANAC	August 2019
Interviewee 19: Madri Bruwer	Straatwerk	Worked there since 2005.	August 2019

5.2.4.2 Interview Guide for Organisations

The purposes of these interviews were multiple. First, it was essential to evaluate the many perspectives on sex work, the legislative framework, and the reasons for entry into sex work. Second, the views on the criminalisation of sex work and how it impacted sex work. Third, the advantages/disadvantages of the decriminalisation of sex work. The fourth question asked was why they thought decriminalising sex was the ideal legislative framework or which alternative system they thought would function best in the South African setting. Fifth, the sex-work policy changes since 1994, including other aspects considered as changes regarding the sex-worker policy. Sixth, what the interviewee believed was still necessary for change to occur in the sex-worker policy. Seventh, their views about the obstacles to policy change and why the policy had not changed substantially since 1994. Finally, opinions on the partial decriminalisation of sex work as a policy choice for sex work in SA was gathered.

An interview guide was developed and included the following interview question areas:[45]

Question area 1: Can you give me an overview of how your organisation views sex work or prostitution, indicating the extent of sex work in SA and why people enter the sex work industry?

Question area 2: How does your organisation view the current policy on sex work in SA? What will their preferred policy approach be towards sex work in SA, considering various other countries' approaches?

Question area 3: In your organisation's view, how has the sex-worker policy evolved or not evolved since 1994? Has the sex-worker policy seen any significant change to date? Why not? How has your organisation been included within these processes?

Question area 4: In your organisation's view, what will need to take place for a change to occur in the sex-worker policy in SA? What form do you think this change will need to take?

Question area 5: What benefits or disadvantages will be for sex workers in SA if sex work is decriminalised? How will this compare to the continued criminalisation of sex work under the current policy? Considering

[44] These are the organisations that the interviewees represented at the time of the interviews.
[45] This can also be found in Appendix G.

your answer, will your organisation recommend partial decriminalisation or criminalisation as a possible policy option? Why or why not?

5.2.5 Ethical Considerations

The research employed a qualitative methodology, encompassing document analysis to scrutinise a range of "primary and secondary documents." These documents encompassed legislative bills, Acts, policy discussion documents, and various other pertinent sources. Additionally, semi-structured interviews were conducted with a diverse set of participants, including Members of the GPL, representatives from NGOs, Chapter 9 institutions, research institutes, and consultants. The research methodology utilised did not raise any significant ethical issues. The key reason for this is because the investigated documents were already in the public domain and hence easily available for investigation. Contrarily, the interviews were performed in an organised manner. The participants in these interviews were contacted in their official positions as representatives of the individual organisations they worked for. It's worth noting that even if some interviewees had personal experiences as sex workers or former sex workers, the interviews exclusively revolved around their roles within the organisations, eliminating any potential for participant trauma. To ensure transparency and informed consent, an interview schedule and information sheet were thoughtfully prepared to elucidate the objectives of the interviews.[46] Furthermore, written consent was diligently obtained prior to conducting the interviews and recording any discussions that occurred during these sessions (CSVR Website, accessed 2016).[47] The interview sessions took place between February 2019 and March 2020, employing three distinct formats. Firstly, in-person interviews were held in private settings, allowing for the recording of these discussions. Secondly, telephonic and Skype interviews were conducted, again in a private setting, with recordings maintained. Lastly, written submissions were accepted via email as an additional means of gathering data.[48] In some instances, participants chose to preserve their anonymity, and such individuals were referenced based on the organisations they represented, for instance, as "research institute." Likewise, anonymous members of the GPL were denoted according to their political party affiliations.[49]

5.2.6 Thematic Analysis (TA)

The final step of the interview procedure was compiling the interview data and ensuring sufficient analysis (Birmingham and Wilkinson, 2003:63). "The purpose of the analysis is not merely for the sake of understanding history but rather to understand the present" (Davids, 2013:111). Therefore, the semi-

[46] Interview Schedule Appendix D and F; Information Sheet Appendix E and G
[47] Appendix C
[48] Ethics clearance for this research was granted by the Wits Ethics Committee on 15 February 2019, with the ethics clearance number H19/02/32 (Appendix B).
[49] Ethics clearance for this research was granted by the Wits Ethics Committee on 15 February 2019, with the ethics clearance number H19/02/32 (Appendix B).

structured interviews were analysed to understand sex work, the policy delays in SA in the present moment, and its future impact. As the researcher, I employed thematic analysis (TA) to analyse the interview data. According to Alhojailan (2012:42), this approach was helpful in analysing interview data since it was based on "participants' vision, feeling, or attitude." As a result, TA proved helpful for studies that sought to "examine the data to discover common themes and thoughts from more than one participant" (ibid). TA made it possible to organise "rich detail[ed] and complex data" following overarching themes discovered in the data (ibid). Alhojailan (2012:42) explained that in this technique, "each statement or idea contribute[d] towards understanding the issue," which, in turn, directed such statements towards an understanding of the "whole picture."

TA was also described by Maguire and Delahun (2017:3352) as "the process of identifying patterns or themes within qualitative data." The purpose of TA, according to Braun and Clarke (2012:58), was "to identify those [patterns] relevant to answering a particular research question" from inside a particular "dataset." This analytic strategy, according to Braun and Clarke (2012:59), was "driven by what [was] in the data." The analysis's codes and themes were all created using the information in the data. However, DeSantis and Noael Ugarriza (2000) and Spencer et al. (2003), as cited in Vaismoradi, Turunen and Bondas (2013:402), noted that a limitation of TA was that "themes are usually quite abstract and therefore difficult to identify." Six stages were outlined by Braun and Clarke (2006) for employing TA in research. The first phase was familiarising the researcher with the information gathered, which involved the researcher becoming familiar with the data and identifying patterns. According to Braun and Clarke (2006), the second phase was the "generation of initial codes." The information derived from the data gathered during the interview procedure was considered while categorising the data. According to Braun and Clarke (2006), the third phase entailed categorising this data based on more general themes. The fourth step involved reviewing these themes.

Step four would assess if the themes and codes defined in step one was consistent. This was crucial since the themes needed to correspond with the data collected. This was referred to as the "thematic map of your data" by Braun and Clarke (2006). Step five was referred to as "defining and naming themes." An "analysis" was written per the concept at stage five. The data was arranged to add to the overall "story" established by each theme. These themes were applied in step six, during the writing of the final report, when the researcher used the themes to respond to the main research question (ibid, 87). The last action taken by the TA was to "report the results of the previous" stages, according to Vaismoradi et al. (2013:402). They emphasised the requirement for "high-quality data" while making sure that the data collection was done in a way that "complex data would be suitable to present interesting findings" (ibid). The topics selected for the

analysis were frequently related to their significance in answering the research question (Vaismoradi et al., 2013:403). In his study, Alhojailan (2012:44) emphasised the necessity to evaluate the topics chosen to "ensure they represent[ed] the whole of the text." This point emphasised the necessity of ensuring that the data gathered during the research was organised according to the themes identified and that the themes were relevant to answering the research question.

The research questions were chosen with a few key themes in mind. These themes were intended to respond to the research question regarding the stalling of change in the sex-work policy. As a result, TA was ideally suited to analyse the research data. These themes were considered when developing the research questions for the interviews. The interviews with Members of the Gauteng Provincial Legislature (GPL) revolved around several prominent themes, encompassing the intricate process of policy change, the personal perspectives and attitudes held by these Members concerning sex work, their favoured approaches to policy formulation, the formidable obstacles hindering policy transformation, the conditions and prerequisites deemed necessary for meaningful change to transpire, and lastly, a comprehensive exploration of the factors shaping their stances on either supporting or opposing partial decriminalisation of sex work. These themes collectively provide a comprehensive understanding of the diverse perspectives and considerations within the legislative body regarding this complex issue.

The interviews conducted with various stakeholders, including NGOs, Chapter 9 institutions, research institutes, and consultants engaged with NGOs and sex workers, encompassed a range of salient themes. These themes delved into the distinctions between sex work and prostitution, the scope and prevalence of sex work within SA, the pathways individuals take to enter the profession of sex work, the degree of agency sex workers possess in their profession, their preferred legal framework for governing sex work, an examination of policy developments since the advent of democracy in 1994, the anticipated processes conducive to policy change, and, finally, an exploration of their overarching perspectives on the available policy options, whether advocating for decriminalisation, criminalisation, or partial decriminalisation. These key themes provide a comprehensive insight into the multifaceted perspectives and considerations among these diverse stakeholders in the discourse surrounding sex work policy in SA. The interview questions were designed based on these central themes, and the analysis followed a similar thematic approach. The themes were linked to the interview question and the "frequency of its occurrence" in the interviews (Vaismoradi et al., 2013:403). The analysis groups the responses to each question per interviewee. Some interviewees were exceptionally knowledgeable in certain areas, meaning the respondents' amount of information on each theme differed. Due to the grouping of themes in the interview guide, some of the responses were broken down into more than one theme during the analysis of the recordings of the interviews.

Chapter 6: Data Analysis and Interpretation: Interviews with MPLs from GPL

6.0 Introduction

The preceding chapter delved into the research's theoretical underpinnings and the applied methodology. Specifically, the methodology section of the previous chapter elucidated the data collection methods, which entailed interviews conducted with Members of the Provincial Legislature (MPLs) of the Gauteng Provincial Legislature (GPL), serving as pivotal policy actors. These interviews transpired during 2019 and 2020. To harmonise with the chosen method of data analysis, namely, thematic analysis (TA), the data from the interviews is presented in alignment with the interview guide and research questions which were formulated around essential themes. Each interviewee's data is thoughtfully summarised, and meticulous source documentation is maintained to bolster data credibility. The interviews predominantly featured MPLs affiliated with the two major political parties in the GPL, namely the ANC and the DA.[50] Several research queries were disaggregated into discrete segments to ensure comprehensive coverage.[51] For a comprehensive understanding, the varied legislative frameworks are elucidated in Chapter 2, section 2.2. To initiate this chapter, real-world accounts from individuals in the sex industry are showcased, offering insights into ongoing debates concerning this industry and contextualising the data amassed in the research's data collection phase. Within the interviews the term "communities" was seen to represent the geographical places in which people lived and "society" the broader South African society.[52]

6.1 Narratives of People in the Sex Industry

The following section focuses on some of the narratives of people in the sex industry. The section aims to describe sex workers' real-life experiences to understand better why the legislative framework on sex work needs to be modified. In addition to the quantitative aspects of the sex work debate outlined above, it was also essential to highlight the qualitative nature of the debate. By presenting these narratives before discussing the findings from the interviews with politicians, the section aims to humanise the discourse surrounding sex work. These personal narratives are also provided to give the reader a deeper understanding of the framework in which sex work functions, even though these narratives were not directly shared with the politicians who were interviewed for the research. These personal accounts provide priceless insights into the real-life realities

[50] The focus on these two political parties enabled the research to highlight data from political parties that had most of the seats in the GPL and therefore, more influence over policy change. The further focus on the GPL was primarily due to their previous attempts to change the legislation around sex work in SA, as discussed in Chapter 3.

[51] The terms used to describe the sex industry during this chapter (6) were in line with the terms used in the interview by the interviewee.

[52] In the interviews there is a distinction made between society as being overall society and communities as the specific areas in which people lived. Smucker (1960: 275), as early as 1960, distinguishes between a community and a society. Smucker (1960:275) notes how "while society is an abstract term, the community is a concrete geographic unit in which the residents carry on a common mode of life." This view pointed to how communities are the places in which people live together, while society is broader. For example, the South African society, which in turn is made up of different communities.

of those working in the sex industry, illuminating the subtleties and complexity that are sometimes disregarded in legislative debates. Through their own narratives, sex workers provide direct insights into the difficulties they encounter, the reasons behind their decision to operate in the field, and the realities of their working environments. These stories besides humanising the conversation around sex work, also help to dispel myths and prejudices and emphasise how urgently legal reform is needed. These first-hand narratives also function as an effective campaigning tool, compelling policymakers to confront the harsh realities of sex workers' discrimination and the criminalisation of the industry. This section seeks to close the gap between policy rhetoric and lived realities by elevating these perspectives in order to promote a more inclusive and knowledgeable conversation on sex work regulation and change. The narratives further aim to frame the information given by the politicians and clarify any potential gaps or misunderstandings surrounding the industry. The purpose being to draw attention to gaps in knowledge and emphasise the value of including lived experiences in policy debates by contrasting the viewpoints of policymakers with the firsthand experiences of sex workers. This method not only improves the conversation but also promotes a more thorough and inclusive approach to policymaking. The purpose of this juxtaposition is to encourage introspection and a critical analysis of prevailing beliefs and presumptions, with the ultimate goal of promoting more knowledgeable and compassionate policymaking procedures.

The first narrative was of Grizelda Grootboom's experiences as documented in her book, *Exit* (2016). The second narrative was of Ayanda Denge as accounted for by *Women in the world* in an online article on her experiences (2018). The final narrative was of Rachel Moran, as documented in *Paid For - My Journey Through Prostitution* (2013). It has been observed that most individual narratives coming out of the sex industry were from sex workers who had left the industry and aimed to showcase their exit from the sex industry and life beyond prostitution. These narratives were defined as counter-narratives, which referred to stories told from the perspective of individuals who had been historically marginalised (Mora, 2014). A counter-narrative had the effect of empowering and giving agency to the individual (ibid). Therefore, it was also important to document the experiences of those who remained in the industry. Some of these experiences are represented in this thesis.

6.1.1 Grizelda Grootboom

Grizelda Grootboom was a street child in Cape Town with a complicated relationship with her family; growing up she moved between shelters and being homeless. At 18 years, as quoted in her book, "I decided to give up street life and go to Johannesburg to find a job and a new life. I contacted Ntombi, who was a university student in Joburg" (Grootboom, 2016:58). She planned her trip to Johannesburg and was met by Ntombi, with whom she would be staying "until [she] found [her] way" (ibid, 59). Ntombi introduced her to

a flat, marking the beginning of her journey into the sex industry. Her harrowing experience is vividly captured in her book, where she recounts the moment when she was abruptly awakened by a group of men, subjected to physical violence, and forcibly stripped. Blinded by masking tape, she found herself in a nightmarish ordeal. The horrors continued as she described being administered ecstasy and injections on her legs and thighs by one of her clients. Her narrative underscores the grim reality of her daily life, where different men would exploit her. She endured this torture for two weeks before being unceremoniously replaced by a new female and thrown out into the pitch-black streets of Johannesburg. She struggled with the need for money to support her addiction after being released, which drove her into prostitution at the age of 18. These stark accounts, as documented in her book, shed light on the brutal experiences faced by individuals in the sex industry (Grootboom, 2016:60, 62-67). Grizelda Grootboom's narrative starkly illuminates the harsh reality of her initial vulnerability, homelessness, and limited alternatives. Her descent into the depths of the sex industry was primarily driven by the imperative to sustain her drug addiction, a harrowing path all too familiar to many women in similar situations. Her story becomes emblematic of a pivotal question in the ongoing debate: Is sex work a chosen occupation or a dire consequence of systemic violations against individuals like her? Grizelda's case challenges the notion of agency and choice within the sex industry. Did she willingly opt for this path to secure a better life, or was it the absence of viable alternatives that led her from Cape Town to Johannesburg in search of new opportunities, ultimately pushing her into the sex industry? Her narrative prompts us to contemplate whether, given more viable options, she would have willingly chosen this path into the sex industry. This thought-provoking question underscores the complexity of the issue and the urgent need for a nuanced understanding of sex work and the circumstances that lead individuals into it.

6.1.2 Ayanda Denge

Ayanda Denge's life story unfolded from a place of early vulnerability as a transgender female in Port Elizabeth who tragically lost her mother during her childhood. In those trying circumstances, Ayanda learned that engaging in sex work was a means to escape starvation, a stark illustration of the dire choices some face (Denge, 2018). Her journey later led her to Johannesburg, a city characterised by its rough streets and perilous environment, where she found herself amid a struggle to survive, often resorting to sleeping in abandoned buildings and enduring horrific experiences, such as being sexually assaulted by gangsters connected to organised criminal networks, all driven by a desperate need to support her drug addiction. While outwardly appearing content, inside, she was a shattered, isolated, and fragile individual (ibid). Ayanda Denge's narrative prompts critical questions about the blurred lines between survival-driven choices, exploitation, and agency within the context of entering the sex industry. It forces us to question whether she genuinely entered the sex industry of her own choice or whether her situation forced her to do so. Whether sex work and trafficking are separate categories in the South African context is the main issue at hand. The Prevention and

Combating of Trafficking in Persons Act, Act No. 7 of 2013, defines "trafficking in persons" as any circumstance in which rewards are directly or indirectly given or received in exchange for consent from a person exercising control or authority over another. Consent issues arise when someone performs sex acts solely for financial benefit since the customer is effectively exchanging money for sexual favours. However, trafficking typically involves a third party receiving the payment. In the case of direct exchanges of money between the sex worker and the client, defining consent becomes intricate. Nevertheless, if the payment goes directly to the individual involved, it may not fit the definition of trafficking. This situation, in essence, mirrors aspects of other professions; without remuneration, individuals would not perform their tasks. In various other vocations, individuals are seen as voluntary participants by choice, even though a hierarchical structure exists with employers having a degree of control over employees due to their salary-based employment.

6.1.3 Rachel Moran

Rachel Moran (2013) recounted her life journey, commencing with a challenging family environment and spiraling into homelessness, which ultimately led her into prostitution. She was just 15 years old, sharing her homeless status with a 21-year-old boyfriend who faced similar circumstances. With no viable means of income, her boyfriend suggested prostitution as a means of survival. This raises a pivotal question: If Rachel had been on her own, would she have willingly chosen to enter the sex industry to make ends meet? Within the pages of her book, Moran vividly portrayed the indispensable skills demanded by prostitution—a capacity to psychologically detach from one's surroundings, to disconnect from immediate reality, and to feign that what was happening wasn't really happening (Moran, 2013:225). She distilled these abilities into the "ability to suppress the reflex to vomit, to restrain the impulse to weep, and to imagine that one's present reality is not occurring." Moran poignantly emphasised that these skills were the essential tools required for engaging in what some individuals sought to normalise as "sex work" (ibid).

These specific narratives of Grizelda Grootboom, Ayanda Denge, and Rachel Moran hold significant relevance in discussions on sex work. They offer firsthand accounts of the profound challenges and complex circumstances that lead individuals into the sex industry. Grizelda's story highlights the vulnerability of those forced into sex work due to homelessness, addiction, and limited choices, shedding light on the exploitation that can occur. Ayanda's narrative reveals the impact of childhood trauma and the need for survival on young people entering sex work, raising questions about agency and coercion. Rachel's account underscores the intricate decision-making process and the emotional toll of prostitution while emphasising the psychological skills required for it. These narratives also prompt considerations about legal definitions and policy implications, emphasising the need for clear distinctions and comprehensive, empathetic policies that address

the diverse experiences within the sex industry. Collectively, they humanise the experiences of sex workers, challenge stereotypes, and advocate for more compassionate approaches to addressing the challenges they face.

The three narratives presented here serve as powerful illustrations of the myriad factors influencing women's entry into the sex industry, shedding light on the complex intersection of vulnerability, economic necessity, and survival. While they raise questions about the distinction between sex work and trafficking, they also leave us pondering why individuals might remain in the industry. It's crucial to recognise that the primary motivation for entering the industry often centers on financial gain, akin to any other form of employment. This begs a critical inquiry: does accepting payment for a sexual act necessarily strip a person of their free will and agency within the sex industry? These narratives predominantly illuminate the negative facets of sex work, emphasising the need for comprehensive protections for those engaged in it. However, they also highlight a significant gap in the literature—a paucity of investigation of the feasibility and advantages of the enterprise. Many depictions of sex work, like the classic film Pretty Woman (1990), have glamorised and sanitised the industry while omitting to show the difficult reality that many women in sex work experience, especially in the setting of a developing nation. Such portrayals contribute to a skewed perception of the industry. Within this thesis, these multifaceted aspects of the sex industry have been examined to gain a deeper understanding of its dynamics in SA and the compelling case for policy reform.

Research on sex work is crucial because it may improve health outcomes, defend human rights, influence legislative changes, lessen stigma associated with sex workers, and assist society comprehend the intricacies of this subject. It was essential to approach this study with compassion, respect, and a dedication to the rights and well-being of sex workers. The goal of the questions developed for the interviews with MPLs of the GPL extended beyond mere clarification; they served as a strategic tool for several crucial purposes. It sought to help identify bottlenecks and challenges in reforming sex workers' policies, raising awareness among stakeholders, and empowering advocates with knowledge to develop effective strategies. This information could aid public engagement, allowing for comparative analysis, facilitating the evaluation of progress, and reinforcing principles of accountability and transparency. In essence, understanding the policy change process was pivotal for informed decision-making, effective advocacy, and successful reform efforts in the context of sex workers' policy change in SA. In essence, the questions regarding the policy change process, views of sex work, preferred policy approach, challenges, hinderances and future actions that could lead to policy change were important because it provided a foundational understanding of the broader context within which policy reform efforts take place. It equips stakeholders with the tools and knowledge needed to address the specific challenges and barriers that have impeded sex work policy reform in SA, ultimately contributing to more informed, strategic, and effective reform efforts.

6.2 Question 1: Exploring Policy Formation and Evolution in South Africa

Question 1: Can you give me an overview of your understanding of how policies are generally changed in SA and what needs to take place before a policy is changed? Considering whose inputs are considered during the process?

The goal of this question was to clarify the process of policy change and provide a general picture of how policies are developed in SA. The answer to the question helps this study better understand why reforming the sex workers policy has taken so long. The delays experienced with policy change may be directly impacted if MPLs lack a clear understanding of policy change. This question was directly linked to the theme of the research and the focus on policy change. The aim of this question extended beyond a mere explanation of the policy change process; it served as a strategic tool to inform and guide efforts to reform sex workers' policies in SA. It empowered stakeholders with the knowledge and awareness needed to navigate the complexities of the policy change process and advocate effectively for meaningful reform.

In the interview, Interviewee 1, Chairperson Godfrey Tsotetsi (2019) provided a comprehensive overview of the process involved in both creating and amending policies within the South African context. He elucidated that policy generation typically commenced with the Executive branch, where the initial policy concept took shape. Subsequently, a draft policy was meticulously assembled and submitted to the Legislature or Parliament for deliberation. Public participation then became a crucial phase, marked by public hearings that solicited invaluable inputs from citizens.[53] Once these public perspectives were thoughtfully incorporated, the draft policy was returned to the Executive for further scrutiny. Notably, the government's legal advisors played a pivotal role in this process, meticulously ensuring the draft policy's alignment with the Constitution and relevant legal frameworks. The final step culminated in the President's endorsement, effectively transforming the policy into law. Tsotetsi underscored the significance of this presidential endorsement, as it signified the policy's readiness for implementation. Furthermore, Tsotetsi offered insights into the procedures for modifying existing policies, which often arose when gaps or deficiencies were identified during policy implementation. This endeavour began within the Ministry, responsible for identifying these gaps and proposing pertinent amendments. Subsequently, the proposed amendments were referred to the Legislature or relevant Committee, which conducted further investigations, including public hearings, if deemed necessary. A critical facet of this process was transparency and public engagement. The proposed amendments were disseminated through media channels to solicit public input, concurrently inviting stakeholder contributions through Committee engagement. These inputs collectively informed the redrafting of the policy. After a thorough revision process, the amended policy draft is returned to the Ministry, where legal advisors meticulously scrutinised its compliance with constitutional and legal

[53] The purpose of public hearings is to give the public a chance to give inputs on draft bills before Parliament (Motshekga, 2020).

requirements. The final step of this intricate process entailed the President's approval, ultimately cementing the policy amendments into law. Importantly, Tsotetsi (2019) underscored that while the public possessed the ability to advocate for policy modifications, the primary avenue for such endeavours was through duly elected public representatives. In summary, Godfrey Tsotetsi's elucidation provides a comprehensive and lucid understanding of the multifaceted processes involved in policy creation and modification within the South African governmental framework. His insights underscore the importance of public participation, legal compliance, and executive endorsement in shaping policies that impact the nation (Tsotetsi, 2019).

In the interview, Interviewee 2, the ANC deputy Chief Whip, Thokozile Magagula (2019) emphasised that significant transformations had occurred in Parliament since 1994, marking the advent of SA as a democratic state. Within this democratic framework, she underscored the vital role played in representing the vulnerable segments of society and amplifying the voices of the people.

> Prior to 1994 there was no democracy; it was only a one-party state, which dictated…. For any policy change there was no communication to the people. That's why people revolted to dismantle apartheid government. They weren't involved in decision making in their country… On the issue of sex work … Now in democracy everyone has a say (Magagula, 2019).

She was highlighting the historical significance of people's revolt in dismantling the apartheid government. In the context of sex work, the interviewee was suggesting that democracy allowed for greater citizen engagement in policymaking, indicating a potential shift in attitudes and policies related to sex work. Her encapsulation of this sentiment resonated in her assertion that "it was nothing for us (society) without us" (Magagula, 2019). Interviewee 3, the Chairperson of Committees, Mike Madlala (2019), expounded upon the diverse manifestations of governance. He explicated that the South African government had assumed the form of a constitutional, democratic state, a paradigm where the Constitution held ultimate authority. Referring to the Constitution of the Republic of South Africa, Act 108 of 1996 (section 118), he highlighted the imperative for National, Provincial, and local governments to actively facilitate public participation in the policy formulation process. Later in the interview he noted that SA was a "secular state", where "religious and cultural groups in terms of the Bill of Rights, they may not be denied the right to fight against prostitution as an evil to society". Furthermore, Madlala (2019) delineated the origins of policy proposals, noting that some emanated from the ruling party's manifesto. This manifesto, he elucidated, constituted a compendium of demands and promises that the party presented to the electorate in its bid for electoral endorsement. Simultaneously, he documented that certain policy changes might have stemmed from "internal and external" political pressure, elucidating that this pressure emanated from both within the political party and external to it (Madlala, 2019). The interviewees' insights, set against the backdrop of the past, underscored the evolving nature of South African governance since the advent of democracy in 1994. These insights emphasise the

significance of inclusive representation, the supremacy of the Constitution, and the multifaceted sources of policy proposals, illuminating the intricate dynamics shaping the nation's political landscape.

In the interviews, a comprehensive understanding of the policy formulation and change process in SA was presented, reflecting on past developments. Interviewee 4, the DA Member, Lebogang More (2019), observed that policy formulation was typically the prerogative of the relevant Ministry. Interviewee 5, DA Member: Nkhumeni Ramulifho (2019), underscored the critical role of political will and leadership in influencing and amending policies. He emphasised that policy creation and change were driven by the Executive Cabinet, followed by referral to Parliament and the relevant Committee (Rumulifho, 2019). Intriguingly, Interviewee 6, an anonymous DA Member (2019), delved into the necessity of both a push from the ruling party and an influential champion within that party to prevent policy changes from stalling, especially in controversial and complex areas. He further suggested the value of a commission or study group to provide input, followed by involvement from legal drafters to facilitate the parliamentary process (Anonymous DA Member, 2019). Interviewee 7, the Speaker, Ntombi Mekgwe (2019), articulated a clear framework for setting up the policy agenda to address identified problems. She stressed the importance of public participation, wherein policymakers and government officials engage with citizens and targeted stakeholders. Mekgwe noted that policymakers should consider the views of most citizens and those directly affected by the problem. She highlighted instances such as the 2016 "Fees Must Fall" campaign, where loud and widespread public voices influenced policy decisions (Mekgwe, 2019). Adding to the discussion, Interviewee 8, Deputy Chairperson of Committees, Mpapa Kanyane (2020), delineated various avenues for policy change, including referendums, petitions, and inquiries. He also pointed out the significance of public participation through mechanisms like sector parliaments, Bua le Sechaba, roadshows, and integrated development plans. Kanyane underscored the power of the public in impacting or determining policy changes, citing the examples of sex workers and citizens standing up and demanding change. In summary, these interviews offer a retrospective examination of SA's policy formulation and change processes. They emphasise the interplay of political will, leadership, public engagement, and the various mechanisms through which policy adjustments can be driven, reflecting the dynamic and evolving nature of policymaking in the country (Kanyane, 2020).

6.2.1 Discussion

The South African Constitution adopted in 1996 is the supreme law of the country and serves as the cornerstone of reforms to national policy emphasising the significance of public participation and inclusion in this process. Kotze and Loubser (2017) highlight how the South African Constitution, is often admired for its progressive human rights protections, grants equal rights to all citizens, including the right to life, equality,

freedom, and dignity. However, they note a disconnect between the constitutional values and the more conservative and traditional belief systems prevalent in SA, suggesting potential conflicts with the secular liberal values enshrined in the constitution. Bentley (2013) also praises the South African constitution for its liberalism and progressiveness, emphasising its role in establishing a constitutional democracy where the constitution itself is safeguarded by the democratic system. The Constitution outlines the nation's overall legal structure, including the procedure for formulating policy. Its guiding concepts and provisions must be followed by all legislation and policies. Along with specifying the legal rights and ideals that policies must uphold, it also creates a framework for accountability and public engagement. Constitutional principles are carefully considered while creating policies, and any deviations are subject to court review. The Constitution greatly affects how policies are made, ensuring that they are consistent with the nation's democratic and human rights ideals. Notably, the ANC and DA Members of Provincial Legislature (MPLs) approach the concept of policy change differently. The ANC primarily adheres to the constitutional guidelines for policy change, reflecting a commitment to established democratic principles. In contrast, the DA places a distinct emphasis on the crucial factor of political will, underscoring the necessity for this will emanate from the ruling party. The DA's emphasis on having a political champion within the "ruling party" hints at the party's influence as the official opposition. It recognises that, in a democratic system, policy amendments require majority support, with the opposition party playing a more indirect role in shaping policy change.

Despite the constitutional framework and the potential for policy change, there has been limited progress in amending the policy on sex work in SA. The GPL identified policy gaps related to sex work as early as 1997, as discussed in Chapter 3, Section 3.2.3 on policy developments. While public participation has been consistently stressed by many MPLs, echoing the sentiment of "nothing for us without us," the desired policy amendments have not materialised. Sector Parliaments were introduced as a means of fostering public participation, with the GPL implementing these with sex workers (South African Government, 2016). However, despite these efforts to engage with the challenges faced by sex workers, the policy criminalising sex work has remained unchanged. This persistence in maintaining the status quo contrasts sharply with the evident health-related challenges confronted by sex workers, as highlighted in the South African National Sex Worker HIV Plan (2016-2019). The lack of policy change underscores a concerning disconnect between identified policy gaps and the actions of the Executive. Despite the obvious need for policy reform in sex work, the legislation was still in place, raising concerns about the effectiveness of the policy-making process and how receptive lawmakers were to public opinion. Based on the data from the interviews it highlights how the ANC, which has held the position of ruling party since 1994, was ultimately responsible for advancing or obstructing changes to the sex work policy. In a participatory democracy, the public was granted a substantial degree of influence, making it imperative to address why this policy has not progressed through the

established policy process. Further clarification is needed regarding the policy itself, particularly its contentious aspect of criminalising sex work. In conclusion, these critical questions surrounding the delay in policy change underscore the complexities of the policymaking process within a democratic context and the imperative of ensuring that policies align with the needs and perspectives of the public.

6.3 Question 2: Perspectives on Sex Work and Policy Recommendations

Question 2: Can you outline your views on sex work (such as whether it should be viewed as work or not)? What policy recommendation will you propose for SA, considering the different policy approaches taken in other countries? What are your views on the call for the decriminalisation of sex work in SA?

The discussion on the governance of sex work in SA is significant as it touches upon fundamental issues of human rights, public health, and policy effectiveness. It reflects a broader global conversation about how societies should approach the regulation of sex work and the rights and safety of sex workers. The objective of this question was to delve into the perspectives of politicians regarding sex work. It served as a crucial avenue for understanding their chosen policy stance and approach toward sex work within SA. This inquiry carries profound significance as it unveiled the underlying attitudes and beliefs held by politicians toward sex work, shedding light on the treatment of sex workers within the legislative sphere. This multifaceted question was designed to serve a dual purpose. Firstly, it sought to uncover the nuanced viewpoints of politicians regarding sex work itself, aiming to capture their diverse perspectives and insights on this complex issue. Secondly, it delved into their articulated preferences and recommendations for policy approaches specifically tailored to SA, thereby providing valuable insights into the potential future direction of policies governing sex work in the country. In essence, this question transcends mere curiosity; it acts as a critical conduit for illuminating the intersection of political ideology, societal realities, and policymaking in the context of sex work, ultimately influencing the lives and rights of sex workers within SA's legislative landscape. While the interviews presented this as a unified query, subsequent analysis has dissected it into distinct parts to gain deeper insights.

6.3.1.1 Question 2(a): Views on Sex Work

In the interview, Chairperson Godfrey Tsotetsi (2019) articulated his perspective on sex work within the context of SA's socio-economic conditions.

> My views on sex work – the so-called sex workers – are products of socio-economic issues. High unemployment, specifically in rural provinces. Yes, there are poor families in Gauteng, but what do we put on the table, especially if they are single mothers. It is a reality to acknowledge. They are subjected to terrible conditions though. And if it's the only thing to support themselves and their children and to put something on the table to eat…The government must assist them in helping them. Regulating that service (Tsotetsi, 2019).

Tsotetsi (2019) underscored the vulnerability of those from economically disadvantaged backgrounds, who are often targeted for involvement in the sex industry. He was acknowledging the grim reality faced by sex workers, subject to harsh conditions and abuse from clients, while engaging in sex work primarily to secure basic necessities like food and to support their families. Furthermore, Tsotetsi (2019) advocated for the government's responsibility in creating a safe environment for sex workers to operate. He stressed the importance of offering protection to sex workers from the industry's brutal realities, proposing the establishment of safe spaces and regular health inspections. In his view, sex workers provided a service and should be treated as such, receiving payment akin to any other form of labour. Tsotetsi (2019) believed that while ensuring the safety of women in the industry was paramount, the government should regulate the sector and levy taxes on the services provided. Tsotetsi (2019) rationalised that sex work, with its structured working hours, resembled a regular occupation or career, especially in a country like SA, where full employment might remain elusive.

> I don’t think there can be full employment in this economy. Each and every person can’t get work. We have capitalism and exploitation. Capitalism is a brutal system. The big companies are there to make profit at the expense of the workers. But I still I am not sure about people selling their bodies. It is not good for their dignity (Tsotetsi, 2019).

The quote reflects scepticism about achieving full employment within capitalism's exploitative framework. While acknowledging capitalism's brutal nature, the interviewee expressed uncertainty about sex work's impact on personal dignity. It underscored the intricate relationship between economic structures, worker exploitation, and the complexities of sex work, emphasising the need for nuanced discussions within this context. He also drew parallels between the sex industry and other capitalist sectors, emphasising the exploitation faced by workers within a profit-driven system. He rejected the notion that sex workers were selling their bodies, instead framed their work as offering a service. He favoured the term "sex work" to describe the industry, as it, in his view, "they must still maintain their human dignity" and it was a more humane term (Tsotsetsi, 2019).

Interviewee 2, the ANC deputy Chief Whip, Thokozile Magagula (2019), echoed a similar sentiment, viewing the sex industry as a form of work. She advocated for the establishment of safe areas for sex workers to operate, where clients would pay fairly for services rendered. Additionally, Magagula (2019) emphasised the importance of police protection for sex workers, aligning with Tsotetsi's (2019) perspective on ensuring their safety. In the interview, Chairperson of Committees, Mike Madlala (2019), underscored the importance of defining sex work and expressed his viewpoint:

> Sex work is satisfaction like drinking a beer or whisky. One cannot say after drinking whisky that s/he was working though the person will be drunk (satisfied), therefore sex work is not necessarily work but a soft cushioning of the word prostitution which is considered to have a bad connotation in society generally (Madlala, 2019).

This perspective aims to reduce societal stigma associated with sex work but may oversimplify the complex issues and challenges within the industry, including exploitation and legal considerations. It represented one viewpoint within the broader debate on sex work's nature and societal perceptions. While "commodities considered as being goods produces for the sole purpose of exchange, which in the case of sex there is no one taking another person's sex" (Madlala, 2019). He contended that "for work to be classified as work, there must be an achievement of a desired resultant product" (ibid.). He further elaborated on the definition of work, referencing to Karl Marx's notion of socially necessary time taken to produce a commodity or goods and contended that in the case of sex, there's no exchange of goods, concluding that in "simple terms, there is nothing called sex work" (ibid.). It implied that the term "sex work" itself was problematic, as it assumed the commodification of sex, which the interviewee rejected. This viewpoint may reflect a broader philosophical stance against the commercialisation of intimate activities and underscores the need to reconsider how society views and regulates sex work. It simplifies a difficult topic, though, since it ignores the economic factors, governing laws, and the agency of those who participate in sex work. The relevance of the phrase resides in its capacity to provoke discussions on the nature of sex work, its place in society, and how it ought to be handled from both a legal and moral perspective.

Interviewee 4, Lebogang More, a DA Member (2019), viewed sex work as a trade where services were offered in exchange for payment, categorising sex workers as more akin to "consultants" providing a service. More emphasised the DA's stance on individual rights, advocating for adults' freedom to choose without state interference. According to the DA's perspective, "no state should determine how people model their lives," except in cases of force, and in his opinion the "issue of consent does not infringe on the rights of others." The DA prioritised protecting individual freedom, including the choice to engage in the sex industry (More, 2019). DA Member, Nkhumeni Ramulifho (2019) regarded sex work as a form of employment that required regulation, primarily to combat the stigma associated with it and raise awareness about sexually transmitted infections (STIs). He acknowledged the presence of divergent views on sex work, with some still considering it a sin. Ramulifho advocated for a liberal ideology and the need to regulate the industry through policy, given SA's poverty and high unemployment rates, which led some individuals to turn to sex work as a means of income generation. He highlighted that while some entered the industry temporarily to support themselves (e.g., students paying for their studies), others became trapped due to addiction. He stressed that "sex work wasn't going anywhere" and emphasised the need for protection for sex workers as a minority group (Ramulifho, 2019). The anonymous DA Member (Interviewee 6, 2019) expressed personal caution about defining sex work as "work" and stressed the importance of avoiding the imposition of a party view. They invoked the concept of a "personal conscience clause," emphasising that individuals should have

the right to determine what aligns with their personal conscience. The interviewee argued against political parties imposing views contrary to what individuals believe is right (Anonymous DA Member, 2019).

Speaker Ntombi Mekgwe (2019) believed that "sex work should be defined as work." She justified this view by asserting that the activities performed by sex workers aimed at economic development, social justice, and labour peace. She emphasised that in a constitutional democracy, protecting the rights of all individuals, regardless of their activities, was a fundamental principle (Mekgwe, 2019). Interviewee 8, Mpapa Kanyane (2020), on the other hand, did not align with the notion of sex work. He regarded sex as a natural compulsion driven by lust, pleasure, and procreation. Kanyane's views were rooted in the belief that sex was primarily meant for procreation and not an activity that could be categorised as work. These diverse viewpoints shed light on the complexity of defining sex work and underscore the varying perspectives on whether it should be classified as work or not, along with considerations of individual rights and societal values. There was all an emphasis on recognising it as a form of labour and advocating for the safety and protection of sex workers within a regulated framework in some of the interviews (Kanyane, 2020).

6.3.1.2 Discussion

The interviews with MPLs offered valuable insights into the complex and contentious nature of the discourse surrounding sex work. These discussions revealed a wide spectrum of perspectives held by MPLs, with some not even recognising sex work as a legitimate form of employment. It was crucial to acknowledge that many of these viewpoints were inherently personal, reflecting individual beliefs and values. This diversity of personal beliefs within the political arena underscored the challenges in achieving a consensus on how the government should address sex work through policy measures. The absence of a unified understanding of sex work among politicians posed a significant hurdle in crafting a cohesive legislative framework. This legislative framework was essential for providing clarity, protection, and support for sex workers, as well as ensuring the enforcement of regulations governing the industry. Furthermore, the discourse surrounding sex work in the political sphere mirrored the extensive discussions occurring within society and the feminist movement. These intricate dialogues revealed the deep-seated disparities in opinions regarding the regulation of sex work in SA. Importantly, these divisions transcended the realm of politics and provided a glimpse into the broader societal rifts on this complex issue, as discussed in Chapter 3, section 3.2. Central to this overarching debate were crucial points of contention, revolving primarily around the criminalisation, decriminalisation, legalisation, and partial criminalisation of sex work. These divergent approaches symbolised the contrasting viewpoints on how to effectively address the complex and multifaceted challenges associated with sex work. The absence of a consensus among politicians and within society at large underscored the urgent necessity for a comprehensive and inclusive dialogue. Such a dialogue was essential

for nurturing a shared understanding and crafting effective policies that not only safeguarded the rights and welfare of sex workers but also tackled the broader societal concerns intertwined with this issue.

6.3.2.1 Question 2(b): Preferred policy approach towards sex work

In the interviews with the MPLs, three MPLs expressed support for the legalisation of sex work, two MPLs advocated for the decriminalisation of sex work with regulatory measures, one MPL endorsed the full decriminalisation of sex work, and one MPL articulated conflicted views on the appropriate policy approach towards sex work. Table 6 provides a concise summary of the preferred legislative frameworks advocated by the interviewed MPLs, offering a comprehensive overview of their stances on this matter.

Table 6: Preferred Legislative Framework by MPLs

Interview	Interviewee	Preferred Legislative Framework
Interview 1	Godfrey Tsotetsi	Legalisation (Regulation)
Interview 2	Thokozile Magagula	Legalisation (Regulation)
Interview 3	Mike Madlala	Legalisation (Regulation)
Interview 4	Lebogang More	Decriminalisation (some regulation)
Interview 5	Nkhumeni Ramulifho	Decriminalisation (some regulation)
Interview 6	Anonymous DA Member	Does not endorse a specific policy approach but believed that all options should be thoroughly examined to determine the most suitable one.
Interview 7	Ntombi Mekgwe	Decriminalisation
Interview 8	Mpapa Kanyane	Legalisation (Regulation)

In the interviews with the MPLs, a spectrum of views emerged regarding the regulation of sex work in SA, reflecting the multifaceted nature of this contentious issue. Interviewee 1, Chairperson Godfrey Tsotetsi (2019) supported the legalisation of sex work, citing Holland's policy as a potential model. He emphasised the need for industry control and government protection for sex workers. Tsotetsi (2019) also called for a cost-benefit analysis to determine the suitability of legalisation or decriminalisation in SA. In his support for the legalisation of sex work, he spoke about the fact that there should be "controlled spaces" for sex workers to operate from, which had the potential to mean that "women would be safer" (Tsotetsi, 2019). Interviewee 2, the ANC Deputy Chief Whip, Thokozile Magagula (2019), advocated for the legalisation of sex work, considering it a legitimate form of employment. That it should be legalised "as part of work." "Sex work would be there whether we like it or not." Magagula (2019) stressed the importance of regulating the industry through laws and taxation. She emphasised the need for moderate regulations, including the identification and training of industry participants, in her words the "bosses be known and trained" (Magagula, 2019).

Interviewee 3, the Chairperson of Committees, Mike Madlala (2019), believed that SA's high unemployment rate was used as a justification for classifying prostitution as a form of work. In his words "this is how the unemployed man, and women derive[d] their livelihood even if there [was] no commodities or goods produced" (Madlala, 2019). He acknowledged the historical prevalence of sex work and the difficulty of enforcing laws against it. Madlala (2019) proposed legalising registered brothels to control and regulate the industry, drawing inspiration from Denmark and the Netherlands. He highlighted the positive outcomes of such policies, including improved health services and reduced population growth. He explained that prostitution "dated back to more than 200 years BC and had prevailed throughout as it is unstoppable." He further explained how "sex is an action taking place, not in public spaces, [therefore] no amount of police action or laws [would] be able to prevent or enforce criminality in that regard." Even though this was the case, he observed how "uncontrolled sexual activities result in untold sexually transmitted diseases (STDs) which [had] a serious impact/repercussion on government resources."[54] Considering this, he felt that the "best view, therefore, [was] that government should legalise brothels which are registered, for control purposes." Madlala (2019) gave examples of how in Denmark and the Netherlands, the governments legalised prostitution and brothels in "red-light districts." Legalisation he outlined meant that prostitutes would regularly visit a doctor for check-ups, while brothels were compelled to supply condoms and ensure preventative measures to prevent STIs. He explained how, under legalisation, both prostitutes and brothels would be expected to pay tax, and nobody would be allowed to practice without an approved-registration certificate. He further described how visitors to Denmark were "advised on arrival that you should not meet anyone on the streets and if you wanted to fulfil your sexual needs, you must visit the state-regulated brothel where there are inspectors and prostitutes which are safe." He observed that this policy has resulted in that country's decreased health budget and population growth. He remarks how in Denmark there were "limited unwanted babies and termination of pregnancies" (Madlala, 2019).

Interviewee 4, the DA Member, Lebogang More (2019), supported decriminalisation. In his words, "it is a right for everyone but not to infringe on others." Despite this he also acknowledged the benefits of legalisation noting that:

> A complete decriminalisation will upset too many people. Partial will be discrimination which will be contested (it's discrimination against individuals). It seems to be a better compromise (More, 2019).

More (2019), supported the decriminalisation of sex work while advocating for specific regulations to ensure safety and proper conduct within the industry. He stressed the importance of designated operating

[54] STIs and STDs are similar and "often used interchangeably." Despite this they are "not exactly the same." The difference is that a "disease is usually an obvious medical problem with clear signs and symptoms." Infection on the other hand "may or may not result in disease" (The Well Project, 2020). The term used is in line with the terms used in the interview by the interviewee.

spaces, taxation, and preventing sex work near sensitive locations like churches and schools. More (2019) believed that decriminalisation offered sex workers agency and reduced the potential for violence and theft. An example he gave of regulation in practice included a "space to operate from" to ensure the safety of those in the sex industry. He also feels the need for those making money to declare this money and pay taxes. **S**ex workers cannot just be allowed to trade "just anywhere," and there was a need for some regulation to prevent them from, for example, working next to churches and schools (ibid.).

More (2019), explained how the benefits of legalising the industry included that the sex industry could be "monitored, controlled and health issues could be checked." He felt that the sex workers could utilise their agency under decriminalisation and how those forced by circumstances could "choose and enjoy the career path." At the same time, sex workers would have "rights to work or give their service" and how it was in his opinion a peaceful solution to poverty where there was "no bloodshed" and "nobody was robbed" (More, 2019). More's (2019) stance on the decriminalisation of sex work reflected a nuanced perspective. He recognised the importance of decriminalisation to grant sex workers agency and reduce violence within the industry. More (2019) also acknowledges the potential benefits of a regulated system, ensuring safe operating spaces and taxation. His argument for specific regulations, such as preventing sex work near sensitive locations, highlights his commitment to balancing individual rights with broader societal considerations. Overall, More's (2019) position underscores the potential advantages of decriminalisation, emphasising its potential to empower sex workers and mitigate the negative consequences associated with criminalisation.

Interviewee 5, the DA Member, Nkhumeni Ramulifho (2019), supported the decriminalisation of sex work to protect sex workers from harassment and reduce stigma. He emphasised the need for specific regulations to create a safe operating environment and manage sexually transmitted infections (STIs). Ramulifho argued that decriminalisation empowered sex workers and allowed clients to engage without fear of legal repercussions. He drew parallels with marijuana legalisation, suggesting that conditions should accompany decriminalisation. He observed the need to have an "environment to operate within, with particular requirements" that would regulate how the industry operates. In his summary of why decriminalisation was the best policy option, he argued that it gave sex workers' "choices," "protects them from harassment," and removed the "negativity linked to sex work." It would also help the "Department of Health (DOH) to manage STIs and provide preventative measures for this." Under decriminalisation, sex workers could "do their job openly and with pride" and "clients [would] not need to hide as it [would] be legal." Ramulifho (2019) argued that decriminalisation protected the choices and rights of sex workers (Ramulifho, 2019). Interviewee 6, the anonymous DA Member (2019), expressed his "personal conflict regarding this." He explains the context of massive police incompetence and corruption in correcting abuses

and law enforcement/implementation difficult in SA. He felt that it would be best to do a "trial change of the legislative frameworks in a delineated area first and then move on from there." Therefore, he did not support any legislative framework to govern sex work but felt a need to trial the different approaches to see what would work best for SA. Overall, he advocated for a trial-and-error approach to find the most effective solution (Anonymous DA Member, 2019). The anonymous DA Member's suggestions for a trial change in a specific area before committing to a legislative framework revealed a cautious approach. Instead of endorsing a specific policy, he advocated for a pragmatic trial-and-error method to determine the most effective approach for the country. This approach reflected a desire to find practical solutions to the complex issue of sex work regulation in SA, acknowledging the need for careful experimentation to address the unique challenges facing the nation.

Interviewee 7, the Speaker, Ntombi Mekgwe (2019) supported the total decriminalisation of sex work and proposed amending existing labour laws to include sex work as a recognised trade. She observed the need to "amend the Basic Conditions of Employment Act (BCEA) and the Labour Relations Act (LRA) to include sex work as an identified trade whether selling or buying of sex as the purpose of economic development, social justice and labour peace are fulfilled by sex workers." She explained how this could "eliminate the abuse that many sex workers were confronted with in their day-to-day work performance and gave protection to sex workers." She also highlighted that sex workers would also be liable to pay income tax like all other workers in the country. She summarised why decriminalisation was the preferred policy option by noting how "sex workers would be protected; the stigma associated with sex work might be changed; it [could] secure human rights for all, and health services could be accessible to all." Mekgwe (2019) emphasised the need to eliminate abuse and stigma, protect sex workers, and provide them with access to healthcare. In this context she argued "brothels could be registered as workplaces for sex workers and minimum standards set as to how they should be structured, where they should be located, [and that] children under the age of 18 years should not be allowed." She noted the need for the "protection of sex workers by the law and the brothels." Meanwhile "brothel-owners could be found to have committed acts of criminality if they do not meet certain minimum standards like safety and provision of condoms and other related health services" (Mekgwe, 2019). Interviewee 8, Mpapa Kanyane (2020), advocated for a policy aimed at regulating the sex industry to prevent infringements and violations. While not specifying a particular approach, Kanyane believed that a policy legalising and regulating the industry would be acceptable and prevent violation (Kanyane, 2020).

6.3.2.2 Discussion

The responses from the MPLs shed light on the diverse array of perspectives regarding the legislative framework for governing sex work in SA. Notably, the first three ANC MPLs expressed support for legalising

sex work, a stance at odds with the party's public endorsement of decriminalisation. This divergence within the ANC raised questions about the party's unified stance on the issue, particularly in defining the nuances of decriminalisation. Concurrently, the NCOP conducted a study tour to Sweden in October 2017 to explore the concept of partial decriminalisation (PMG, 2018). These inconsistencies in the ANC's positions underscored the complexity surrounding sex work legislation within the party. In contrast, the majority of DA members interviewed endorsed the decriminalisation of sex work while acknowledging the need for certain regulations to ensure the safety of individuals in the industry. This stance appears to blur the line between decriminalisation and legalisation, as regulations akin to those for legalised industries are advocated. Two DA MPLs firmly labelled their position as "decriminalisation," yet the proposed framework seems aligned with what others might term "legalisation," as demonstrated in countries like Denmark. Notably, only one interviewee, Ntombi Mekgwe (Interviewee 7), explicitly supported "full decriminalisation" as conventionally defined. Despite these varying views, there was a consensus against the continued criminalisation of the sex industry, highlighting a shift away from this punitive legislative approach. This shift suggested an openness to alternative legislative frameworks, even among those who may held negative perceptions of sex work. The ideas of first-wave feminism, which were focused on obtaining gender equality and legal rights, were analogous to the changing cultural perspectives on women's roles that were reflected in this shifting viewpoint. The shift in beliefs pointed to changes in the traditional liberal and radical feminist views around sex work. It also showcased how more people were able to separate their opinions from what was best for those in the industry. The socio-economic conditions in SA, specifically unacceptably high poverty and unemployment levels, were noted as key drivers of the sex industry. Further drivers included the intersection of race, class, and gender, as discussed in Chapter 5, section 5.1.1.5. Overall, sex workers were mainly burdened by their socio-economic circumstances, which pushed them towards the sex industry. Within this context, there was agreement on how women deserved to be protected and for their human rights to be respected. In the context of sex work, the contradictory view pertained to whether it represented the ongoing subordination of women to men or if it signified women’s liberation.

The question of whether or not sex work represented women's emancipation within feminism was however a topic of continuous discussion. Some people made the liberal feminist claim that sex work may increase self-esteem (Weitzer, 2005d:221). This transformation toward a more liberal stance on sex work in SA was evident, mirroring Foucauldian theory. Foucault's concept of the "panopticon" and self-surveillance revealed how legislation could discipline the body, which applied to the criminalisation of sex work (Foucault, 1977). Modern society often controlled sexual behaviour through institutions like marriage and moralised sex outside wedlock, by terming it deviant sex (Lucas, 1995:48). Prostitutes were perceived as transgressors who defied societal norms. However, the demand for sex work complicated the pursuit of moral purity. The safety

concerns for sex workers were framed as matters of women's well-being, but radical feminists argued that this perpetuated patriarchal surveillance (the male gaze), maintaining the status quo. The evolving discourse on sex work and the shifting perceptions of women's agency and autonomy contributed to the ongoing debate on the legislative framework for the sex industry in SA. The evolving discourse on sex work and changing perspectives on women's agency and autonomy have contributed to ongoing debates about the legal framework for the sex industry in SA.

6.4 Question 3: Changes and Hinderances/Stumbling blocks to change in the sex work policy.

Question 3: In your view, how has the sex-worker policy evolved or not evolved since 1994? And, if not, why has the sex-worker policy not seen any significant change to date?

Question 3 assumed a pivotal role in the discourse on sex work within this thesis due to its multifaceted contributions. This question aimed to unravel the intricacies of the sex work policy, focusing on both its evolution since 1994 and the barriers obstructing substantive policy change. Interviewees offered a nuanced perspective on the historical trajectory of sex work policy and the persistent roadblocks to transformative shifts. This question sought to gauge whether any changes had occurred in the sex work policy and the factors contributing to the ANC government's reluctance to enact substantial revisions. It was a crucial component of discussions on sex work, shedding light on the historical, political, and social dimensions of this complex issue. Question 3 provided valuable information for policymakers, advocates, and researchers striving to improve the lives and rights of sex workers and address their challenges. Policy changes and obstacles to policy change are inherently intertwined in the policymaking process. Policymakers posing questions about policy changes often receive responses that reveal not only proposed shifts but also the associated challenges and hindrances. These insights help policymakers identify barriers, understand sources of resistance, evaluate past efforts, and recognise key stakeholders in the policy arena. Additionally, discussions on policy change yield insights into public opinion, resource constraints, legal and regulatory frameworks, and innovative mitigation strategies. In essence, questions about policy change serve as a gateway to comprehending the complex policymaking landscape, enabling the development of more informed and effective strategies to navigate, and overcome obstacles to desired policy changes.

Interviewee 1, Chairperson Godfrey Tsotetsi (2019) primarily directed his focus towards the second segment of the question. In answering this question, Tsotetsi (2019) explained that, in his view, the stumbling blocks were due to a lack of leadership to ensure that the policy change was carried through. He emphasised the need for the policy change to be led and pushed by a public official. Tsotetsi (2019) outlined how Gauteng, a highly populated province known for its better opportunities, was supposed to be championing the process of policy change in the sex worker policy. He further argued that Gauteng should champion the process even

though previous attempts to push for this policy change were unsuccessful. Part of the challenge he raised was the fact that political terms ended. The new leadership did not follow up on the issues left by the old administration. He further observed how there was generally a "lack of passion on a particular issue" and therefore "new leadership focused on other issues that they felt were more important." Additionally, he mentioned the lack of clear policy direction while there were gaps in the current policy. He highlighted the "issues of leadership," noting that it was critical that the "ANC guide society" (Tsotetsi, 2019).

On the other hand, Interviewee 2, the Deputy Chief Whip Thokozile Magagula (2019), noted a perceptible reduction in the harassment of sex workers. She remarked on their increased visibility during daytime and a decline in abuse, suggesting some positive shifts over time. Regarding the policy delays Magagula (2019), explained how some of the delays were due to the clients of sex workers. She mentioned that some clients were "big fish," meaning they were in positions of power, including politicians, police, and businessmen. At the same time, businesses were seen to influence the government, impacting policy change in this area. In line with this, the continued criminalisation of sex work helped keep the clients' confidentiality, giving them more control over sex workers. For example, she explained how if sex work were to be regulated, the sex workers could take clients to court if they did not pay. The other stumbling blocks she observed were the change in Ministers in the departments and the lack of follow-through on what the previous Minister worked on. New processes were started with new priorities. She noted that the "actual industry is not involved in the process, which is also causing challenges" (Magagula, 2019).

Interviewee 3, the Chairperson of Committees, Mike Madlala (2019), painted a sobering picture of policy evolution, asserting that there had not been any "observably significant policy changes in SA regarding the subject matter as even the sector itself is not properly coordinated." He attributed this stasis to a lack of proper coordination within the sex work sector. Madlala recounted efforts by the GPL to engage sex workers "through its program of Public Participation and citizen responsibility had coordinated several sector parliaments" for the "so-called" sex workers. The "purpose was to find an adequately coordinated resolution that represents their aspiration." He believed that sex workers had "no interest to contribute to policy formulation [which could] legalise their industry" (Madlala, Interviewee 3). Madlala (2019) recounted efforts by the GPL to engage sex workers through sector parliaments and public participation programs, only to face challenges as sex workers demanded compensation for their participation, citing lost income from clients. The "purpose [of these sector parliaments] was to find an adequately coordinated resolution that represents their aspiration." He believed that sex workers had "no interest to contribute to policy formulation [which could] legalise their industry" (Madlala, 2019). This, he argued, hindered meaningful policy formulation.

In a similar vein, Interviewee 4, the DA Member, Lebogang More (2019), acknowledged the engagement with sex workers through the GPL Sector Parliament but did not delve deeply into the policy evolution aspect. More (2019) however, attributed the stumbling blocks to policy change to the "contested views on the topic leaving government caught between a rock and a hard place." He highlighted how moral stances taken in society, primarily from religious institutions, who considered sex work morally wrong, posed a challenge to policy change. Simultaneously, there was the government's indecisiveness on the matter. More noted the coexistence of raids and workshops, reflecting significant policy uncertainty in this area, and emphasised the need for the government to clarify its position. The DA, he explained, was currently prioritising other issues like corruption and poverty, with potential future policy considerations on subjects such as sex work contingent on addressing these core concerns (More, 2019).

Interviewee 5, the DA Member, Nkhumeni Ramulifho (2019), mentioned how commitments to policy change did not progress as expected. He stressed the need for policy change in the sex workers policy to have occurred "within this term." Despite the government conducting a "sex workers' summit" to gather sex workers' views, these efforts often seemed to culminate without tangible results. Ramulifho (2019) emphasised that while the government engaged with sex workers, follow-through on commitments remained lacking, emphasising the necessity for the government to transition from mere discussions to concrete actions (Ramulifho, 2019). Interviewee 6, an anonymous DA Member (2019), acknowledged the intricacy of addressing this issue, noting that "it [was] a difficult nettle to grasp, and political parties are internally divided on it. Simultaneously, it is politically easy to kick it down the road." This recognition highlighted the internal divisions within political parties and the political complexities that have contributed to the inertia in driving substantial policy changes related to sex work (Anonymous DA Member, 2019).

Interviewee 7, Ntombi Mekgwe (2019), provided comprehensive insights into policy changes over the years. She highlighted legal challenges mounted by brothels and sex workers to contest discriminatory laws, with an unsuccessful appeal in 2002. She also noted the 2007 amendment to the criminal law, which further criminalised sex work. Mekgwe (2019) underscored the ANC Women's League and Gender Commission's support for sex work decriminalisation, as well as the SALRC's 2017 recommendation for either maintaining the current laws or partial decriminalisation. Furthermore, she detailed the GPL's annual Sector Parliaments with commercial sex workers, serving as a platform for understanding their issues and raising them with the Executive, although concrete outcomes were yet to materialise. Mekgwe (2019), explained that even though the GPL and the Executive led by the Premier convened with the sex industry once a year through Sector Parliament sessions, she believed that "there [was] still more work to be done." She expressed uncertainty about the success of the issues raised during these sessions, suggesting that tangible

progress remained to be seen. Mekgwe (2019) identified the primary stumbling blocks in policy change as stemming from the lack of a comprehensive understanding of the challenges faced by sex workers, driven by the stigma associated with sex work. She noted that many people still used the term "prostitute" when referring to sex workers and that those advocating for change often faced social ostracism. Mekgwe (2019) underscored the influence of SA's predominantly religious population, which perceived sex work as a sin, and argued that insufficient pressure had been exerted on the government to revise laws in favour of sex workers (Mekgwe, 2019). Interviewee 8, Mpapa Kanyane (2020), acknowledged the existence of GPL sector parliaments with sex workers. Kanyane (2020), observed that "a policy [was] a result of a consultative process, especially with relevant stakeholders." In this context, he felt that "the state [had] not paid attention to the matter, and it [had] not been entertained at all levels." Kanyane (2020) further suggested that activities like sector parliaments seemed to serve as mere checkboxes and should be explored more deeply to achieve a meaningful impact on policy change (Kanyane, 2020).

6.4.1. Discussion

The multifaceted set of responses to question 3 unveiled a mixed landscape of policy changes and challenges, providing valuable insights into the complex dynamics surrounding sex-worker policy evolution in SA. Developments in the policy around sex work were largely linked to efforts made by government through sector parliaments conducted with sex workers. However, the effectiveness of these engagements has been limited for various reasons. One recurring theme was the perceived lack of seriousness among sex workers participating in these sessions. This sentiment was particularly highlighted by Mike Madlala (2019), who even referred to the attendees as "so-called sex workers." This scepticism about the authenticity of participants underscored the challenges of visually distinguishing a sex worker from any other individual, as sex workers often lead nondescript lives while engaging in the industry for economic reasons. This situation resonated with existing literature that linked the stigma experienced by sex workers to the criminalised nature of sex work, which encompasses "public stigma" (Konstant et al., 2015:S3). Notably, this stigma tended to be associated with an individual once their involvement in sex work became known. Consequently, many sex workers concealed their profession and were hesitant to openly admit their status as sex workers. This secrecy further complicated efforts to engage sex workers in policy discussions and government initiatives. Furthermore, it appeared that the resolutions generated from these engagements did not translate into tangible actions or policy changes. This lack of follow-through on the outcomes of sector parliament sessions contributes to the frustration and disillusionment expressed by some respondents, these are particularly mentioned by Clara Singende (2019) in the interviews with Organisations. The inability to translate discussions into policy actions reflected a broader challenge in the policy-making process. Overall, these findings underscored the complexities surrounding sex work policy in SA. They highlighted the difficulties

in engaging sex workers effectively in policy dialogue, given the stigma associated with their occupation and the challenges in identifying them within the broader population. Moreover, the limited success of these engagement initiatives pointed to broader hurdles in translating policy aspirations into actionable change within the legislative and regulatory framework.

Most of those interviewed concurred that the primary stumbling block to policy change was associated with a lack of political will. The issues around political will were also raised in the literature review, Chapter 4. There was a consensus in the interviews that issues often didn't carry over across different political terms. Furthermore, delays were attributed to clients' desire to keep their identities hidden. Some interviewees believed that sex workers were not sufficiently committed to assisting in the development of new policies. Another significant obstacle was the moral opposition to the decriminalisation of sex work. Additionally, communities appeared to lack awareness of why sex workers were in the industry and the daily challenges they faced. The MPLs acknowledged government efforts related to sex workers but noted a lack of follow-through on these initiatives. The stumbling blocks mentioned were perceived as political, social, or attributed to sex workers themselves. Attributing blame to individuals within the sex work industry for the absence of policy change was unjust. Especially in a context where a substantial portion of sex workers, often categorised as "survivalist sex workers," originated from impoverished backgrounds and had limited access to education, potentially limiting their ability to engage in policy formulation or offer input. Consequently, many relied on organisations such as SWEAT to advocate on their behalf. Furthermore, the criminalisation of sex work created a perilous environment for sex workers, deterring them from participating out of fear of arrest or legal repercussions. While Question 3 acknowledged an awareness of the obstacles to policy reform, it's crucial to recognise that mere awareness alone was insufficient to drive meaningful policy change.

Government delays were closely associated with changes in political terms. There was a recognised need for the government to collaborate with sex workers to overcome these obstacles. Commitment from both the government and sex workers could potentially lead changes in the legislative framework. Moreover, society needed to be educated about the issues faced by sex workers. Concerns related to clients also merited attention, as influential clients could exert pressure on the government to resist policy changes. Given the anonymity of clients, it was challenging to determine whether those opposing policy changes were clients themselves or simply held moral objections to sex work. This highlighted a significant challenge in understanding the motivations of individuals opposing policy changes in the sex work industry, as the anonymity of clients complicated the distinction between those with personal involvement and those driven by moral objections. Simultaneously, most of the interviewed MPLs emphasised the government's responsibility to regulate the industry. In a manner reminiscent of the diversity of feminist perspectives on

sex work, MPLs exhibited varying views on the issue. Even those who opposed sex work continued to call for government oversight of the sector. The Constitution and the Bill of Rights emphasise that all South Africans, regardless of their occupation, have a responsibility towards the government. Consequently, there was unanimous agreement that the government should guarantee the protection of all individuals. There was no consensus on the best means to safeguard sex workers in SA, even though the need for protection was accepted. The requirement that the government create secure settings from which sex workers could conduct their business, including granting access to crucial healthcare services, served as the cornerstone for the legalisation of sex work.

Historically, societal norms aimed to confine women to "reproductive roles," with sex reserved for the context of marriage (Coovadia, 2009). Paradoxically, prostitutes were viewed as a "necessary evil" because they ostensibly kept more virtuous women safe from male sexuality (Thusi, 2015:207,211). Patriarchy reinforces the confinement of women to the home, leading to male dominance in positions of authority. As a result, legislation related to sex work aimed to regulate both the body and sexuality within society. While sex work was seen as a necessary evil, it also symbolised women gaining control over their sexuality (Bell, 2009:4). Consequently, any changes in sex work policy could potentially diminish state control over the female body, possibly contributing to the lack of political will. At the societal level, the dearth of political support for legislative change stemmed from lifelong socialisation to accept sexual norms. For instance, men were encouraged to explore their sexuality, while women were expected to remain chaste until marriage. These norms were perpetuated through religious and patriarchal influences (Kambarami, 2006:3).

6.5 Question 4: What needs to take place to see a change in the sex worker policy.

Question 4: In your view, what will need to take place to see a change in the sex-worker policy in SA? What form do you think such a change, if any, will need to take?

Question 4 sought to elicit insights from the interviewees regarding the necessary conditions for bringing about a change in SA's sex worker policy. The aim was to tap into their perspectives on the pragmatic steps required to initiate a policy shift rather than their personal policy preferences. By focusing on the process and direction of potential change, this question aimed to extract actionable insights that could contribute to the policy change discourse in SA. These insights are invaluable for understanding the procedural aspects of policy transformation and for providing guidance on the strategic actions that can be taken to advocate for and facilitate policy change in the realm of sex work. In essence, Question 4 served as a critical component of the broader discussion on sex work policy, offering a roadmap for advocacy, reform, and engagement with relevant stakeholders in the policy arena.

In his interview, Godfrey Tsotetsi (Interviewee 1, 2019) reflected on Gauteng's prior attempts to instigate policy change in the policy governing sex work, highlighting their lack of success. He emphasised the crucial role of a "vocal civil society and academics to push for policy initiation" stressing the need for these voices to "sustain and people must make noise and so on" to ensure "aggressive agitation for policy change." Tsotetsi (2019) believed that both civil society and the public needed to actively lobby for change, asserting that generating significant public outcry was essential to capture the government's attention. He identified Sector Parliaments as suitable platforms for raising these concerns and proposed that the public should also engage with the Speaker of the Legislature to inquire about the lack of policy change. Tsotetsi (2019) pointed out the option of utilising the Petitions Committee to formally lodge petitions that would necessitate government responses. If these avenues failed to yield results, he suggested taking the matter as far as the CCT. Overall, he underscored the importance of leaders listening to the people and taking proactive steps. He also mentioned the role of academic institutions and researchers in identifying issues related to sex work, emphasising that researchers should highlight these problems, ultimately paving the way for a policy response (Tsotetsi, 2019). In a SA context where a "vocal civil society" already exists, this questions the effectiveness of their strategies in influencing government policies. To ensure their advocacy efforts have impact, these organisations need to consider factors such as communication channels, forming alliances, conducting research, engaging with communities, political lobbying, long-term commitment, and adaptability. By addressing these aspects, civil society groups can maximise their influence and contribute to meaningful policy change.

In her interview, Thokozile Magagula (Interviewee 2, 2019), the ANC Deputy Chief Whip, highlighted the necessity for comprehensive consultation with sex workers to reach a mutually agreeable resolution. She emphasised the importance of convening a National Conference involving sex workers to proactively address potential protests that might arise if the proposed resolution were to be implemented. Magagula (2019) noted a significant challenge: the sex work industry itself was not actively advocating for change. To navigate this, she proposed a leadership role for the Presidency and suggested that the Women's Ministry develop a term of reference (TOR) regarding changes to the policy with the Department of Women, Children and People with Disabilities (DWYPD) leading the process. Despite these national considerations, she believed that change could be instigated at the Gauteng level through a "Private Member's Bill," allowing Gauteng to spearhead the process, with the national level subsequently following suit. Magagula (2019) emphasised the need for Sector Parliaments to carry meaningful weight, emphasising that resolutions arising from these platforms should be effectively processed. She also underscored the importance of achieving community acceptance, drawing parallels to the reduction in HIV stigma, where individuals with HIV are now embraced without judgment. She suggested that demarcated areas for specific industries could

potentially contribute to reducing the stigma associated with sex work. In conclusion, she stressed the importance of garnering government and community support, advocating for comprehensive education and engagement with the community on the proposed policy changes. Her interview closed with poignant questions: "why are we quiet? Why are we waiting for the affected to come out when they have spoken?" (Magagula, 2019).

In his interview, Mike Madlala, the Chairperson of Committees (Interviewee 3, 2019), delineated a comprehensive approach to address the challenges associated with changing the sex worker policy, especially in the face of cultural and religious opposition. He stressed the necessity of conducting "extensive consultation with all forms of stakeholders." During this process, Madlala (2019) underscored "the government need[ed] to provide reasonable and relevant information as to why it [was] justifiable for it to take the route of legalising prostitution." Madlala (2019) outlined the critical components of these consultations, encompassing issues such as the "constitutional compliance on health matters," "prevention of STDs, i.e., HIV/AIDS," "implications to healthcare institutions and health resources," "regulations and registrations of prostitution and brothels" and "cost implications to SA revenues of unregulated prostitution in the country." To effectively engage stakeholders, Madlala (2019) recommended employing diverse communication channels, to "be in the form of pamphlets and posters, radio and TV debates, drama and plays, interviews with politicians and experts on the matter, as well as public hearings." This multifaceted approach aimed to ensure that all voices were heard, information was disseminated comprehensively, and public discourse facilitated a well-informed decision-making process regarding the policy change (Madlala, 2019).

Mike Madlala (2019) emphasised the significance of the South African Constitution and the Bill of Rights in the context of sex worker policy. He pointed out that these foundational documents granted "everyone the right to access health care services, including reproductive health care" and necessitated that the state takes responsive measures within its available resources to progressively realise these rights. While these measures may not "totally eradicate illegal prostitution and the spread of STDs." Madlala (2019) argued that sexual activities often occurred in concealed and private settings that were challenging for law enforcement to regulate effectively. Additionally, Madlala (2019) highlighted that the Bill of Rights also upheld the rights of religious and cultural organisations to "fight against prostitution as an evil in society." However, he underscored that when one person's rights intersected with the rights of others, several factors must be considered. These factors included "the nature of the right; the importance of the purpose of the limitation; the nature and extent of the limitation; the relation between the limitation and its purpose and less restrictive means to achieve the purpose." This comprehensive analysis showcased the complex legal and ethical considerations surrounding potential changes in the sex worker policy in SA (Madlala, 2019).

Lebogang More, the DA Member, (Interviewee 4, 2019) reiterated the call for "extensive consultations and dialogues with all role players," emphasising the need for "public representatives to want change" and a "clear policy direction and monitoring of the policy's implementation." He stressed the necessity for a concerted "push or drive" toward policy change. Concurrently, he argued that the current policy should face scrutinised and challenged on both national and provincial fronts. More (2019) expounded on the potential strategy for change, centring on the role of the Gauteng Province. He proposed that Gauteng could take the lead in lobbying for change by providing a mandate to the NCOP to enable them to champion the viewpoint within the parliamentary sphere. Within the democratic framework, he emphasised the importance of aligning with the majority view in the legislative body to facilitate the adoption of a motion. Once a motion received approval at the provincial level, it could be elevated to the NCOP for inclusion on the national agenda. Furthermore, more underscored the necessity of addressing issues related to taxation on a national scale. On a provincial level, he underscored that Gauteng should continue to bear the responsibility for ensuring the safety and well-being of sex workers within the province. This comprehensive approach highlighted the intricate dynamics between different tiers of government and the legislative processes required to advance policy change in SA's sex worker policy (More, 2019).

Nkhumeni Ramulifho, the DA Member, (Interviewee 5, 2019) reflected on the imperative need to "relook the resolutions made by sex workers themselves" and to "re-establish the process and look at the next step." He emphasised the significance of establishing precise timeframes once the policy change process had commenced. Additionally, Ramulifho (2019) underscored the potential avenue for change through a private member's bill, allowing for advocacy within the NCOP to champion the bill as a submission originating from Gauteng. Simultaneously, Ramulifho (2019) highlighted the importance of holding the President and the Speaker of the Gauteng Provincial Legislature (GPL) accountable for their commitments to various resolutions. These measures were seen as integral to the process of advancing policy change (Ramulifho, 2019). On the other hand, the anonymous DA Member (Interviewee 6, 2019) expressed a contrasting perspective, suggesting that there might "never be huge public support for any change, and it [might] need to be initiated from above." This viewpoint contended that societal acceptance of a change in the sex worker policy was unlikely, necessitating political backing for any substantive shift in the status quo. This distinction highlighted the role of political leadership in spearheading policy change efforts given the anticipated challenges in garnering broad public support (Anonymous DA Member, 2019).

Ntombi Mekgwe (2019) underscored the necessity for "radical awareness to be done," with a call for "gender activists and public representatives need to put the item on the agenda." Simultaneously, she emphasised the importance of "lobbying influential people and organisations to support the women's

organisations, civil society groups, as well as the CGE and the Human Rights Commission (HRC) should take this matter up and work together" advocating for their collaborative efforts in addressing the matter (Mekgwe, 2019). Meanwhile, Mpapa Kanyane (2020) emphasised the importance of engaging with pertinent stakeholders to drive changes in the sex worker policy. He also suggested that the government should initiate comprehensive studies on the subject, both at academic and governmental levels, with the belief that government-led research could provide a more comprehensive societal perspective. Kanyane (2020) stressed the significance of comparative studies, which analysed approaches taken by other countries, to propel SA toward meaningful change in its sex worker policy. His viewpoint highlighted the critical role of well-informed research in informing legislative modifications (Kanyane, 2020).

6.5.1 Discussion

In the interviews with MPLs, the onus appeared to fall on civil society to ensure that the need for policy change remained on the political agenda and to actively lobby for change. Constitutionally, it was the government's responsibility to identify gaps in policies requiring attention. However, there was an expectation among MPLs that civil society organisations and sex workers themselves would bring these challenges to their attention. This presented a contradiction as, on one hand, there was an emphasis on the government creating a safe operational space for sex workers, in line with their responsibilities. On the other hand, it was imperative that the government listen to and incorporate public perspectives. Sector Parliaments were recognised as platforms for sex workers to voice their concerns, yet they were seen by some as mere bureaucratic checkboxes, lacking real impact. The proposition of a National Conference with sex workers was raised, but its effectiveness and the subsequent actionability of its resolutions remained uncertain, mirroring the ambiguity in approaches to policy change and accountability.

The statement by Mekgwe (2019) that "gender activists and public representatives need to put the item on the agenda" was significant. It highlighted the collaborative role of gender activists and public representatives in influencing policy by placing gender-related issues on the agenda. It also underscored the power of agenda-setting in policymaking and emphasised the need for advocacy, awareness-raising, and policy responsiveness in advancing gender equality and addressing gender-based discrimination. This intersection of activism and politics underscored the importance of public representatives being responsive to the needs and demands of gender activists, ultimately leading to informed public discourse and concrete policy outcomes that promote gender equity.

The President and the DWYPD were seen as potential leaders in the process of policy change. Some MPLs mentioned the Private Member’s Bill as a strategy that could be used to push for policy change. It was

outlined that the most effective way to garner national support for legislative change would be through the NCOP. There was a view that the government needed to educate communities around sex work. However, it was argued that civil society and the public would need to work together for policy change. Foucault's (1977) concept of power, emphasises how it emerges from the collective efforts of civil society and the public, suggests that policy change can be driven by the collective action of these groups, which can exert enough influence to bring issues to the government's attention and shape the political agenda. The effectiveness of this collective action hinges on a unified voice representing a common message, as it signals a shared stance to the government. Recognising that past divisions in messages to the government has led to debates and policy stalemates concerning sex work in SA, the importance of a cohesive and collective approach to governance in this context becomes evident. In line with Foucault's (1977) understanding of power and how power comes from below, a collective effort from civil society and the public was believed to have the potential to make enough noise to capture the government's attention and put policy change on the political agenda. The key to this being effective was seen as the collective standing behind a common message, representing a unified voice to the government. It was acknowledged that divisions in the messages to the government had previously resulted in debates on the sex work policy and a stalemate regarding the best approach to govern sex work in SA.

Key recommendations emerged, including the need for clear timeframes once the policy change process is initiated to prevent stalling. Research was underscored as a critical driver of change within this legislative framework. While more academic research was deemed necessary to illuminate the challenges faced by sex workers, this appeared to shift some responsibility away from the government. Alternatively, the government should commission additional studies, including comparative analyses related to sex work in SA, considering that the SALRC report on adult prostitution published in 2017 was perceived as inadequate. This report, which recommended various policy approaches, faced significant delays in being released due to its controversial nature, sparking intense debates about its authenticity and bias. Understanding why such bias found its way into the SALRC report's final draft was deemed crucial for ensuring future government-commissioned research encompassed diverse viewpoints. Once finalised, it took time for the report to be released to the public. In a meeting of the MPWC in Parliament in November 2016, it was admitted that the "Cabinet [was] yet to release the report to the public domain because of the controversial nature of the report" (Morutoa, ANC, 2016b). Furthermore, cross-sectional research spanning different facets of sex work was proposed. The protracted duration of the SALRC report's finalisation raised questions about the effectiveness of additional research. Hence, a feasibility study was suggested as a complementary measure to understand the costs, payment plans, and taxation implications for exit programs, shelters, and psychological support for sex workers leaving the industry. A payment plan for exit programs is necessary to ensure the effective

operation, sustainability, and accessibility of these programs aimed at assisting sex workers in leaving the industry. It serves to allocate resources, secure ongoing funding, make services affordable, expand program reach, and maintain financial accountability. In essence, a structured payment plan is crucial for supporting the successful transition of sex workers to alternative livelihoods through exit programs. Numerous MPLs also advocated for tax payment by sex workers and brothels if legislation changed, making a feasibility study even more relevant. Additionally, conducting a cost-benefit analysis was seen as essential to evaluate the most suitable legislative framework for the South African context.[55]

Challenging societal views around sex work required community education. This education needed to challenge the culture of patriarchy and beliefs that females must remain in traditional monogamous and "heterosexual" relationships (Lucas, 1995:47). Further, the cultural/religious views around sexuality needed to be challenged for societies to understand the context of sex work and the issues faced by those in the sex industry. By challenging traditional norms around sexuality and the stigmas attached to women in the sex industry, it would be questioning radical feminists' views around sex work, disputing that sex work was abuse and a denial of women's humanity and them being utilised as sexual objects (Comte, 2014:198). In turn, it could be exploring how sex work could instead be an expression of a woman's agency, a viable career option, as well as a space to explore their sexuality safely in line with liberal feminism (Bell, 2009:1). Overall, it challenged the views around the female body and the traditional views of male ownership (Pateman, 1999:59).

Through the lens of African feminism, in particular, the interviews with MPLs offer nuanced insights into the complexity of altering SA's policies on sex workers. The stakeholders emphasise the importance of civil society involvement, scholarly input, and grassroots activity in bringing about policy change. These points of view are consistent with African feminist concepts of community empowerment and collective action. The core tenets of this viewpoint include the necessity of inclusive decision-making procedures that give sex workers' voices and agency priority, mirroring the inclusion and participatory democracy principles found in African feminist thought. In addition, MPLs underscore the moral implications of policy modifications, promoting approaches based on the values of fairness, humanity, and constitutionalism. This emphasises the need for legislative solutions that address structural injustices and advance gender equality, which is in line with African feminist ideals of accountability, debate, and consensus-building. In addition, MPLs emphasise the significance of institutional reform, legislative action, and political leadership in bringing about policy change, mirroring the demands of African feminists for transparent decision-making, responsible governance, and successful implementation. The adoption of an African feminist viewpoint

[55] Dreze and Stern (1987:909) define the "purpose of cost-benefit analysis [being] to provide a consistent procedure for evaluating decisions in terms of their consequences." Therefore, in terms of sex work, a cost-benefit analysis will be able to review the consequences of both legalisation and decriminalisation and determine the best fit for SA.

provides a complete framework that emphasises political accountability, human rights, and community participation as key pillars of transformational change, providing guidance through the intricacies of sex worker policy reform in SA.

6.6 Question 5: Why is criminalisation/partial criminalisation not a preferred policy option.

Question 5: What do you think the benefits or disadvantages will be of the decriminalisation of sex work versus the continued criminalisation of sex work in line with the current policy in SA? Will you, consequently, recommend partial decriminalisation or partial criminalisation as a possible policy option? Please give reasons.

Question 5 aimed to delve into the perspectives of the MPLs regarding the potential merits and drawbacks associated with either decriminalising or continuing to criminalise sex work within the current South African policy context. This line of inquiry sought to elicit their insights into the practical implications of these two contrasting approaches. Furthermore, it sought to explore whether MPLs would endorse the concept of partial decriminalisation or partial criminalisation as a viable policy option and to extract the underlying rationales for their recommendations. The central objective of this question was to gain a comprehensive understanding of the thought processes and considerations guiding the MPLs' stance on sex work policy. By examining the views of MPLs on the potential advantages and disadvantages of decriminalisation versus continued criminalisation, the question aimed to uncover the nuances of their positions and the factors shaping their policy preferences. Additionally, by inquiring about their stance on partial decriminalisation or partial criminalisation, the question sought to uncover alternative policy avenues that MPLs might endorse, shedding light on the complexities of their policy outlook. In essence, this question served as a critical juncture for the MPLs to articulate their perspectives on the sex work policy spectrum, explore the potential middle ground of partial policy adjustments, and provide underlying justifications for their policy recommendations. By doing so, it contributed to a richer understanding of the policy landscape and the diverse viewpoints held by key stakeholders in the legislative process.

In the interviews, Chairperson Godfrey Tsotetsi (2019) emphasised how in his opinion criminalisation was an unsuitable policy choice for sex workers, arguing that they require protection rather than being pushed into illegality. He framed this as essential for their well-being, stating that criminalisation amounted to "throwing them to the bush" when they actually needed "protection through policy" (Tsotetsi, 2019). Thokozile Magagula, the ANC Chief Whip (2019), proposed a cautious approach to partial decriminalisation, suggesting a need for a pilot phase to assess its strengths, weaknesses, and opportunities. Such a pilot could help identify any gaps in the legislative framework, providing valuable insights into its effectiveness (Magagula, 2019). Mike Madlala, the Chairperson of Committees (2019), pointed out the practical challenges of enforcing criminalisation or partial decriminalisation, "to criminalise or partially

decriminalise sex work would not be enforceable by the police agents and our court system would be cluttered with pending unresolved litigation" (Madlala, 2019).

Lebogang More, a DA Member (2019), strongly opposed criminalisation, arguing it "infringe[d] on the freedom of choice, basic rights of sex workers, the right to decide how they live their lives, and it was wrong and not an option." Within the partial criminalisation framework, he questioned the fairness of penalising clients:

> If it's partially criminalised what [had] the client done? It's not rape. It is consent between two people. It has nothing to do with the state. Maybe someone can also say lobola is transactional. Like sex work (More, 2019).
>
> How do you prove it? If you find me with someone in a bedroom, am I a client or a boyfriend? How is this law going to be forced? What happens if I stopped at a robot, and they are alleged a sex worker? It's like that law that says farting in public is illegal. (Laughs) How will you even enforce this? (More, 2019).

More (2019) argued that it "infringe[d] on the rights of a client," framing their interactions as consensual and raising doubts about enforcement challenges, such as determining a client's guilt in ambiguous situations. He asked the following question: "what [had] the clients done?" noting how the client's wrongdoing was questionable and questioned how it could be enforced. Using the example above he questioned whether the driver would be guilty of an offence (More, 2019). More opposed the criminalisation of sex work, citing concerns about its infringement on individual freedom and rights. He questioned the fairness of penalising clients, emphasising the consensual nature of their interactions with sex workers. More (2019) also highlighted the practical challenges in enforcing such laws, especially when distinguishing between clients and non-clients was ambiguous. His stance underscored the need for a more nuanced and rights-based approach to addressing sex work, acknowledging its complexities and potential flaws in current legal frameworks.

Nkhumeni Ramulifho, another DA Member (2019), expressed concerns about partial decriminalisation, suggesting it might perpetuate stigma, particularly in rural areas were sex workers faced increased victimisation, explaining how urban areas were more liberated than rural areas. Ramulifho (2019) highlighted how urban areas were known to victimise sex work. At the same time, the communities needed to be informed that those in sex work had rights, and it was a choice to make use of their services while emphasising the need for informed community education on the rights and choices of sex workers (Ramulifho, 2019). The anonymous DA Member (2019) expressed personal conflict regarding legislative frameworks and proposed that it was "best to do a trial change in a delineated area first and then move on from there." Speaker Ntombi Mekgwe (2019) did not advocate for partial decriminalisation, firmly endorsing full decriminalisation as the solution to the challenges faced by sex workers. She felt that only fully

decriminalising the industry would solve the issues being faced by sex workers (Mekgwe, 2019). Mpapa Kanyane (2020) emphasised the need for a policy regulating sex work, considering its behavioral aspects as a basis for effective regulation. As he phrased it there was a need for a "policy that [could] regulate the act since it [was] based on a behavioural pattern" (Kanyane, 2020). These insights from the interviews provided diverse perspectives on the advantages and disadvantages of different policy approaches, highlighting the complexities surrounding the issue of sex work legislation.

6.6.1 Discussion

Historically, the criminalisation of sex work primarily aimed to exert control over the female body, aligning with Foucauldian theory and seeking to render those involved in sex work submissive, in line with traditional perspectives on body commodification (Foucault, 1977). It highlights how the criminalisation of sex work has been historically used as a mechanism of social control, particularly over female bodies, which aligns with Michel Foucault's (1977) ideas about power, control, and discipline in society. Foucault's theories often explore how institutions and systems exert control over individuals and bodies, and in this case, it's applied to understanding the motivations and effects of criminalising sex work. This perspective views sex workers as subjects of discipline, emphasising bodily control. However, evolving societal views have prompted a shift towards a more human rights-oriented approach.

As women have gained increasing influence in the political arena, there has been a growing recognition that sex workers deserve protection of their human rights. It was acknowledged that sex workers were more than just their bodies, and their rights must be safeguarded. Notably, none of the interviewed MPLs endorsed the partial decriminalisation of sex work as a viable legislative framework. This stance stood in direct contrast to the recommendations proposed in the SALRC 2017 report on adult prostitution. This contradiction raised questions about whether these perspectives were considered during the report's drafting. The lack of MPL support for the recommendation made in the SALRC 2017 report could be a significant factor contributing to the absence of policy change. The interviews also highlighted concerns about how partial decriminalisation might impact the rights of clients. Questions arose about which rights clients needed protection for and how various legislative options affected them. This prompts a broader consideration of whether clients' rights hold the same importance as the rights of individuals within the sex industry. These critical questions underscore the need for a comprehensive understanding of the potential consequences of different legislative approaches to sex work.

As per the discussion in Parliament on July 25, 2019, in a session of the MPWC, the need for the current MPWC to be acquainted with the SALRC's recommendations (2017 report on Adult Prostitution) and

the report stemming from Parliament's public hearing were emphasised. The proposal suggested holding public hearings in each province to gather input on the SALRC recommendations. Additionally, there was a plan to engage in discussions with the Department of Justice and Correctional Services regarding sex work policy reform. (Bilankulu, 2019). However, a pertinent question arises: was this the most effective starting point for such discussions? It was crucial to inquire whether the perspectives of all sex workers had been adequately considered during the formulation of the report. In this context, SWEAT conducted an analysis of the SALRC report, uncovering certain observations regarding its contents:

> In summary, the report [was] disappointing and [did] a disservice to the SALRC as an institution. It is outdated, leaves out essential academic research and is strongly biased in favour of one legal approach. This is in direct opposition to its stated purpose "to review the fragmented legislative framework that currently regulates adult prostitution… to consider the need for law reform concerning adult prostitution… and to decide which legislative model accords with the government's goals and strategies (Asijiki Coalition publication, 2018:ii).

SWEAT's perspective suggests that the SALRC report may not serve as the most suitable starting point for parliamentary discussions concerning a legislative change in the sex work policy. Previous debates in Parliament, led by the MPWC, revealed significant support from civil society for the decriminalisation of sex work. It becomes pertinent to question why the SALRC did not give due consideration to these views during the extensive period they dedicated to their investigation into adult prostitution in SA. The interviews conducted earlier indicate that the government bears a constitutional responsibility to ensure the safety of women engaged in sex work. In this context, it becomes essential to assess whether a report founded on outdated evidence can effectively contribute to achieving this objective. These inquiries are crucial for gaining a comprehensive understanding of the broader debate surrounding sex work policy.

6.7 Conclusion

This chapter highlighted the perspectives of MPLs who predominantly advocated for the protection of sex workers and their envisaged role for the government in this endeavour. The predominant legislative frameworks endorsed by these MPLs were legalisation and decriminalisation, coupled with a recognition of the necessity for regulations to govern the industry. Delays in policy change were attributed to societal, governmental, and sex worker-related factors. The chapter also takes this further by underscoring actionable steps for policy change, such as the need for the government to take sex worker input seriously, the possibility of introducing a Private Member's Bill, garnering national support via the NCOP, and engaging in public awareness campaigns to educate society about sex workers' experiences and the advantages of legislative reform. Additionally, the chapter suggested conducting academic and government-commissioned research on sex worker-related issues, offering an outsider perspective. To provide a more comprehensive understanding.

The perspectives shared by the MPLs from Gauteng reflected a significant departure from the recommendations laid out in the SALRC 2017 report, which proposed a combination of partial decriminalisation and continued criminalisation of sex work. This divergence highlighted an internal governmental conflict regarding sex worker issues and the legislative framework that best addresses their needs. Among the MPLs interviewed, the prevailing view favoured the legalisation of sex work as the most suitable policy approach for regulating the industry. Interestingly, even those advocating for the decriminalisation of sex work emphasised the necessity of implementing regulations to manage the industry effectively. Their paramount concern was to safeguard the human rights of sex workers while acknowledging the government's responsibility to create a secure operating environment for them.

Policy formulation and modification in SA adhered to a structured process in accordance with the constitutional framework. However, it remained puzzling and factually inaccurate that sex work policy persisted in a criminalised state. Although there was an understanding within government of the challenges faced by sex workers, engagements through Gauteng's Sector Parliaments have thus far failed to yield any substantive changes to the sex work policy. The government was mandated by the South African Constitution and Bill of Rights to defend the human rights of all citizens. In a sharp paradox, the prohibition of sex work infringes upon these same rights. Moreover, the legislation governing sex work traces its origins to apartheid-era racial laws that originally aimed to regulate private sexual interactions along racial lines. Given this historical context, the government bears a heightened responsibility to protect sex workers and rectify the longstanding injustices they face.

The shift to a constitutional democracy in 1994, characterised by secular principles and protections for all religious groups, altered the role of the church in South African governance. The church, which had wielded significant influence during colonial and apartheid eras, no longer enjoyed the same privileged position. Instead, it became just one voice among many in the democratic landscape. Bentley (2013) observes that this transition led to an "alternative consciousness," prompting the church to adapt and engage with new societal issues. Historically, the church had been instrumental in addressing social and economic challenges at the community level, but its influence waned as other voices gained prominence. In this changing context, the legal rights of sex workers remained undetermined, with policy responses subject to various influences. The evolving role of religion and the church in a secular democracy, where the government introduced secular policies such as the legalisation of abortion and same-sex marriages, indicated a shift away from centuries-old church-dominated governance. This shift, combined with the diminished power of the church to shape policies, raised questions about the factors contributing to the lack of policy change regarding sex work in SA. The complex socio-economic context and deep-seated cultural and social taboos surrounding sex work

further complicated the policy debate, necessitating a comprehensive review of SA's dynamics rather than focusing on individual aspects (Kotze & Loubser, 2017; Bentley, 2013).

In the South African context, the significance of discussing the role of a secular state and the evolving influence of the church in policymaking, particularly regarding contentious issues like sex work, lies in understanding the complex dynamics at play. The country's progressive constitution, renowned for its protection of human rights and secular values, often clashes with deeply rooted conservative and traditional belief systems. This contrast can lead to conflicts when formulating policies that adhere to constitutional principles while respecting cultural and religious perspectives. Furthermore, the shift to a constitutional democracy in 1994 redefined the role of the church, diminishing its once-privileged position. As the church adapted to new societal issues, such as sex work, and as secular policies like the legalisation of abortion and same-sex marriages were introduced, the landscape of governance evolved. This context underscores the need for comprehensive policy discussions that navigate these intricate dynamics to address the legal rights and social conditions of sex workers effectively.

Examining Michel Foucault's theories (1977) of discipline and control reveals the underlying dynamics at play. The criminalisation of sex work can be understood as a mechanism to exert control over the female body, predominantly as sex work is a female-dominated industry. This control aligns with historical efforts to confine female sexuality within the boundaries of conventional femininity. Women's reproductive capacity has traditionally led to their subjugation, reducing them to instruments for male desire and reproduction (Comte, 2014:201). Consequently, altering the sex worker policy holds the potential to empower women, freeing them from dependency on men and providing an alternative to traditional marriage. Foucault's (1978:93) concept that "power is everywhere" underscores the importance of community dynamics in effecting policy change. The power of accepted routines and shared knowledge within communities can influence policy outcomes significantly. Historical objections to policy change in the lead up to the 2010 World Cup (as discussed in Chapter 3, section 3.2.3), were driven by concerns about potential moral decline, exemplify this dynamic (Bonthuys, 2012). Religious teachings, embraced and acted upon by communities, endow viewpoints with authority and influence. However, just as community acceptance has thwarted policy change in the past, it can also propel positive shifts in the sex worker policy landscape. Foucault's (1977) notion that power resides in bodies working together suggests that collective efforts within communities can advocate for policy change. The forthcoming chapter delves into interviews with individuals from non-governmental organisations (NGOs), Chapter 9 institutions, research institutes, and consultants affiliated with sex-worker NGOs and Chapter 9 institutions. These interviews shed light on the importance of community education as a key driver of policy change.

Chapter 7: Data Analysis and Interpretation: Interviews with Organisations

7.0 Introduction

This chapter offers a comprehensive examination of the insights gathered from a series of interviews conducted with a range of stakeholders, encompassing NGOs, Chapter 9 institutions, research institutes, and consultants actively engaged with sex work-related organisations or Chapter 9 institutions in SA. Particularly noteworthy is the diversity of perspectives among the interviewed NGOs, with some passionately advocating for the complete decriminalisation of the sex industry, while others adopted opposing viewpoints. In contrast, research organisations generally adopted a more neutral stance on this contentious issue. To structure our analysis, this chapter chiefly focuses on addressing questions 1, 2, and 5, as delineated in the interview guide, with questions 3 and 4 receiving dedicated consideration in the subsequent chapter. Within each section, we meticulously present the interview data, thoughtfully organised by question and individual interview, at times dividing specific questions into segments to ensure a comprehensive portrayal of the valuable insights garnered from these interviews.

7.1 Question 1

Question 1: Can you give me an overview of how your organisation views sex work or prostitution, indicating the extent of sex work in SA and why people enter the sex work industry?

Question 1, a fundamental query in our interview guide, sought to provide a foundational understanding of the landscape of sex work within the South African context. This question, when addressed comprehensively, serves as a critical building block for any meaningful discussion on sex work policy reform. Its multifaceted nature enabled us to glean insights that spanned four distinct but interrelated dimensions. Firstly, it invited interviewees to elucidate their respective organisations' perspectives on the sex industry and the preferred terminology employed to refer to individuals engaged in sex work. This dimension was paramount as it highlighted the nuances surrounding language and discourse in the realm of sex work, which can significantly impact policy discussions. Secondly, the question delved into the extent of sex work in SA. Given the criminalised status of the sex work industry in the country, accurately assessing its size and scope has proven to be a formidable challenge. Organisations directly engaged with sex workers are uniquely positioned to offer valuable insights into the industry's dimensions, shedding light on an otherwise obscured aspect of South African society. Thirdly, this question explored the reasons prompting individuals to enter the sex work industry. This facet of the question not only aided in understanding the demographic makeup of sex workers but also delved into the complex web of factors influencing their decisions. Unearthing these motivations contributed to a more comprehensive picture of the industry's composition. Lastly, this question probed into the level of agency exhibited by those entering the sex industry. This dimension was instrumental in

discerning the degree of autonomy individuals had when making the choice to engage in sex work. It allowed us to explore the fine line between agency and coercion in the context of sex work. By consolidating these four components, Question 1 played a pivotal role in laying the groundwork for subsequent discussions. It aimed to provide a holistic understanding of the sex industry in SA, encompassing its nomenclature, scale, socio-economic dynamics, and the agency of its participants. This comprehensive backdrop was essential for crafting informed arguments and recommendations regarding potential legislative frameworks and policy changes related to sex work in the country.

7.1.1 Question 1(a): Views on the sex industry and preferred use of terminology for women in the sex industry

Table 7 serves as a reflective repository of the diverse terminology that permeated the discussions conducted with the various organisations during the interviews.[56] In the subsequent analysis, the identities of the interviewees and the organisations they represent seamlessly coalesce, a strategic choice aimed at accentuating a salient point. Namely, that the perspectives articulated during these conversations emanated primarily from the organisational stances, yet, in some instances, they also encapsulated the personal viewpoints of the interviewees themselves. It's worth noting that certain interviewees wore multiple hats, representing not one but several organisations, thereby adding another layer of complexity to the narrative. This multifaceted approach to terminology underscored the intricate tapestry of perspectives woven into the discourse surrounding the sex work policy in SA.

Table 7: Overview of terminology used in the interviews by organisations.

Number	Interviewee	Organisations	Date of interview	Terminology for women in the sex industry
Interviewee 1:	Clara Singende	Lifeline Johannesburg Sisonke	March 2019	Sex work (work) Prostitution (enjoyment)
Interviewee 2:	Melodie van Brakel	Cradle of Hope	March 2019	Sex Work
Interviewee 3:	Ishtar Lakhani	SWEAT	April 2019	Sex Work
Interviewee 4:	Marlise Richter	SONKE Gender Justice	April 2019	Sex Work
Interviewee 5:	Mickey Meji	Embrace Dignity KWANELE	April 2019	Prostitution Prostituted Women
Interviewee 6:	Cherith Sanger	Consultant	May 2019	Sex Work
Interviewee 7:	Constance Mathe	Asijiki Coalition	May 2019	Sex Work
Interviewee 8:	Matthew Clayton	Triangle Project	May 2019	Sex Work

[56] The terms used to record the information received from the interviews is the preferred term used by the interviewee in the interview so that it correctly reflects the information obtained.

Number	Interviewee	Organisations	Date of interview	Terminology for women in the sex industry
Interviewee 9:	Anonymous	Anti-Trafficking Organisation	May 2019	Commercial sex industry
Interviewee 10:	The Commission for Gender Equality	Commission for Gender Equality (CGE)	June 2019	Sex work (consensual) Prostitution (forced)
Interviewee 11:	Ntokozo Yingwana	African Centre for Migration and Society, University of the Witwatersrand (ACMS)	June 2019	Sex Work
Interviewee 12:	Anonymous	Research organisation	June 2019	Sex Work
Interviewee 13:	Dr Marcel van der Watt	Global Resources Epicenter Against Trafficking (GREAT)	June 2019	A person in prostitution/prostituted person
Interviewee 14:	Naomi Hill	Wits Reproductive Health and HIV Institute (WRHI)	July 2019	Sex Work
Interviewee 15:	Corinne Sandenbergh	STOP Trafficking	July 2019	Prostitution
Interviewee 16:	Yodwa Mzaidume	Mothusimpilo Outreach Project	July 2019	Sex work
Interviewee 17:	Cause for Justice	Cause for Justice	July 2019	Person in prostitution
Interviewee 18:	Dr Mariette Slabbert	Consultant	August 2019	Sex Work
Interviewee 19:	Madri Bruwer	Straatwerk	August 2019	Prostitution Individuals/women in prostitution

As reflected in the above table, it was found that many of the organisations preferred to use the terminology "sex work." Key insights from the interviews are emphasised to illuminate the various discussions surrounding the chosen terminology. In the interview with Interviewee 1, Clara Singende (2019), Lifeline Johannesburg, and Sisonke board member, who was also a sex worker, noted that:

> To me that is not a sex worker then. If they enjoy sex. To me it is when they need to feed their families. To pay to send kids to school. Unlike someone just sleeping around. Those are the ones we call prostitutes. Sleeping men for the sake of it (Singende, 2019).

Through her definition of a prostitute, she was highlighting that sex work was a profession while prostitution was done for enjoyment. This distinction was interesting as it came from a woman who also worked in the industry, and it distinguished between sex as work and sex as enjoyment. Her view was also contrary to those that held that "prostitution" referred to a woman in the sex industry due to some form of coercion (Singende, 2019). Interviewee 2, Melodie van Brakel (2019), Cradle of Hope, in describing the sex industry, noted how sex workers were emotionally abused and attacked repeatedly, and how men did not only want to have sex with them. She explained that fetishism and deviant behaviour were also factors, including how some:

men have a suitcase with baby items in it and want the sex workers to treat them as a baby, which includes changing nappies (van Brakel, 2019).

van Brakel further explained how children were often "pimped" by their parents (of all races) to buy drugs. Simultaneously, many sex workers lived in poor conditions such as crack houses This latter group of sex workers were often those addicted to drugs (van Brakel, 2019). Interviewee 4, Marlise Richter (2019) from Sonke Gender Justice argued that "prostitution" was an outdated and derogatory term; in a context where sex work, she contended was a profession primarily pursued to meet a financial need or for financial stability, the term "sex work" represented it as a profession (Richter, 2019).

Interviewee 5, Mickey Meji (2019), Embrace Dignity, observed how the sex industry shortened women's lifespans, posing significant health risks, leaving them particularly vulnerable to STIs and HIV/AIDS. Embrace Dignity did not favour terms like "sex worker" or "prostitute" and instead preferred the term "prostituted women." They argued that this term underscored the non-voluntary nature of the act, emphasising that women were being "prostituted." Meji (2019) viewed the system of prostitution as the worst form of VAW and a type of "paid rape." Meji (2019) elaborated on the various health hazards associated with prostitution, particularly related to STIs and HIV/AIDS. She explained how, in prostitution, women often left home uncertain if they would return, attributing the existence of prostitution to systemic failures in society, disproportionately affecting poor black women (Meji, 2019). Interviewee 6, Cherith Sanger (2019), a consultant and former advocacy and human rights defence manager at SWEAT, supported this perspective by highlighting that the term "prostitution" carried a loaded, negative connotation that contributed to the stigma associated with the industry. Sanger also emphasised the inherent oppression faced by women in sex work and cited statistics indicating that "women in sex work [were] more likely to die than non-sex workers" (Sanger, 2019).

Interviewee 9, the Anti-Trafficking Organisation (2019) interviewed, disagreed with the term sex work or prostitution, and preferred to call it the "commercial sex industry," encompassing both men and women involved in selling sexual services and pimps. Interviewee 10, the CGE (2019), explained that sex work was used to denote a voluntary choice to enter the sex industry. They believed that the term "prostitution" should be reserved for those who were "coerced" into joining the industry, specifically women who were "socially excluded" and "vulnerable to victimisation" (CGE, 2019). Interviewee 12, the Research Organisation (2019), clarified that sex work was considered "work, an occupation with specific health needs."

In the interview with Interview 13, Dr Marcel van der Watt (2019), a nuanced perspective on prostitution emerges, challenging the notion of sex work as a form of legitimate employment. van der Watt's (2019) observations emphasise the heterogeneous nature of individuals engaged in prostitution, dispelling the

notion that they constitute a "homogenous group." He criticises organisations that claim to be "speaking on behalf of all prostituted persons," asserting that such claims are inaccurate and misleading, in his words it was a "lie and not accurate." Van der Watt's (2019) stance on the interconnectedness of prostitution and trafficking underscored the complexities of people's "lived experiences" within the sex industry. He discerned "red flags for trafficking" when examining these experiences, shedding light on what he termed the "darker side of the sex trade." According to him, the "narratives of 'prostituted person's survivors'" revealed the extent of its inherent harms. Rejecting the label of "sex worker," van der Watt (2019) preferred the term "a person in prostitution or 'prostituted person.'" He contended that the sex industry carried "implicit harm," often involving third parties. From his vantage point, individuals who turned to prostitution typically lacked "reasonable alternatives," and he firmly believed that prostitution couldn't be categorised as "dignified work." His advocacy centered on the imperative to "protect people" from perceiving prostitution as their only option. Van der Watt eloquently underscored the detrimental effects of the sex industry, characterising it as a manifestation of a "deeply unjust society." Yet, he acknowledged the complex reality where, for many women, there was no better-paying job alternatives than prostitution. Paradoxically, voices opposing prostitution were often "dismissed," particularly when they challenged the notion of recognising prostitution as legitimate work. In this landscape, the sex industry was presented as an "alternative option for many people without understanding or dismissing the harms" (van der Watt, 2019).

In the perspective of Interviewee 15, Corinne Sandenbergh (2019) from Stop Trafficking, the assertion that prostitution constituted legitimate work was categorically rejected. Instead, she characterised it as a "degrading, demoralising, and dangerous industry" (Sandenbergh, 2019) This perspective underlined the profound harm inherent in prostitution, challenging any notion of it being considered work. Interviewee 16, Yodwa Mzaidume (2019) of the Mothusimpilo Outreach Project, acknowledged the complex reality of sex work in SA. She recognised that, for many, sex work served as a vital source of income, particularly within mining communities, making "sex work part and parcel of lives in SA." While her organisation engaged in outreach efforts related to safe sex practices, Mzaidume (2019) acknowledged her ethical reservations regarding sex work. Despite her misgivings, she advocated for the decriminalisation of sex work, emphasising the importance of providing support to those engaged in it (Mzaidume, 2019). However, Interviewee 17, representing Cause for Justice (2019), took a distinct stance, expressing disapproval of terms such as "sex worker" to refer to individuals in prostitution (prostituted person) or "sex work" to refer to prostitution (prostituted services). They firmly contended that the use of these terms biased the discussion by prematurely framing prostitution as either "exploitation (which it is) or a form of work (which it was not)." In their view, both "prostitute" and "sex worker" where degrading terms, as the act of prostitution inherently infringed upon the invaluable human dignity of those involved." Since the activity itself inherently and therefore necessarily

infringes the invaluable human dignity of the person involved in prostitution." They emphasised that the term "sex worker" had been manipulatively misused for propaganda purposes and preferred the more accurate and less derogatory phrase "person in prostitution" to safeguard and promote human dignity (Cause for Justice, 2019).

Interviewee 19, Madri Bruwer (2019) of Straatwerk, referred to the industry as prostitution but was critical of labeling individuals working in prostitution as "prostitutes." Instead, her organisation preferred to use the term "individuals or women in prostitution" to avoid narrowing down their identity. She did not endorse any terminology that might diminish the complexity of their experiences. Bruwer (2019) firmly rejected the notion of prostitution as 'decent work' and underscored that the inherent damage in prostitution could not be prevented, as it was an integral part of the activity itself. She argued that the "damage from prostitution cannot be prevented as it is part of the act." She attributed the roots of prostitution to trauma and abuse and advocated for amplifying the voices and stories of women in prostitution, emphasising the importance of understanding their experiences (Bruwer, 2019).

7.1.2 Question 1(b): Extent of the sex industry (sex workers) in SA[57]

Interviewee 1, Clara Singende (2019), recognised that during the research period, the full extent of the sex industry was not fully understood due to the challenges faced by many sex workers in openly acknowledging their profession. Nevertheless, she emphasised that, the sex industry was an enduring and prominent presence that showed no signs of disappearing (Singende, 2019). Interviewee 2, Melodie van Brakel (2019), shared a significant incident that occurred in the Krugersdorp area around 2016 when law enforcement conducted a raid resulting in the arrest of 190 sex workers. This event, unfolding in a relatively small town, underscored the alarming scale of the sex industry's reach across the entire country (van Brakel, 2019). Interviewee 3, Ishtar Lakhani (2019), argued that the criminalisation of sex work posed substantial barriers to conducting comprehensive studies on its extent in SA. Despite these challenges, she referenced previous research conducted in 2013, suggesting that during that period, there were estimated to be between 153,000 and 180,000 sex workers in SA. She also acknowledged that this figure was considered conservative, as it did not encompass all sex workers, including those working indoors, outdoors, and online (Lakhani, 2019). Based on a study conducted by the University of California San Francisco (UCSF), Marlise Richter (2019), Interviewee 4, noted that the estimated number of sex workers in SA stood at approximately 153,000. This

[57] Chapter 3, Section 3.1.4 outlines how the statistics on the number of sex workers in SA are outdated due to a lack of statistics being collected on this demographic. A lack of updated statistics on sex work in SA also contributes further to the marginalisation of sex workers. An updated study is needed to truly understand the extent of sex work in SA. SANAC in the South Africa's National Sex Worker, HIV, TB and STI plan (2019-2022) still quote the SANAC and SWEAT 2013 study when outlining the number of sex workers in SA. When giving these statistics SANAC highlights that "there is limited data on the absolute population size of sex workers due to social marginalisation and criminalisation of sex work" (SANAC, 2019:9).

study also revealed that around five percent of these sex workers were men, while another other five percent identified as transgender (Richter, 2019).

Interviewee 6, Cherith Sanger (2019), emphasised the necessity for more recent studies to determine the number of sex workers accurately. Nevertheless, based on her extensive work with sex workers, she argued that the number of sex workers likely remained consistent with the figures reported in the SWEAT 2013 study. Despite an ongoing influx of women entering the industry, Sanger (2019) noted that a substantial number of sex workers were facing mortality, prompting SWEAT to maintain records of their deaths. She explained that global studies had indicated that sex workers were 18% more likely to experience premature mortality, a phenomenon echoed in SA (Sanger, 2019). Interviewee 7, Constance Mathe (2019), representing the Asijiki Coalition, estimated that the sex worker population encompassed approximately 200,000 individuals, irrespective of race or gender. Interviewee 9, an advocate from an Anti-Trafficking Organisation (2019), acknowledged the immense scale of the industry. He pointed out that the "sugar daddy" phenomenon, often overlooked, was a significant factor in the sex industry. Although he did not provide a specific estimate, he emphasised its relevance (Anti Trafficking Organisation, 2019). Interviewee 10, from the CGE (2019), also shared the view that the criminalisation of sex work made it challenging to obtain accurate statistics regarding its true extent in SA. She noted that sex workers were often reluctant to disclose their profession due to the legal consequences. The CGE underscored its belief that the number of sex workers had increased significantly, reflecting a direct correlation between the "large demand for sex work" and the growing size of the industry (CGE, 2019).

Interviewee 11, Ntokozo Yingwana (2019), considered the 2013 estimate of 153,000 sex workers as a "gross underestimate," raising the question of how "do you count a hidden or criminalised population?" She noted a lack of "real indication of an increase or decrease in the industry." She illustrates this point by referring to the supposed fear of the influx of sex workers before the 2010 World Cup, which she highlighted "didn’t happen" (Yingwana, 2019). Interviewee 12, from the Research Organisation (2019), described the "extent of sex work [as] anyone's guess." He argued that sex work statistics should encompass various forms, including sex for money, stripping, and participation in pornography. He also noted the presence of subgroups within the industry, such as transgender women and men involved in sex work. He observed that the sex industry was "fluid, changing," transitioning from traditional "penetrative sex" to more "creative and diverse" forms of work. He also highlighted the importance of "self-identification as sex workers is very narrow, the sex workers that their organisation work with self-identify as sex workers" (Research Organisation, 2019).

Interviewee 13, Dr Marcel van der Watt (2019), asserted that organisations often "inflate[d] the [prostitution] problem for funding," while simultaneously claiming that there was "no idea how big the

problem is." He expressed concerns about organisations selectively choosing participants to "to get information that they want[ed] to hear", particularly avoiding engagement with those against decriminalisation and he questioned how the then "claim it to be research." In his view, these practices could not be considered legitimate research, and he emphasised the importance of speaking to all relevant stakeholders. He also pointed out the challenges in distinguishing between trafficking and prostitution (van der Watt, 2019). Interviewee 14, Naomi Hill (2019), from WRHI, believed that the figures presented were "an underestimate" of the extent of sex work in SA. Interviewee 15, Corinne Sandenbergh (2019), representing Stop Trafficking, mentioned keeping a record of the "prostitutes" she encountered weekly, averaging between 20 to 30 girls. She acknowledged the difficulty in providing statistics, given the lack of safe housing for women (Sandenbergh, 2019). Interviewee 16, Yodwa Mzaidume (2019), focused on her experiences working with sex workers in the mining town of Merafong, without commenting on the national extent of sex work. Interviewee 18, Dr Mariette Slabbert (2019), highlighted that the determination of whether the studies on the extent of sex work in SA were outdated depended on how "sex work [was] defined." She argued that sex work should be described as "sex in exchange for money," as other types did not require the same level of protection, in her opinion (Slabbert, 2019). Interviewee 19, Madri Bruwer (2019), refrained from offering an estimate of the extent of prostitution in SA. She mentioned that their organisation primarily worked with visible prostitutes and observed an increase in prostitution through her work (Bruwer, 2019).

7.1.3 Question 1(c): Reasons for entry into the sex industry as seen in the interviews[58]

Various themes emerged from the interviews regarding why women and men entered the sex industry, with the majority citing economic reasons. Interviewee 1, Clara Singende (2019), noted that the primary reason for entering the industry often stemmed from individuals losing their jobs while having young children at home, necessitating support for their families, education expenses, and rent. She explained that women living in poverty struggled to secure other employment opportunities and that peer pressure influenced their decision in the context of high unemployment in SA. Singende (2019) argued that sex work paid better, especially for "mothers" with increased responsibilities. Interviewee 2, Melodie van Brakel (2019) from Cradle of Hope, stated that sex workers earned good money and couldn't find other jobs that paid as well. Interviewee 3, Ishtar Lakhani (2019), representing SWEAT, emphasised that people joining the sex industry needed money to survive and pay bills, much like individuals pursuing any other job to make a living. SWEAT also highlighted that, on average, sex workers supported between 4-8 dependents (Lakhani, 2019).

[58] This research focused on women even though it was acknowledged that men are also found in sex work. This caveat was important considering the fact of not only the high number of women in sex work, but also because of the argument regarding conservative patriarchy from which men as a whole benefit and how this view continues to stigmatise specifically women.

Interviewee 4, Marlise Richter (2019), from Sonke Gender Justice, remarked that the desire for financial stability motivated individuals to enter the sex industry, like any other profession. Interviewee 5, Mickey Meji (2019), from Embrace Dignity, observed that individuals entered the sex industry due to poverty and sexual abuse. She argued that some were groomed into prostitution (Meji, 2019).[59] Interviewee 6, Cherith Sanger (2019), cited that research highlighted economic reasons, childcare responsibilities, the loss of fathers, poverty, and the need for income generation as common factors influencing entry into the sex industry. Interviewee 7, Constance Mathe (2019) representing the Asijiki Coalition, noted that limited employment opportunities for non-educated individuals made sex work a favourable choice among limited options. She argued that alternative jobs like domestic work, cleaning, or building assistance were time-intensive, making it difficult for individuals to spend time with their families. Some, she mentioned, were groomed into prostitution (Mathe, 2019). Interviewee 8, Matthew Clayton (2019), from the Triangle Project, emphasised that while individuals doing sex work were diverse, many shared similar motivations. He noted that people in the LGBTQIA+ community often entered sex work due to family dislocation and societal exclusion. Ultimately, the main reason for entering the sex industry, like any other job, was financial need, compounded by limited opportunities (Clayton, 2019).

Interviewee 9, representing an Anti-Trafficking Organisation (2019), acknowledged social and economic drivers as motivations for entering the sex industry. He also pointed out the ideological sexualisation, objectification, and commodification of people, especially women and children. While economic reasons played a role, they emphasised that force and abuse were also factors. He highlighted instances of abuse, including rape, and the normalisation of violence against women in the industry. He further argued that the notion that poverty was the primary reason for entering the sex industry oversimplified a complex issue. Cultural factors were mentioned, such as "child brides," where "sisters [were] traded or forced into relationships," and "girls [were] sold to pay debts." These practices were considered examples of trafficking. He also discussed the grooming of young girls through social media highlighting what he termed as "Ben 10" where older women abused young boys. He observed how "rape often [led] to individuals entering the industry" (Anti-Trafficking Organisation, 2019).

Interviewee 10, from the CGE (2019), noted that people entered sex work as a profession, often due to poverty. For transgender sex workers, it was often the only work they could find due to stigma surrounding their gender identification (CGE, 2019). Interviewee 11, Ntokozo Yingwana (2019), explained that high unemployment rates in SA led people to enter the sex industry primarily for socio-economic reasons. She

[59] Bennett and O'Donohue (2014: 957) describe how child molesters use a "seduction stage" before abusing a child. This has generally been termed as "grooming," while there is no consensus on what this really means it is generally believed to be a stage where "child molesters gain access to and prepare future victims to be compliant with abuse."

also argued that while people might enter sex work for different reasons, "the reasons a person enters sex work may be different from why they stay in the industry," referencing research by Busza (2004) to support her point. Busza (2004) found that sex workers often stayed in the industry because it provided the "most favourable of limited options," it was "easy work" compared to other available jobs, and the ability to "earn a decent living" (Yingwana, 2019). Interviewee 12, from a Research Organisation (2019), explained that people entered sex work out of economic necessity. They also pointed out that "yet to see a trafficking case in the work he [does]." Additionally, they highlighted that the "traditional view [was] that sex workers hate[d] their job," he had come across sex workers who said they "enjoy[ed] their job" (Research Organisation, 2019).

Interviewee 13, Dr Marcel van der Watt (2019), discussed various factors contributing to entry into the sex industry, including abuse, economic reasons, and social circumstances. He mentioned issues related to drug addiction within the industry and the transfer of prostitution to children through parents pimping them. He felt that these issues were not being spoken about by sex work organisations. He observed that prostitution never occurred in "isolation," affecting both children and the community, with children being both primary and secondary victims of the sex industry. He emphasised that the "demand for prostitution and cheap labour fuel[led] the sex industry" (van der Watt, 2019). Interviewee 14, Naomi Hill (2019), explained that entry into sex work was often an "economic survival strategy to stay above the poverty line." Many sex workers needed to meet specific needs, such as paying for "education, children's school fees and books; sex work is the answer" (Hill, 2019).

Interviewee 15, Corinne Sandenbergh (2019), from Stop Trafficking, expressed her belief that "most girls were trafficked at some point." She described instances where families had sold girls into the industry and highlighted abuse in rural areas, where girls were groomed for sex work due to poverty, a lack of education and a need to take care of their children. She stressed how no child wanted to grow up and become a sex worker. Sandenbergh (2019) noted that prostitution left women sick and broken, often leading to their reliance on disability grants. Sandenbergh (2019) further elaborated on the role of boyfriends in women's involvement in prostitution. She described how some women became prostitutes to their boyfriends, providing sex, free accommodation, and financial support, often associating this with prostitution, as men were essentially using the women. She also discussed the vulnerability of children's homes, where children were preyed upon by predators. From her experience, most of those in prostitution were not on drugs, and they did not smoke or drink. She observed how they went to work at night, and once done, they would go home. In contrast, she explained how those working in the cities or towns were more likely to be involved in gambling and drugs. Sandenbergh, further elaborated how there was not much pimping in the rural areas. However, some women according to Sandenbergh (2019) were "half pimped by their boyfriends," while in

the cities, most of the girls were pimped. She was observing the role boyfriends play in women being in prostitution. She observed how children's homes were very vulnerable places as the children are "sitting ducks" and "victims for predators." In the rural areas where she works, there is 40-50% joblessness, and women who did not have children, were not eligible for child grants. For these women, all they in her view had to sell are their bodies. In these areas, she had witnessed women aged 45-56 who were soliciting from their homes. Many of their clients were white, which results in coloured children. From her experience, prostitution left women sick and broken, often ending up on a disability grant. She reflected how some women became prostitutes to their boyfriends, giving them sex for free, providing them free accommodation and sharing a bed with them while the boyfriend was jobless. Sandenbergh (2019) was associating sex with a boyfriend as being a form of prostitution as the men were using the women. Women often had what she called a "father's wound" and looked for "sugar daddies." Another factor according to Sandenbergh (2019) was that foreigners knew how to charm women and were able to manipulate and abuse them. Sandenbergh's (2019) statements regarding interracial relationships and her xenophobic remarks, when examined through an intersectional feminist lens, underscore the reinforcement of detrimental stereotypes and the perpetuation of racial and xenophobic oppression. By employing an intersectional approach, which draws on the interconnectedness of various forms of oppression, we can discern how racism, sexism, and xenophobia intersect to influence individuals' experiences and perpetuate systemic inequalities.

Interviewee 16, Yodwa Mzaidume (2019), who worked in the mining town of Merafong, Carletonville, highlighted the social dynamics of the area. Men were made to stay in mine hostels, with women operating as sex workers in the surrounding bushes. She observed how some "white" families who occupied mine houses allowed men to use their premises for gaining access to sex workers. This meant that many migrant sex workers entered Merafong from outside areas. She described various types of sex workers in the area, including those who openly practiced sex work, private sex workers, single women, and even married women who discreetly engaged in sex work. For married women, their husbands were not aware that they were sex workers. The mines knew of the sex workers but did not acknowledge it as a practice. Mzaidume (2019) discussed factors driving women to turn to sex work in mining communities, citing reasons such as unemployment, parental deaths, and family pressure. She also noted the informal settlements' exposure to alcohol and sex work, which made it a viable option for women to support their families. Poverty, lack of education, and the need to provide for their families were common motivators. Despite entering the industry out of necessity, many women remained in sex work because the income met their needs. Simultaneously, many women in sex work did not tell their families how they were making money (Mzaidume, 2019).

Interviewee 17, Cause for Justice (2019), agreed that "it [was] common knowledge that poverty, inequality, violence, and abuse (and much of it 'gender-based') [were] rife in SA, which [meant] many South Africans, and especially women, [found] themselves in desperate and vulnerable positions." They concurred with the SALRC report's assessment that "prostitution [was] predominantly a last resort, survival strategy used by certain vulnerable persons to alleviate the pressure of desperate socio-economic circumstances" (Cause for Justice, 2019). Interviewee 18, Dr Mariette Slabbert (2019), explained that women often made a personal choice to enter sex work due to a lack of other job opportunities. In the case of foreigners, limited work permit options forced them into sex work. She also noted that sex work offered flexibility in terms of working hours and salary determination, which some individuals found appealing (Slabbert, 2019). Interviewee 19, Madri Bruwer (2019), contested the notion that prostitution helped people, characterising it as an "illusion." She argued that individuals in prostitution did not make money themselves but instead moved it among "broken people." According to Bruwer (2019), people entered prostitution not solely based on poverty, as not all poor individuals engaged in prostitution, and some not considered poor still entered the industry. In her words she justified this by the fact that "not all poor were in prostitution and some that might possibly not be considered as poor were in prostitution." She believed that people in prostitution were "vulnerable" and seeking to fulfil their needs, rather than making substantial income (Bruwer, 2019).

Bruwer's (2019) perspective challenged the conventional notion that prostitution served as a means for individuals, particularly those facing economic hardship, to improve their financial situation. Her argument that prostitution merely shifted money among "broken people" suggests that the economic gains are not as substantial or empowering as commonly perceived. This viewpoint underscores the complexity of motivations behind entering the sex work industry, emphasising that poverty alone cannot account for everyone's participation. By pointing out that not all poor individuals engage in prostitution and that some who are not traditionally considered impoverished still enter the industry, Bruwer (2019) highlights the multifaceted factors influencing this decision. Her assertion that individuals in prostitution are "vulnerable" and primarily seeking to fulfill their needs rather than accumulating significant income sheds light on the human aspects of the industry. This perspective challenges stereotypes and emphasises the agency of sex workers, emphasising that their involvement may be driven by a variety of needs, not solely financial ones. Bruwer's (2019) view urges a more comprehensive understanding of sex work that considers the diverse motivations and vulnerabilities of those involved, highlighting the importance of addressing these underlying issues in any policy discussions related to sex work.

7.1.4 Question 1(d): Agency of the sex workers as per the interviews

During the interviews with various organisations, a recurring theme emerges among those advocating for decriminalisation – the recognition of sex workers as individuals with agency who actively choose sex work as a profession. A discussion on agency in the context of sex work however highlighted two contrasting viewpoints. Some argued that sex workers could exercise agency and make choices within the industry, emphasising empowerment and self-determination. Others believed that agency was limited due to systemic factors like poverty and exploitation, emphasising the need for protective policies. Recognising these differing perspectives was crucial for informed policymaking, aiming to balance empowerment and structural challenges faced by sex workers. Agency and free will are defined in Chapter 2, section 2.1.3. Agency being the ability of an individual to make their own choices (MacKinnon, 2011:273). Free will being an understanding that an individual can make choices without constraint. Pecorino (2001:348) defines "free will as the ability of agents to make choices unconstrained by certain factors." Based on the interviewees' responses, while an individual in sex work could make choices, it was done within limited options. In this context, it can be seen as an exercise of free will, despite the constraints imposed by their circumstances.

In the interviews, Interviewee 1, Clara Singende (2019), argued that "sex work [was] an actual profession in which sex workers make enough money if they work hard." She also acknowledged that other jobs were seen to not pay enough to meet their needs (Singende, 2019). Conversely, Interviewee 2, Melodie van Brakel (2019), Cradle of Hope, believed that individuals were not actively choosing to be sex workers but were often pulled into the industry due to a lack of choices. At the same time, she also acknowledged how women often chose to stay in the industry due to the money they were making once in the industry. Therefore, while they may not have had agency when joining the industry, they used agency in their choice to remain in the industry (van Brakel, 2019). Interviewee 3, Ishtar Lakhani (2019), SWEAT, noted how being in sex work was a choice even though it was "chosen within limited choices." She emphasised, how it was "important to respect the agency and a woman's choice," and how women "could also choose to leave sex work" (Lakhani, 2019). Interviewee 4, Marlise Richter (2019), Sonke Gender Justice, noted how women had agency and decided to enter sex work as a form of labour.

Interviewee 5, Mickey Meji (2019), Embrace Dignity, viewed individuals entering the sex industry as lacking agency, contending that they operated under someone else's control and often couldn't refuse clients. Meji (2019) emphasised the industry's dependency on buyers and its cutthroat competition, where younger sex workers faced financial pressures and older ones had to accept lower payments. This highlighted the industry's financial instability. According to Meji (2019), "the more streetwise a woman [was], the fewer clients they [had]," and men typically dictated the prices. Their perspective maintained that prostitution did

not empower those involved and did not promote gender equality, as it relied on women's dependence on male clients (Meji, 2019).

Interviewee 6, Cherith Sanger (2019), contended that despite the constraints, engaging in sex work represented a form of choice. She argued that sex work could be compared to other limited employment options, such as domestic work, which afforded individuals a degree of agency. Her perspective maintained that there existed "a level of choice." Sanger (2019) elaborated on the diversity within the sex work community, acknowledging that while most sex workers faced economic disadvantage, they were not a "homogeneous group." She highlighted that most sex workers were "black women", reflecting the broader demographics of SA, where black women were disproportionately impoverished due to the legacy of apartheid, due to them also being the most impoverished. From a legal standpoint, Sanger (2019) believed that, despite the complexities of the sex industry, there was still a level of choice. She also pointed out the different motivations within the industry, citing examples of individuals who engaged in sex work temporarily to fund their studies and pursue their desired professions (Sanger, 2019).

Interviewee 7, Constance Mathe (2019), articulated the perspective that sex work offered a choice in selecting one's sexual partners. She drew a contrast with intimate relationships where sex might be driven by obligation or duty, suggesting that sex work empowered women by granting them control over their bodies. Drawing from her personal experience as a sex worker, Mathe (2019) emphasised her voluntary engagement in sex work, asserting that she genuinely enjoyed it and was not compelled to participate. According to her, success in the sex industry depended on a woman's ability to market herself effectively for different types of work. Mathe (2019) acknowledged the financial necessity that often drove women to engage in sex work as "nobody can sleep at home with no money." She argued that even those who identified as survivors within the KWANELE movement still practiced sex work, as alternative employment opportunities often fell short in terms of income (Mathe, 2019). As quoted from the interview by Mathe (2019):

> If you are a black woman, your salary is already underpaid. I have worked under these circumstances. But sex work is better paid. Even now that I am a coordinator, I still haven't resigned from being a sex worker. That is my occupation, this is what I feel comfortable doing and this is what I love doing (Mathe, 2019).

Mathe (2019) was expressing her reluctance to quit sex work, emphasising that from her time in the industry (15 years) the level of exploitation in the industry varied depending on the individual. She advocated for sex workers to assert control over their bodies and exercise choice in their interactions with clients, even when approached by drug dealers seeking their services. Mathe (2019) stressed the importance of presentation, noting that well-dressed and well-groomed sex workers could command higher prices, as men were willing to pay more for those who met certain standards. She critiqued instances where sex workers

allowed themselves to be mistreated, asserting that maintaining strict boundaries could result in higher earnings. Mathe underscored the importance of preserving one's dignity and the ability to say no, acknowledging distinctions between upper-market sex work and street-based sex work, the latter of which she personally found less appealing (Mathe, 2019).

Interviewee 8, Matthew Clayton (2019), contended that individuals voluntarily choose to enter the sex industry, defining sex work by the element of choice. He argued that once choice is eliminated, the activity ceases to be sex work and becomes something else entirely. Nevertheless, he acknowledged the ongoing debate regarding the "extent to which people [truly] have a choice" in this matter. Clayton (2019) raised questions about whether sex work would be the first choice for individuals if they had other viable options available to them (Clayton, 2019). Interviewee 9, representing an Anti-Trafficking Organisation (2019), expressed the perspective that women in the sex industry might make choices about what they do not want, emphasising that love and agency were not part of the equation when clients "buy a vagina." He indicated that he had not encountered anyone in the sex industry who felt they had agency, suggesting that those who claimed to choose sex work might be were probably paid to say that. He pointed out that even those who argued that sex workers had agency and actively chose this profession acknowledged that these choices were made "within a limited range of options", highlighting the influence of financial considerations. He noted that "theoretically" people in the sex industry had options but the additional of a financial payment created a "power imbalance." He also drew attention to the prevalence of individuals he described as "broken people" trapped in very difficult circumstances he describes as the "gutters" of prostitution. While he highlighted that he didn't "think you'd find many people who would agree that prostitutes have dignity especially in terms of the commodification of sexual parts. You are not seen as a person." (Anti-Trafficking Organisation, 2019).

Interviewee 10, the CGE (2019), observed that sex workers' entry into the industry was indeed a choice, even though poverty often played a significant role in shaping this decision. She characterised sex work as a "choice" and a "career" for women, advocating against its criminalisation (CGE, 2019). Interviewee 11, Ntokozo Yingwana (2019), noted that entry into sex work often resulted from limited available choices, but emphasised that individuals still exercised agency when engaging in sex work. She clarified that her assertion referred exclusively to "adult consenting sex workers," distinguishing them from those who were trafficked or underage. Yingwana (2019) acknowledged that while sexual exploitation did occur, it was not as prevalent as portrayed in the media. She cited a study on exploitation within the sex industry, where trafficking was a factor but not a dominant one (Yingwana, 2012). Interviewee 12, representing a research organisation (2019), explained that "agency varies" among the women they worked with, with some possessing as much "agency as any other women in SA", while others had none at all. The level of agency

fluctuated dramatically among individuals, with some having "as much agency as someone unemployed" (Research Organisation, 2019).

Interviewee 13, Dr Marcel van der Watt (2019), reflected on the vulnerability and potential for abuse faced by women in the sex industry. He observed that many women "submitted to exploitation" primarily due to various circumstances, such as being migrants, lacking documentation, struggling with drug addiction, supporting children, or living in poverty. Van der Watt (2019) argued that individuals in the sex industry often engaged in it out of necessity, not by choice. He emphasised the urgent need for an "open and honest conversation about trafficking," highlighting that brothel often served as sites of exploitation. Through establishing rapport with women in brothels, he had gained insights into their reasons for being there, which included situations like "debt bondage from a fines system," circumstances that he contended did not equate to "free will."[60] Van der Watt (2019) underscored the importance of protecting these vulnerable women.

Interviewee 14, Naomi Hill (2019), representing WRHI, acknowledged that sex work could provide women with a sense of "autonomy." They clarified that the sex workers they worked with were adults. However, they also noted that "younger sex workers, [in particular], experience[ed] a greater degree of persuasion, especially from family." While asserting that sex workers had agency, Hill recognised that their choices might be influenced by the absence of viable alternatives. She viewed "sex work as a survival strategy" and emphasised the recognition of sex work as a form of employment. Nevertheless, they did not advocate for specific alternative approaches to the sex industry, as their organisation primarily aimed to "meet sex workers where they were and provide [support] services" (Hill, 2019). Interviewee 15, Corinne Sandenbergh (2019), representing Stop Trafficking, contended that "no woman dreams of being in prostitution." She pointed out a prevalence of "pimping" in rural areas, where more than "half the women they deal with [were] pimped by their boyfriend." Drawing from her seven years of experience working with prostitutes, she highlighted the pervasive presence of men in the industry, particularly in the city where most prostitutes had pimps. She explained that women in rural areas often resorted to selling their bodies as they had no other viable options, suggesting a lack of agency in their interactions with the sex industry (Sandenbergh, 2019).

[60] Van der Watt (2018b) explains this system of debt bondage in his research into trafficking, whereby women owed money to the brothel owner. This money is to pay for initial transport costs for foreign sex workers and increases due to fines for various aspects of their work including being late, going over time, not wearing the correct outfits, a client not paying and even when they are sick. These debts are recorded in a "little black book." Often their "passports and visas" are kept by the brothel owners until the debt has been paid in full (van der Watt, 2018:183). Busza (2004: 232) highlights in her research how women are paid an initial sum of money often to be given to their families resulting in a debt bondage, this amount increases due to arrests and payment of bribes. These payments are added to their account as well as costs of food if they are unable to work. This debt bondage in turn increases the control brothel managers have over women working in brothels (ibid).

Interviewee 16, Yodwa Mzaidume (2019), observed a spectrum within the sex industry, where some individuals made a conscious choice to engage in sex work, while others felt pressured into it. She provided an example of sex workers who concealed the nature of their work from their families, referring to it as "piece work." This secrecy inadvertently led families to unknowingly send their daughters into the sex industry, coercing them into this profession. These girls were unaware of what work they would be doing and were just told "you see, what we do, so go and work." Mzaidume (2019) emphasised the difficulty of leaving the sex industry once involved, highlighting the complex interplay of choice and agency alongside coercive elements. Interviewee 17, representing Cause for Justice (2019), stressed the importance of raising awareness within society about prostitution as a form of sexual exploitation, urging against apathy. They acknowledged that some individuals turned to prostitution as a last resort and survival strategy due to dire socio-economic circumstances, implying a lack of agency in their decisions. However, Cause for Justice (2019) also asserted that the existence of prostitution and sex trafficking depended on the demand for these services.

Interviewee 18, Dr Mariette Slabbert (2019), noted the patriarchal nature of South African society, which limited women's agency. Despite these constraints, she argued that choosing to become a sex worker was still a conscious decision. Slabbert (2019) highlighted the "benefits" of the sex industry that were rarely discussed, such as the flexibility of "working hours, leave, and the ability to set one's salary." She contends that while the job itself was "hard" and "terrible, and horrible things [did] happen," there was still the upside and the reasons that women "chose to stay in sex work." She highlights the need to "strip the layers to the human rights abuses against sex workers" (Slabbert, 2019). While acknowledging the harsh realities of the job, she also recognised the reasons why individuals might choose to remain in the industry and emphasised the need to address human rights abuses against sex workers (ibid.). Interviewee 19, Madri Bruwer (2019), differentiated between trafficking and prostitution, emphasising that individuals in the latter category still made choices, even within "contexts of deprivation and trauma." She noted that those entering prostitution often came from backgrounds of exclusion and neglect, and while their choices might be limited or unfavourable, they remained choices. Bruwer (2019) elaborated on the updated definition of trafficking, which included elements like "debt bondage." She underscored the significance of considering the conditions and circumstances within which these choices were made in the sex industry (Bruwer, 2019). The dynamics of agency within the sex industry are intricate and multifaceted. Agency, or an individual's capacity to make choices, being constrained and influenced by various factors. Many enter the sex industry due to limited economic options, while external pressures from pimps, traffickers, or clients can limit their choices significantly. Intersectionality plays a role, as marginalised individuals often have fewer options and face increased risks. The legal framework also impacts agency, with criminalisation pushing sex work into the shadows. Debates over choice versus lack of choice, empowerment versus exploitation, and the role of

advocacy and rights further complicate the picture. Recognising sex workers' agency, while acknowledging the challenges they face, is essential for understanding their experiences within this complex social context.

7.1.5 Discussion of Question 1

Divergent perspectives existed concerning the act of exchanging sex for an income. Some regarded it as a voluntary means for women to meet their financial obligations, while others considered the mere necessity for income as a form of coercion. This dichotomy underscores the division between those providing support to sex workers and those seeking to assist them. Foucault's work emphasises the role of discourse in shaping and reinforcing power structures (Foucault, 1977). The terminology used in discussions about the sex industry reflected and reinforced power dynamics with certain terms, such as "prostitution" or "sex work," being deployed by different stakeholders, including policymakers, activists, and the media. In turn these different perspectives shape public perception and in turn influence policy decisions. Among the interviews conducted with organisations, thirteen participants concurred on employing the term "sex work" to characterise the sex industry, while two interviewees favoured the term "prostitution." In contrast, three interviewees preferred to describe sex workers as a "person in prostitution" or "prostituted person." One favoured the term "commercial sex industry." The term "sex work" represented the industry as an occupation in which people provided a service in exchange for a monetary payment. The use of this term was in line with liberal feminism, which argued for women's rights to choose to partake in sex work as an occupation (Clements. 1996:57). On the other hand, the term "prostitution" represented being forced into an industry where an individual did not willingly partake in the activity. The use of this term was in line with radical feminism, which did not view prostitution as work but rather as a form of oppression of women (MacKinnon, 2011a). The terminology used to describe the sex industry played a pivotal role in shaping the discourse around sex work. It can either empower or stigmatise individuals engaged in sex work and profoundly influenced public perception, policy decisions, and advocacy efforts. The term "sex work" emphasised agency, labour rights, and human dignity, supporting harm reduction and human rights-based policies. In contrast, terms like "prostitution" may carry negative connotations, potentially leading to punitive measures and continued criminalisation. The choice of language also impacted research, community engagements, and the overall tenor of the discourse. Therefore, selecting terminology that respected the rights and choices of sex workers was crucial for fostering productive and rights-based discussions on sex work.

Interviewee 1, Clara Singende's (2019) belief that prostitution represented the enjoyment of the act rather than merely a financial necessity carried significant implications within the broader context of discussions on sex work. Singende's perspective challenged the prevailing stereotypes and stigmatisation associated with sex work, which often portrayed sex workers as victims or individuals solely driven by

economic desperation. Her view suggested that some individuals may willingly choose sex work as a profession, finding personal satisfaction or enjoyment in it. This challenged conventional narratives that framed sex workers as passive victims in need of rescue. Singende's perspective aligned with the idea of agency and empowerment among sex workers, emphasising their right to make choices regarding their bodies and livelihoods. However, it's essential to note that Singende's (2019) viewpoint was just one perspective within a complex and multifaceted debate. Other stakeholders and organisations held different beliefs about sex work, and these varying perspectives contributed to the ongoing discourse surrounding sex work policy, human rights, and societal attitudes. In essence, Singende's perspective highlighted the diversity of experiences and opinions within the sex work community and underscores the importance of considering a range of viewpoints when discussing sex work-related issues.

In contrast to the perspective presented by Clara Singende (2019), there were organisations and individuals who did not view the sale of sex as a form of work but rather as an involuntary or coerced activity. For these stakeholders, the terminology used to describe the sex industry becomes particularly significant. They preferred to employ the term "prostitution" when referring to the industry as a whole. However, when discussing individuals engaged in prostitution, they opted for terms like "prostituted women" or "women in prostitution." The choice of such terminology underscored their belief that prostitution was imposed upon individuals in the industry, primarily women, often due to various forms of coercion, exploitation, or socio-economic vulnerabilities. This perspective challenged the notion of agency and choice within sex work, emphasising the need to address the systemic issues and power imbalances that lead individuals into the sex industry. By using terms like "prostituted women" or "women in prostitution," these organisations sought to highlight the victimisation and lack of agency they perceived within this context. This linguistic divergence highlighted the broader ideological divide within the discourse on sex work, reflecting varying beliefs regarding the agency, consent, and autonomy of individuals involved in the industry. It also underscored the complexities surrounding sex work policy, as different stakeholders advocate for different approaches based on their interpretations of these terms and the corresponding rights and protections, they believe should be afforded to those engaged in the sex industry.

The contrasting perspectives on terminology usage within the sex work discourse, as showcased in the interviews underscored, a broader disagreement within the feminist movement in the context of SA. This divergence between liberal and radical feminists contributed to the lack of a unified front advocating for changes in sex work policy. The selection of terminology was far from trivial, significantly impacting how organisations interacted with the sex industry and approached legislative reform. It also signified whether they aligned with liberal or radical feminist viewpoints regarding the sex industry. Moreover, the discussion

touched upon the intersectional discrimination faced by sex workers, including factors like class, gender, and race. In SA, where historical racial inequalities persisted, sex workers were predominantly from marginalised backgrounds, primarily lower socioeconomic classes, and people of colour. This question also highlighted the continued presence of sex workers within society. Official statistics on the number of sex workers in SA were considered outdated and unreliable. Documenting an industry that operated within a criminalised context was inherently challenging, and the fear of legal consequences had deterred many from disclosing their involvement. The vibrancy of the sex industry may have stemmed from sustained demand, while its supply side could be attributed to the country's socioeconomic conditions, characterised by high unemployment and poverty rates.

The determination of the size of the sex industry was also profoundly influenced by the definitions and terminology employed in this context. The crucial question arises: should the scope of sex work encompass those who engage in sexual activities and accept non-monetary rewards in exchange? This debate over definitions introduces a layer of complexity that distorts the accurate quantification of sex workers in SA. The ramifications of these differing definitions extend beyond mere semantics; they carry significant implications for understanding the true scope of the industry within the country. One profound consequence of this definitional dilemma is the substantial contribution of sex workers to HIV/AIDS infections in SA, as documented by the South African National AIDS Council (SANAC) in 2017. This persistent challenge was exacerbated by the continued criminalisation and stigmatisation of the industry, creating an environment where individuals are reluctant to openly identify as sex workers. This reluctance poses a formidable obstacle to the overarching goal of reducing HIV and AIDS prevalence in the country, particularly in the context of the ambitious 90-90-90 HIV mandate. The discrepancy between official estimates and the real population of sex workers feeds a vicious circle of false information and poorly focused initiatives. As a result, attempts to prevent HIV/AIDS and promote public health within the sex industry sector were less effective. This mismatch had repercussions for public policy, healthcare delivery, and the larger understanding of how the sex industry affected public health in general. In the end, the definitional problem within the discourse on sex work not only emphasised the need for standardised terminology but also emphasised the critical importance of a nuanced, inclusive, and evidence-based approach to understanding the complex problems posed by the sex industry and its intersection with public health issues. A crucial requirement was the precise estimation of the scope of sex work.

The data extracted from the interviews underscored the pervasive issue of persistent poverty among women engaged in the sex industry, a phenomenon that aligned with the assertions put forth by radical feminists. However, it was crucial to note that the existing body of research predominantly focused on street-

based prostitutes, as highlighted by Weitzer (2009:217), with street-based sex workers garnering more attention due to their visibility and the perception of them as a "public nuisance," as noted by Abel (2014:589). Clements (1996:52-53) further quantifies this by estimating that street-based sex workers constituted approximately "10-20%" of all individuals involved in prostitution. Therefore, the concentration of research on street-based sex workers resulted in a skewed representation of the sex industry in SA. Organisations operating within SA primarily interacted with visible sex workers who were willing to openly identify as such. These individuals often belonged to the lower echelons of the sex work spectrum, further contributing to the skewed perception of the industry. Consequently, there existed an imperative need for more comprehensive research efforts focused on indoor sex workers within the South African context. Such endeavours are essential to gain a nuanced understanding of the experiences and challenges faced by this segment of the sex industry, which remains underrepresented in the existing literature.

Moreover, the research landscape surrounding sex work was significantly influenced by the competing feminist perspectives that underpinned it. The divergent positions of radical feminists, who advocated for the protection of women within the industry due to their belief that it would persist, and abolitionists, who lean towards criminalisation or partial criminalisation to eradicate the industry, introducing a critical dimension to the discourse. Radical feminists contended that the sex industry extends and perpetuates male domination over the female body within a patriarchal framework, normalising male control and ownership of women (Sutherland, 2004:142). This perspective underscores the broader societal context in which women were treated as objects, bought, sold, and subjected to the whims of male authority. In contrast, liberal feminists assert that the sex industry entails the sale of sexual services, which could be divorced from the self, distinguishing between the physical body and one's personal identity (Bell, 2009). This perspective supported the regulation or decriminalisation of the sex industry, with the belief that these legislative frameworks may offer protective measures for sex workers. The divergent feminist arguments thus not only shape the discourse but also have a tangible impact on the collection and interpretation of data related to the sex industry in SA.

The interview data showcased and reinforced how the motivations behind entering the sex industry were predominantly rooted in financial necessity, specifically linked to the high levels of unemployment and poverty prevalent in SA. The overarching consensus among interviewees was that economic reasons, akin to those driving individuals to seek employment in any field, served as the primary impetus for participation in the sex industry. These economic factors extended beyond the sex workers themselves, encompassing the financial needs of their families or third parties, rendering the decision to enter the industry in line with the broader job market dynamics. Notably, many individuals in the industry were identified as "mothers" or

"breadwinners," assuming the critical responsibility of providing for their families. This aspect aligns with the perspective advocated by radical feminists, emphasising that sex workers do not amass substantial wealth within the industry. In concurrence with this viewpoint, SWEAT's insights, derived from the interviews, underscored that many sex workers were burdened with the financial support of four to eight dependents, a substantial obligation that further heightened their vulnerability. Sexual workers frequently lost their hard-earned money because of theft and physical assault. Additionally, the lack of formal education among women in the industry limited their capacity to successfully promote themselves and get access to better-paying markets for sex work. Additionally, the criminalised status of the sex industry hindered sex workers from opening bank accounts or obtaining loans, effectively limiting their financial management options. Operating within the "black market" further exacerbated financial challenges, potentially resulting in higher payments to entities like loan sharks and regular bribes to law enforcement officers.

Interviewee 7, Constance Mathe (2019), highlighted the disconcerting power dynamics within the industry, where men dictated the prices paid to sex workers and exhibited a preference for younger sex workers. This preference perpetuated a scenario in which individuals who remained in the industry for an extended period faced diminishing earnings, particularly in an environment where low-income employment opportunities were scarce or non-existent. Moreover, the interviews illuminated the multifaceted forces compelling individuals to enter the industry. On one hand, individuals found themselves driven by the dire circumstances of poverty, while on the other, the spectra of trafficking loomed as a significant factor. These circumstances often stemmed from the loss of parents, limited access to education, and the overarching need to provide for children and other dependents. Regrettably, these factors perpetuated a cyclical pattern of poverty, rendering sex workers increasingly vulnerable and prompting many to remain in the industry as a means of supporting their dependents. The interviews also revealed the profound impact of traumatic experiences, such as childhood abuse and rape, as influential factors leading individuals to enter the sex industry. It became evident through multiple interviews that the decision to join the industry differed from the motivations to remain within it. The prevailing sentiment among interviewees was that alternative employment opportunities offered inferior compensation compared to sex work, thereby presenting a formidable barrier to exiting the industry. Consequently, sex work was often characterised as a "survivalist strategy" and, in many instances, perceived as a last resort for individuals facing limited options.

As was already indicated, a thorough analysis of the factors influencing women's entry in the sex industry required taking into consideration a wide range of variables, including the number of dependents, educational attainment, and feasible job possibilities for women in a similar situation. Since it was illegal to work in the sex industry in SA, many women resorted to it as a last resort. Their decision-making was

significantly shaped by external factors, with familial pressures frequently pushing them in that direction. Additionally, the potential for higher earnings within the sex industry, compared to other low-income professions, could sway their choices. A yearning for a better life for their loved ones also factored into the decision to enter the industry. As elaborated in earlier chapters, SA's high unemployment rate further constrained opportunities for securing low-income jobs. Consequently, while women may aspire to find alternative employment in low-paying occupations, they may not invariably succeed in doing so. Paradoxically, within the framework of Foucauldian theory, women who found themselves unable to financially support their families encountered societal expectations that they should turn to selling their bodies, underlining the prevailing social norm dictating that women should resort to any means necessary to provide for their families. This societal perspective starkly contrasted with the views held by communities regarding sex workers, often stigmatising them as unworthy or immoral. Thus, a complex dynamic emerges in which predominantly impoverished women from lower socioeconomic background were expected, and at times compelled, to engage in sex work to meet their familial obligations. Simultaneously, they faced ostracisation and condemnation from these same communities, reflecting the inherent contradictions within societal attitudes towards sex workers.

Interviewee 15, Corinne Sandenbergh (2019), Stop Trafficking argued that women in sex work did not dream of being sex workers while growing up. However, due to a lack of "education," "unemployment" and "other opportunities," they found themselves joining the sex industry. The social motives included the social conditions found in SA, such as patriarchy and the way women are treated (Rakoczy, 2004:30) from a young age. The girls are groomed to believe that abuse is normal, which is exacerbated by a lack of education and disintegration of the family. Radical feminists mention the "sexual training" of girls from a young age which reduced them to "sexual objects for men" (Comte, 2014:198). Radical feminists argue that this reduces women to "their sex" and "dehumanises" them (Comte, 2014:198). The commodification of women and children accompanied by the sexualisation of children has affected how women view themselves and their bodies. Due to abuse and vulnerability, including rape, women see themselves as not amounting to more than what the sex industry offers. The disintegration of the family, according to Corinne Sandenbergh, has led to what is termed as the "father wound," where women are seen to be searching for love in the sex industry. Interviewee 8, Matthew Clayton (2019), Triangle Project, Interviewee 10, CGE (2019) and Interviewee 12, the Research Organisation (2019), highlighted how for transgender women, the stigma and rejection from their families often leave them with few other options. The interviews illustrate a fear that if the industry is no longer criminalised, the positive aspects could outweigh the negative and result in more women and girls entering the industry.

7.2 Question 2 and 5: The Preferred Legislative Framework towards sex work/prostitution

Question 2: How does your organisation view the current policy on sex work in SA? What will their preferred policy approach be towards sex work in SA, considering various other countries' approaches?

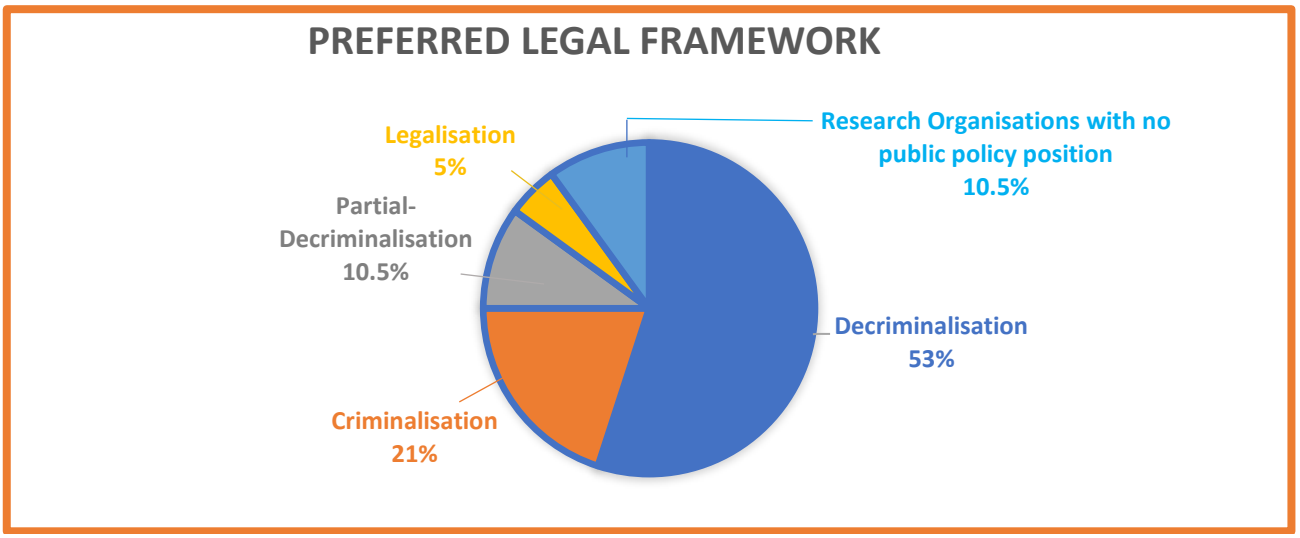
The purpose of this question was to understand, based on their work with sex workers, what they feel would be the best legislative approach for SA. This would help to contextualise the call for the decriminalisation of sex work in SA and whether this was the best legislative approach for SA. This question was asked considering other legislative frameworks in other countries. Question 2 played a pivotal role in the discussion of sex work and the persisting policy stagnation in SA. It served as a window into the perspectives of organisations closely engaged with sex workers, shedding light on their views regarding the then-current policy landscape. Furthermore, it sought to extract their preferred policy approaches for regulating the sex industry in SA, drawing from their extensive experience. By considering alternative legislative frameworks from other countries, the question prompted a comparative analysis, allowing organisations to leverage international experiences in shaping local policy discussions. Crucially, as the debate over the decriminalisation of sex work continues, Question 2 aids in contextualising this discourse by exploring whether organisations believed decriminalisation aligned with the South African context and international best practices. The responses collected therefore held the potential to guide policy advocacy efforts, offering a comprehensive understanding of organisational perspectives within this complex policy landscape.

Question 5: What do you think the benefits or disadvantages will be for sex workers in SA if sex work is decriminalised? How will this compare to the continued criminalisation of sex work under the current policy? Considering your answer, will your organisation recommend partial decriminalisation or criminalisation as a possible policy option? Why or why not?

The purpose of this question was to understand the positive and negative effects of the different legislative frameworks. It gave awareness into the various legislative frameworks and the impact they have on sex workers. The responses were provided per legislative framework for both question 2 and question 5, focusing on the positive and the negative aspects of each legislative model. Figure 1 highlights the percentage of support per legislative framework as per the 19 interviews done. Question 5 took on paramount significance within the context of discussing sex work and the enduring policy inertia in SA. It ventured into the realm of practical implications, seeking to unravel the potential benefits and drawbacks that sex workers might encounter under different legislative frameworks. By delving into the lived experiences of sex workers and the impacts of legislative choices, this question operated as a bridge between policy discourse and the real-world consequences for those directly affected. It offered an opportunity to gauge the tangible effects of continued criminalisation versus the prospects of decriminalisation on sex workers' lives and their access to rights and protections. As organisations reflected on these implications and weighed the pros and cons, they were better equipped to formulate well-informed recommendations regarding the most suitable policy

approach for SA. The question's comparative nature, examining both decriminalisation and continued criminalisation, fostered a comprehensive understanding of how legislative choices could either empower or disenfranchise sex workers. Ultimately, the responses gathered through Question 5 informed the broader policy debate and contributed to efforts aimed at dismantling the existing policy stasis.

Figure 1: Percentage of support for each Legal Framework according to the interviews with the organisations: [61]



Of the 19 interviews conducted, ten of the organisations were pro-decriminalisation, one was pro-legalisation, two were pro-partial decriminalisation, and four were pro-criminalisation. A large majority of organisations that worked directly with sex workers were also in favour of decriminalisation. Table 8 below illustrated the organisations and their preferred legislative framework towards managing the sex industry in SA.

Table 8: Organisations and their preferred legislative framework.

Number	Interviewee	Organisations	Date of interview	Preferred Legislative Framework
Interviewee 1:	Clara Singende	Lifeline Johannesburg Sisonke	March 2019	Decriminalisation
Interviewee 2:	Melodie van Brakel	Cradle of Hope	March 2019	Legalisation
Interviewee 3:	Ishtar Lakhani	SWEAT	April 2019	Decriminalisation
Interviewee 4:	Marlise Richter	SONKE Gender Justice	April 2019	Decriminalisation
Interviewee 5:	Mickey Meji	Embrace Dignity KWANELE	April 2019	Partial Decriminalisation (Equality Model)

[61] There is a discrepancy in the presentation of data concerning "research organisations" not supporting specific legislation is attributed to donor funding conditions, with PEPFAR being a significant contributor. While the figure indicates their inability to endorse certain policy views, subsequent interview discussions imply that these organisations do hold opinions on decriminalisation. However, restrictions imposed by donors, for example PEPFAR, prohibit them from publicly expressing these views. This nuance underscores the complexity of their involvement and should be acknowledged alongside the pie chart data.

Number	Interviewee	Organisations	Date of interview	Preferred Legislative Framework
Interviewee 6:	Cherith Sanger	Consultant	May 2019	Decriminalisation
Interviewee 7:	Constance Mathe	Asijiki Coalition	May 2019	Decriminalisation
Interviewee 8:	Matthew Clayton	Triangle Project	May 2019	Decriminalisation
Interviewee 9:	Anonymous	Anti-Trafficking Organisation	May 2019	Criminalisation
Interviewee 10:	The CGE	The CGE	June 2019	Decriminalisation
Interviewee 11:	Ntokozo Yingwana	ACMS	June 2019	Decriminalisation
Interviewee 12:	Anonymous	Research organisation	June 2019	Research Organisation with no public policy position, the organisation was restricted by funding from supporting a particular legislative framework.
Interviewee 13:	Dr Marcel van der Watt	GREAT NFN	June 2019	Research Organisation, with no public policy position, the organisation was restricted by funding from supporting a particular legislative framework.
Interviewee 13:	Dr Marcel van der Watt	Ex-Hawks investigator and Researcher	June 2019	Partial Decriminalisation (Equality Model)
Interviewee 14:	Naomi Hill	WRHI	July 2019	Research Organisation, with no public policy position, the organisation was restricted by funding from supporting a particular legislative framework.
Interviewee 15:	Corinne Sandenbergh	STOP Trafficking	July 2019	Criminalisation
Interviewee 16:	Yodwa Mzaidume	Mothusimpilo Outreach Project	July 2019	Decriminalisation
Interviewee 17:	Cause for Justice	Cause for Justice	July 2019	Criminalisation
Interviewee 18:	Dr Mariette Slabbert	Consultant	August 2019	Decriminalisation
Interviewee 19:	Madri Bruwer	Straatwerk	August 2019	Criminalisation

The interviewees were united by a similar dedication to defending the rights and dignity of sex workers in conformity with the South African Constitution. However, they disagreed on which legislative strategy would be the best for achieving this objective. While the majority of interviewees advocated for decriminalisation to protect sex workers' rights, a minority aligned themselves with alternative legislative frameworks aimed at addressing sex work in SA. Radical feminists, represented by figures like Leidholdt (1993:145), asserted that the act of buying a woman's body was inherently violative of her human dignity, paralleling the violation incurred by selling it. In contrast, liberal feminists argued that permitting women to explore their sexuality was a way to uphold their dignity. This perspective arose within a societal context described by Comte (2014:201) as one attempting to constrain "women's sexuality" and confine women to the "restrictive frame of monogamous heterosexual sexuality." The responses to these differing viewpoints

were categorised based on the legislative framework they supported, with an examination of both the positive aspects and the potential drawbacks associated with each framework.

7.2.1.1 Support for Legalisation

Interviewee 2, Melodie van Brakel (2019), representing Cradle of Hope, strongly advocated for the legalisation of sex work as the most effective approach to managing the sex industry in SA. Legalisation, in her view, would entail designated areas where sex workers could safely operate. Within these designated zones, service hubs could be established to address the various health issues commonly experienced by sex workers. Under the current framework of criminalisation, van Brakel (2019) believed that sex workers faced significant barriers to accessing healthcare. This was primarily attributed to the pervasive stigma that sex workers encountered when seeking medical assistance at hospitals and clinics. Moreover, the practical challenges of seeking healthcare under criminalisation were highlighted, where sex workers often had to spend extended periods at medical facilities, impeding their ability to earn a livelihood to support themselves and their families. In addition, those who were coerced into sex work by pimps faced further obstacles in accessing healthcare. The presence of controlling pimps who monitored their activities and demanded their earnings made it even more difficult for these individuals to seek medical attention when needed (van Brakel, 2019).

7.2.1.2 Negative effects of Legalisation

Interviewee 6, Cherith Sanger (2019), expressed her reservations regarding the "legalisation of sex work," emphasising her concerns about potential state control and the registration of sex workers, which could restrict their autonomy and dictate where they could operate, often relegating them to the outskirts of society. In a similar vein, Interviewee 8, Matthew Clayton (2019), representing the Triangle Project, echoed the sentiment that sex workers were generally uncomfortable with the idea of legalising sex work. He firmly believed that decriminalisation offered a more sensible approach, as attempting to regulate the industry to align with the values of those who found it objectionable would be impractical. Moreover, he cautioned against over-regulation, which could potentially marginalise sex workers further (Clayton, 2019). Interviewee 11, Ntokozo Yingwana (2019), shared concerns that legalising sex work could be overly restrictive, effectively categorising sex workers as "dirty" individuals confined to designated spaces (Yingwana, 2019). Interviewee 12, from the Research Organisation (2019), also questioned the practicality of legalisation, expressing doubts about the protective measures it might offer to sex workers, in his words "legalisation [did] not make sense." Interviewee 15, Corinne Sandenbergh (2019) representing Stop Trafficking, highlighted potential challenges if prostitution were to become legal, such as diminished control over organised crime and limitations on police interventions in brothels, they would not be able to "rescue girls." She pondered whether such legalisation

would be feasible in a predominantly "Christian country" like SA, where certain "moral values" held sway, and many in the public deemed prostitution as morally wrong (Sandenbergh, 2019). Interviewee 17, Cause for Justice (2019), shared the perspective that "legalising prostitution would not eradicate the harms of prostitution, it would only legalise the very source of the harm" associated with it.

7.2.1.3 Discussion

Interviewee 2, Melodie van Brakel (2019), Cradle of Hope, advocated for the legalisation of sex work in the provided interviews. Nevertheless, the prevailing sentiment across the interviews was that the potential disadvantages associated with increased government control, a consequence of legalising the sex work industry, outweighed any prospective benefits. This consensus stemmed from the perspective that such legislation would necessitate government involvement in establishing specialised service hubs for sex workers' healthcare. However, the success of these hubs hinged on the government's willingness to incorporate them within the framework of legalised sex work, operating exclusively within designated areas. The limited support for this legislative approach within civil society was indicative of a broader desire to shift away from government control over individuals' bodies and toward greater respect for women's liberty, aligning with Foucauldian theory.

The prevailing consensus among the interviewees was that legalisation was not the most suitable legislative framework for SA. This collective viewpoint was grounded in diverse rationales, ranging from scepticism about the effectiveness of potential over-regulation to moral objections. Overall, it was believed that legalisation could potentially marginalise sex workers by relegating them to the fringes of society. The interviews also underscored the notion that this legislative framework might not eliminate the harms associated with prostitution, and society might remain unreceptive to sex workers' inclusion. Historically, SA faced political pressure to legalise sex work during the 2010 FIFA World Cup. However, this proposition did not materialise due to strong societal opposition and concerns about potential increases in trafficking. Bonthuys (2012:18) highlights that opponents of sex work legalisation in 2010 included "political parties, church leaders, local government officials, and members of the public." This lack of support during the 2010 episode reflected prevailing attitudes toward sex work at the time. In the years following 2020/21, it was crucial to ascertain whether these views had evolved. Interviews with MPLs revealed political support for legalising sex work to safeguard individuals within the industry. This shift in political perspective corresponded with global pressure to protect women and children in SA and to implement programs aimed at reducing HIV/AIDS. To gain a more comprehensive understanding of contemporary perspectives on sex work, there was a pressing need for increased community engagement to ascertain any updated viewpoints and sentiments regarding this issue.

7.2.2.1 Support for Partial-Decriminalisation

Two interviewees supported the concept of partial decriminalisation for sex work. The most robust endorsement for this legislative approach came from interviewee 5, Mickey Meji (2019), Embrace Dignity/KWANELE, who advocated for the "equality model." Meji (2019) believed that this approach could potentially restore the dignity of women involved in prostitution and compel the government to support essential exit programs for individuals within the industry. In her view, partial decriminalisation aimed to deter women from entering the sex industry while simultaneously facilitating their exit. Under this framework, clients would face criminalisation, and the government could impose fines on them. Meji (2019) suggested that the revenue generated from these fines could be allocated to fund much-needed exit programs. She cited examples from SA, where fines for infractions like smoking in non-designated areas and failing to wear seat belts had proven effective. According to Meji (2019), imposing fines, or penalties of up to R250,000 on brothels for violating these laws could substantially contribute to funding exit programs. Meji (2019) contended that the current criminalisation of the sex industry had not yielded success. She explained that SA had been awaiting decriminalisation for two decades, contending that there were reasons as to why this had not yet been achieved. They proposed that partial decriminalisation could offer the government an intermediate option between full criminalisation and full decriminalisation, potentially safeguarding the rights and dignity of prostituted women. She believed that while the government had expressed support for decriminalisation, it had not provided explicit details about its potential scope. This ambiguity allowed room for the government to consider partial decriminalisation, which, in her view, could protect the rights of sex workers and grant them dignity. She argued that this legislative framework would be preferable because male clients would be less likely to expose their identities, and women in the sex industry would have more protection against prosecution for their work. Meji stressed the importance of exit programs, emphasising that women leaving the sex industry needed viable options (Meji, 2019).

Interviewee 13, Dr Marcel van der Watt (2019), felt that while the "dignity of all women [was] critical," he did "not advocate for sex work or full decriminalisation." Alternatively, he also advocated for the partial decriminalisation of the sex industry while emphasising the critical nature of upholding the dignity of all women. He did not support full decriminalisation but believed that there should be off-ramps and robust exit services for those involved in sex work. Van der Watt perceived men as the primary perpetrators in the sex industry and asserted that the trade should not exist, as it inherently abused women. He argued for constraints on the sex trade and penalties for clients. He believed that partial decriminalisation could alleviate some of the current harms and reduce police power over sex workers, as he noted "police would not be able to exert power" over the sex workers. Women, in this framework, would have more "choices when abuse occure[ed]". Through the partial decriminalisation of the sex industry, it might make police think twice before

arresting sex workers, and this was the only way he felt the "current harms would be mitigated." Van der Watt (2019) firmly opposed making the sex trade entirely legal and that this door should never be opened. He believed that brothels should remain illegal to prevent the proliferation of exploitative establishments, as he noted there would be more than ten times the "lolly lounges" popping up all over. He advocated for the decriminalisation of women in the sex industry, contending that this approach could help curb the demand for women in the sex trade (van der Watt, 2019).

7.2.2.2 Negative effects of Partial-Decriminalisation

Interviewee 1, Clara Singende (2019), asserted that partial decriminalisation placed sex workers at a disadvantage. She argued that when clients faced the risk of arrest, they might avoid seeking the services of sex workers, potentially driving the industry underground (Singende, 2019). Interviewee 2, Melodie van Brakel (2019), expressed scepticism about the government's approach to partial criminalisation of sex work. She criticised the government for not thoroughly considering the practical aspects and for seemingly following other countries without adequate planning. She argued that while the legislative framework might seem promising on paper, the real challenge lay in implementation and regulation. She questioned, "who would control it and who would implement it?" In her opinion, this framework might only be feasible in an ideal world (van Brakel, 2019).

Interviewee 3, Ishtar Lakhani (2019), SWEAT, observed that research indicated dissatisfaction by the Swedish government with partial decriminalisation in Sweden. She pointed out that this legal framework had not led to a decrease in the number of sex workers comparing it to a scenario where women could "sell [their] tomatoes but that nobody [was] allowed to buy it." SWEAT further explained how sex workers might resort to conducting business in "dark, secluded places" to protect their incomes, citing the example of Ireland where this model had allegedly put sex workers at greater risk. She emphasised the need for an "evidence-based approach" over a "moralistic approach centred on [dictating] how women should use their bodies" (Lakhani, 2019). Interviewee 4, Marlise Richter (2019), Sonke Gender Justice, argued that "any criminalisation of sex work would have far-reaching effects."

Interviewee 10, The CGE (2019), stated their opposition to partial decriminalisation and their support for full decriminalisation. They clarified that while they shared a "common goal with Embrace Dignity [in advocating for policy] change," they did not agree with their viewpoints. They outlined their concern that partial decriminalisation could lead to the regulation of the industry and the sale of sex while leaving related activities criminalised, thereby undermining the rights of sex workers. Overall, they believed that by trying to "control the sector, they [were] undermining the rights of sex workers" (CGE, 2019). Interviewee 7,

Constance Mathe (2019), Asijiki Coalition, explained how partial decriminalisation worked in smaller countries like France and Sweden, highlighting differences in economic and social contexts. She argued that this model might not work effectively in SA, as sex workers could sell their services while buyers could be arrested. In a context where sex workers needed to support their families, they considered this legislative framework "risky" as it could force sex workers to work undercover, allowing clients to escape legal consequences. She questioned how sex workers could function if clients were criminalised. They asserted that the model had not worked effectively in Sweden and France, leading to an increase in criminal cases as sex workers operated in high-risk environments (Mathe, 2019).

Interviewee 11, Ntokozo Yingwana (2019), expressed a preference "for full decriminalisation as she [couldn't] imagine what partial decriminalisation would look like and how it might be governed." Interviewee 12, the Research Organisation (2019), explained that partial decriminalisation was harmful to women. They also discussed how clients could remain anonymous and it would potentially "hurt women." They argued that this legislative framework could harm women rather than help them (Research Organisation, 2019). Interviewee 14, Naomi Hill (2019), WRHI, observed that partial decriminalisation was challenging to monitor and could lead to increased discrimination. Interviewee 15, Corinne Sandenbergh (2019), Stop Trafficking, believed that implementing the "Nordic Model" might not succeed in SA due to poverty and diverse means of solicitation. She argued that this legislative framework might not be successful in a developing country and suggested it worked better in "first-world countries" with "smaller numbers of sex workers, making it manageable" and better exit programs. She maintained that despite women not being criminalised. under this model, there were still too many "loopholes." Sandenbergh (2019), felt that poverty in SA was too severe for partial decriminalisation to succeed. She also expressed doubts about its effectiveness in a developing country (Sandenbergh, 2019).

Interviewee 16, Yodwa Mzaidume (2019), questioned what partial decriminalisation would include or exclude and how it might change the industry. She also raised concerns about criminalising brothels, potentially forcing sex workers to work openly, and exposing them to more dangers. She stressed that sex workers did not want partial decriminalisation, as safety was a crucial aspect of sex work (Mzaidume, 2019). Interviewee 17, Cause for Justice (2019), observed that partial decriminalisation had "delivered limited successful results." However, they raised objections to this model due to SA's context, emphasising the need for "a specialised prostitution/sexual exploitation unit" without which this model could not be "effectively implemented." They also expressed "reservations about decriminalising inherently self-harming behaviour, considering it a human rights violation" (Cause for Justice, 2019). Interviewee 18, Dr Mariette Slabbert (2019), explained how partial decriminalisation criminalised aspects of sex work, increasing the "dangers for

sex workers." She viewed it as a "half measure" that would not protect sex workers and was rather a "human rights violation" (Slabbert, 2019). Interviewee 19, Madri Bruwer (2019), believed that partial decriminalisation made sense as it could empower women in prostitution and allow them more control within the system. She suggested that women might have the ability "to manipulate the system" under this framework, given the "desperation" of individuals in prostitution. She argued that individuals in prostitution could "be running the system" due to them knowing "nothing [could] happen to them" (Bruwer, 2019). This perspective contrasted with others who believed that men might gain more control under this legislative framework.

7.2.2.3 Discussion

Some advocates for the partial-decriminalisation legislative model initially favoured full decriminalisation. An example from the narratives given at the start of Chapter 6, Ayanda Denge (2018) initially supported the decriminalisation of sex work but later shifted her support to partial decriminalisation. She explained that "something was not connecting anymore. I began to feel that we were spoon-fed and indoctrinated by privileged white academics who did not know what the inhumane working conditions that we had to experience were like." Denge (2018) further observed that SWEAT only presented "one sex trade policy to consider," which was full decriminalisation. Dr Marcel van der Watt (2019) raised concerns about SWEAT's research methods, suggesting they tailored their findings to align with their agenda. He questioned how they could claim to represent all sex workers when they hadn't engaged with all segments of the industry. These arguments challenge the responses of organisations supporting the decriminalisation of sex work, highlighting that not all sex workers endorse full decriminalisation.

Interviewee 5, Mickey Meji (2019) Embrace Dignity, and Interviewee 13, Dr Marcel van der Watt (2019), both endorse the partial decriminalisation of sex work. They believed that this legislative framework offered the best solution, providing women with more control and helping them regain their "dignity." Their support for this model acknowledged that the sex industry wasn’t disappearing and sought to address an industry sustained by clients' demand. Meji (2019) suggests that successful implementation of partial decriminalisation would require complementary exit programs. Supporters of partial decriminalisation recognised, in line with radical feminism, that the sex industry primarily existed to cater to the sexual needs of men (clients). While acknowledging the imperative to protect women's human rights within a context of male oppression and dominance. The sex industry was seen as an extension of patriarchy, illustrating men's control over women. Critics of this legislative framework argue that it could leave sex workers more vulnerable to abuse. Ishtar Lakhani (2019) SWEAT highlighted the potential for sex workers to be pushed into working in dark and secluded places underground due to the increased risks to clients.

Concerns arose regarding the applicability of this model in SA, given its different socio-economic conditions, as it was originally developed for smaller countries with lower unemployment rates. In developed nations, sex work may be an option, but not a survival strategy. Critics label partial decriminalisation as "half-measures," effectively telling desperate women they could sell their services but that nobody could buy them (Lakhani, 2019). Questions arise about the practicalities and management of this framework, which is viewed as potentially time-consuming. While it appeared promising in theory, doubts persisted about its suitability for the South African context. Partial decriminalisation aligned with feminist support for women's protection. Both liberal and radical feminists were concerned with safeguarding women, particularly within the sex industry. Radical feminists aiming to shield women from the sex industry, while liberal feminists focused on protecting women's rights within it. Partial decriminalisation was often seen as a middle ground, potentially enhancing the safety of women in sex work while keeping clients criminalised. In line with Foucauldian theory, the criminalisation of clients was believed to help regulate their behaviour and, consequently, ensure the safety of women working in the sex industry.

The interviews examined above shed light on the complex landscape surrounding the partial decriminalisation of sex work, revealing a dynamic interplay of shifting perspectives, critiques of advocacy organisations, and concerns about practical implementation. Notably, some individuals who initially advocated for full decriminalisation, like Ayanda Denge (2018), underwent a change in viewpoint, indicating the multifaceted nature of this issue. Denge's (2018) evolving position on decriminalisation and her criticism of white feminists reveal the complexity of racial dynamics within feminist advocacy. Intersectional feminism emphasises the necessity of amplifying the voices and perspectives of marginalised women, including women of colour, within feminist movements. Additionally, this highlights the potential for white feminists to perpetuate racism within feminist spaces.

Furthermore, scepticism emerged regarding advocacy organisations such as Ishtar Lakhani (2019), SWEAT, with Dr Marcel van der Watt (2019) highlighted concerns about their selective presentation of research findings. Interviewees also raised questions about the feasibility of implementing partial decriminalisation in the South African context, emphasising doubts about regulation, oversight, and the creation of safe working conditions. Supporters argued that partial decriminalisation could empower sex workers, provided it is complemented by effective exit programs, while critics cautioned that it might expose them to greater vulnerability. The interviews also delved into feminist perspectives on the sex industry, positioning partial decriminalisation as a compromise between radical and liberal feminist viewpoints. Finally, due to SA's unique socioeconomic problems, the viability of this technique in a developing nation like SA was also questioned. The interviewees supported the need for a comprehensive, fact-based approach

tailored to SA's conditions, with a special focus on upholding the rights and dignity of sex workers, at the end.

The interviews on partial decriminalisation of sex work revealed a multifaceted discourse characterised by diverse stakeholder perspectives, concerns for intersectionality, and a shared commitment to mitigating the vulnerability of sex workers. The complexity of the debate was evident, with varying opinions on legislative approaches, including full decriminalisation and partial decriminalisation. International comparisons, particularly with countries like Sweden and France, illustrated the global nature of the conversation and its potential implications for South African policy. This discourse also reflected the historical context of SA, where sex work has a long history intertwined with colonialism, apartheid, and social inequalities. Throughout the discussions, there was a prevailing emphasis on evidence-based policymaking and the ongoing evolution of viewpoints. In sum, these interviews provided a rich tapestry of insights, highlighting the importance of nuanced, context-specific, and well-informed approaches to address the intricate challenges related to sex work legislation in SA.

Critiques of this legislative framework by advocacy organisations like SWEAT underlined the importance of scrutinising motives and ensuring inclusive representation. The vulnerability of sex workers, especially within the context of poverty and GBV, underscored the need for a comprehensive approach addressing underlying socio-economic disparities. Moreover, the interviews cautioned against directly applying international models, given SA's unique challenges like high unemployment and poverty rates. These conversations also reflected a spectrum of feminist viewpoints, illustrating the ongoing debate within feminist discourse. The tension between regulating and controlling the sex work industry remained a recurrent theme, with exit programs emerging as a consensus among partial decriminalisation supporters. Lastly, the historical context of apartheid looms large, emphasising the significance of understanding how past injustices continue to shape the present and influence policy considerations in this complex arena.

The perspectives shared by organisation on the negative effects of partial decriminalisation highlight the complexity and potential risks associated with this legislative approach, particularly within the framework of African feminism. Clara Singende (2019) and Ishtar Lakhani (2019) both underscore the disadvantages faced by sex workers under partial decriminalisation, emphasising the potential for increased risks and vulnerability when clients fear legal repercussions. These concerns align with African feminist principles of prioritising the safety and agency of women within the sex work industry, challenging policies that may exacerbate their marginalisation. Moreover, Melodi van Brakel (2019) and Marlise Richter (2019) critique the government's approach to partial decriminalisation, echoing African feminist calls for comprehensive and evidence-based policy solutions that address the practical challenges of implementation and regulation. Their

insights underscore the importance of centering sex workers' voices and experiences in policy-making processes, in line with African feminist values of inclusivity and participatory democracy. Additionally, the concerns raised by Constance Mathe (2019) and Naomi Hill (2019) about the potential for increased discrimination and harm under partial decriminalisation resonate with African feminist critiques of policies that fail to address systemic inequalities and power imbalances. Overall, these perspectives highlight the need for a nuanced and rights-based approach to sex work policy that centers the voices and experiences of sex workers, challenges patriarchal norms and power dynamics, and prioritises the safety, agency, and dignity of all individuals involved.

7.2.3.1 Support for Criminalisation

Four interviewees firmly advocated for the continued criminalisation of the sex industry in SA. They aligned with the SALRC report's stance that the timing was inappropriate for altering the sex work policy and emphasised the need for diverse exit programs to support sex workers. Jackie Selebi's pre-2010 World Cup proposal to decriminalise sex work was referenced as an example of the government's wavering stance on the issue. (Bonthuys, 2012:17). Interviewee 9, Anti-Trafficking Organisation (2019) voiced support for continued criminalisation, contending that this approach could be effectively combined with exit programs within the judicial system. They criticised decriminalisation as potentially condoning abuse against women in the industry. Furthermore, they cautioned against hastily altering existing legislation, fearing it could have catastrophic consequences, and make the government the "biggest pimp." This perspective underscored the complexity of the matter, where concerns about vulnerable individuals in the sex industry vied with arguments for maintaining the status quo to deter exploitation (Anti-Trafficking Organisation, 2019). Interviewee 15, Corinne Sandenbergh (2019), aligned with the Anti-Trafficking Organisation 's argument, emphasising the potential risk of SA becoming a hub for the sex industry if decriminalisation were pursued. She championed criminalisation while advocating for the implementation of "exit programmes" to support vulnerable women. Sandenbergh (2019) was actively involved in piloting such an exit program and aimed to demonstrate its efficacy, potentially leading to the decriminalisation of prostitutes who engaged with the program. She claimed that other countries which had decriminalised prostitution were sorry that they did. Through her pilot programme, she aimed to prove that exit programmes worked, explaining that through agreeing to the exit programme, the "prostitute would be decriminalised" (Sandenbergh, 2019).

Interviewee 1, Cause for Justice (2019), concurred with the stance favouring continued criminalisation but emphasised the importance of robust exit programs and alternative income opportunities for those in prostitution. For Cause for Justice (2019), "it [was] also important to prioritise the provision of adequate alternative opportunities to earn an income … to prevent re-entry into prostitution." Cause for Justice

(2019) contended that criminalisation, if executed properly, could effectively combat the demand and supply of prostitution while safeguarding vulnerable individuals. They also highlighted the need for skill development and job creation to offer prostitution-affected individuals dignified income options. They argued that the "availability of decent work" would assist both those entering and those exiting prostitution. In line with the S vs. Jordan and others judgement, they viewed the "criminalisation of prostitution [as] constitutional." They viewed the only shortcoming to the criminalisation of prostitution in its current form was the fact that "exit programmes [were] not prioritised." In Cause for Justice's submission to Parliament in March 2018 they stressed the following:

> A human rights-based society cannot condone and tolerate human rights violations that originate from the vulnerability of a group of persons which renders that group relatively powerless and easily exploitable due to their desperate socio-economic circumstances (Cause for Justice, 2019).

Cause for Justice (2019) argued that by the continued criminalisation of prostitution, it could "send a clear message that sexual exploitation of human beings (and its associated ills/harms) [was] unacceptable." They maintained that through criminalisation, "if applied, implemented and enforced properly and adequately, the criminal response might be effective to eradicate the demand and attendant supply of prostitution." However, they reasoned that this efficiency would be watered down if no "effective diversion programmes" and "job opportunities" existed. Overall, Cause for Justice (2019) contended that "it [was] important to protect persons who [were] vulnerable to exploitation (typically due to dire socio-economic circumstances) from entering prostitution in the first place."

Interviewee 19, Madri Bruwer (2019) of Straatwerk, supported the ongoing criminalisation of prostitution and viewed it as a "form of abuse." She underlined the societal impact of prostitution, equating it to incest within families. Bruwer (2019) stressed the imperative of understanding the severe harm associated with prostitution and urged society to recognise its corrosive effects, stressing the importance of understanding "the damage involved in prostitution." While society's lack of awareness was acknowledged, Bruwer (2019) contended that prostitution profoundly impoverished the souls of those involved, fostering societal breakdown. Bruwer (2019) argued that the law should convey hope and contended that criminalisation could help control distressing statistics associated with prostitution. She asserted that the perceived safety provided by decriminalisation might not mitigate violence and abuse within the industry. Rather than criminalising individuals, Bruwer saw criminalisation as targeting an industry that degrades and harms people. She maintained that with the appropriate social transformation, prostitution could be eradicated, and the physiological damage it inflicted could be addressed (Bruwer, 2019).

Bruwer's (2019) rationale for endorsing the continued criminalisation of prostitution lies in their belief that the "law need[ed] to communicate hope." They asserted that criminalisation could effectively "keep the (already horrifying) statistics down." Their argument centred on the perception that the "perceived safer environments" resulting from the decriminalisation of the sex industry may not effectively "stop the violence and abuse" endured by individuals in prostitution. Bruwer (2019) emphasised that the aim was to criminalise the industry itself, not the people involved, as it was seen as a source of degradation and harm to individuals. They highlighted the extreme vulnerability of those engaged in prostitution. Additionally, they underscored the need to consider the impact of prostitution on youth. Bruwer contended that South African society provided fertile ground for prostitution to thrive due to rampant sexual exploitation, fostering the notion that "women [were] commodities who [could] be bought." She argued that the inherent damage inflicted by prostitution couldn't be prevented while the notion of prostitution being solely a choice was illusory and argued that "legalising prostitution [did] not eradicate violence." Despite high levels of unemployment and poverty in SA, they asserted that there was no imperative for prostitution to cater to people's needs. Instead, they advocated for a transformed society which they argued couldn't be established if prostitution remained freely practiced. In their view, prostitution could be eradicated, along with the physiological damage it inflicts. Bruwer underscores the importance of focusing on clients under criminalisation and suggests that the negative attitudes towards individuals in prostitution may persist regardless of the legislative framework. She contended that access to healthcare was not denied under criminalisation and attributed the negative attitudes of healthcare providers to discomfort caused by those in prostitution. Bruwer (2019) argued that decriminalisation would not necessarily improve healthcare access unless specialised services were provided, and she expressed concern that offering special benefits to individuals in prostitution might encourage more people to enter the industry (Bruwer, 2019).

The arguments in favour of the continued criminalisation of prostitution, as articulated in the interviews, reflected a perspective deeply rooted in concerns about the potential outcomes of decriminalisation. Supporters of criminalisation emphasised several key themes. They believed that criminalisation served as a symbol of hope and a means to control the already troubling statistics associated with prostitution. This perspective conveyed a clear message that sexual exploitation was unacceptable and advocated for the protection of human rights among individuals in prostitution. Additionally, proponents expressed doubts about the effectiveness of creating safer environments through decriminalisation, fearing it might normalise or perpetuate violence and abuse within the industry. There was a strong emphasis on distinguishing between the industry itself and the individuals involved, with the focus on penalising the exploitative industry rather than stigmatising sex workers. The socioeconomic context of SA played a significant role in these arguments, with advocates stressing the importance of addressing root causes like

unemployment and poverty through broader societal transformation. Furthermore, concerns were raised about the societal impact of prostitution, with a belief that it promoted harmful beliefs about women and caused psychological and social harm, contributing to a breakdown in societal values. Overall, support for criminalisation aimed to safeguard the rights and dignity of individuals while addressing systemic issues within the sex industry. In summary, the perspectives supporting the continued criminalisation of prostitution in SA emphasised the importance of safeguarding vulnerable individuals and preventing potential exploitation. They called for comprehensive exit programs and alternative income opportunities while challenging the notion that decriminalisation would improve the situation for those in prostitution. These arguments, rooted in concerns about gender-based violence and societal harm, presented a compelling counter-narrative to the ongoing debate over the legal status of sex work in the country.

7.2.3.2 Negative effects of Criminalisation

In her interview, Interviewee 1, Clara Singende (2019) explained that, under criminalisation, sex workers were unable to report instances of rape or robbery. Moreover, they faced significant obstacles in accessing essential services at clinics, police stations, or even opening bank accounts to save money.

> In the clinics if someone goes with a STI, they are asked to go with a partner. But you can't go to the clinic with a partner if you are a sex worker. Maybe the condom bursts or is broken but if you get the STI you don't want to spread it. But when you get to the clinic they ask where your partner is. Where will you get that partner? Because the clients they come and go (Singende, 2019).

The statement by Singende (2019) underscored a critical issue concerning healthcare access for sex workers in SA. The dilemma of dealing with a potential STI while lacking a stable partner for clinic visits further underscores the vulnerability of sex workers and the need for a more inclusive and sensitive healthcare approach that addresses their unique circumstances. This anecdote sheds light on the structural barriers and stigma that sex workers encounter within the healthcare system, which can have detrimental consequences for their health and well-being.

Singende (2019) pointed out that, despite the criminalisation, sex workers often sought alternative employment, but the options available were limited with their criminal records creating further limitations. Therefore, they were free to look for alternative work, but it wasn't readily available. She emphasised that borrowing money to start a new venture, like their own business, was also a challenge. Another pressing issue Singende (2019) highlighted was the difficulty in accessing post-exposure prophylaxis (PEP) drugs for HIV/AIDS exposure, which required administration within 72 hours of a sexual assault or unprotected sex. Singende (2019) shared her observation that both sex workers and clients remained criminalised, but in practice, clients often bribed the police, resulting in fewer client arrests. She further elaborated on how some police officers solicited bribes from sex workers and even engaged in sexual activities with them in exchange

for early release. Singende (2019) noted that police frequently patrolled the streets searching for sex workers, arresting them for loitering or public drunkenness. She explained that sex work itself was not typically used as the reason for arresting sex workers; instead, law enforcement had to catch them in the act. This situation left sex workers with limited freedom to work and send their children to school. Interestingly, Singende (2019) observed that more individuals were entering sex work, indicating that criminalisation had not achieved its intended goal of eradicating the industry. Singende (2019) discussed the pervasive stigma within communities, where being identified as a sex worker placed individuals at risk. There was a fear among women in these communities that sex workers might "take" their men, further contributing to sex workers' concerns about their reputations. As a result, Singende (2019) reasoned that communities were generally resistant to the idea of decriminalising sex work. She suggested that NGOs should play a vital role in sensitising communities about sex work. Such efforts could help dispel stereotypes and foster a better understanding of why people entered the industry (Singende, 2019).

In the interview with Melodie van Brakel (2019), she made a thought-provoking statement, noting that "Jesus [was] the first to decriminalise prostitution." She acknowledged that criminalisation prevented sex workers from accessing healthcare services and left them vulnerable to exploitation by the police. van Brakel (2019) argued that criminalisation violated human rights and led the public to view sex workers as criminals. Ishtar Lakhani (2019), SWEAT explained that the "abolitionist stance remov[ed] the agency from sex workers" while acknowledging that other job opportunities were often inadequate in a capitalist system. In contrast, sex work provided better pay and more freedom. Marlise Richter (2019), Sonke Gender Justice considered the "criminalisation of sex work [to be] making people vulnerable," resulting in "sex workers being viewed as victims who [could not] think for themselves." Cherith Sanger (2019) highlighted how "criminalisation [took] away sex workers' ability to make choices."

Constance Mathe (2019), Asijiki Coalition emphasised how the "criminalisation of sex work [disproportionately] affected street-based sex workers." She argued that this law, "implemented in 1957, and while other laws are changing, this law stayed the same" leading to the deaths of sex workers since 1994. They cited instances of clients raping sex workers, with the police taking advantage of sex workers and denying them medication while in custody. Mathe (2019) also discussed the police targeting sex workers who advertised on local websites, "police pretending to be clients and arresting them." This online advertising, once considered safe for sex workers, had become risky, as the police posed as clients to make arrests. She explained how sex workers were sometimes coerced into providing sexual favours to the police. Shockingly, they provided examples of police brutality, such as forcing sex workers to jump off a bridge and leaving them in life-threatening situations. Furthermore, Mathe (2019) pointed out that the criminalisation of sex work

contributed to high levels of HIV/AIDS. Police arrested women found with condoms, leading many sex workers to avoid carrying them. To make ends meet, some sex workers resorted to agreeing to unsafe practices, increasing their risk of HIV/AIDS. She emphasised that all individuals involved or benefiting from sex work were criminalised, including the children of sex workers, who were "stigmatised and ostracised." Misconceptions about sex workers, such as assuming they had no money, further complicated their lives. Additionally, sex workers faced challenges in depositing money in banks. Those working in brothels often endured long hours and had to comply with demands due to the need to pay rent. She pointed out how sex workers did not contribute to unemployment insurance funds (UIF) or provident funds, depriving them of benefits when changing jobs. They also argued that criminalisation had led to an increase in crime and the number of pimps. Surprisingly, even though both sex workers and clients had been criminalised since 2007, "only 15 clients [had] been arrested, while the rest [went] free." (Mathe, 2019).

Matthew Clayton (2019), Triangle Project believed that criminalisation was an outdated moralistic approach that did not deter sex work. He explained how criminalisation was if his view "de facto wrong" and an "ineffective way of getting things done." He argued that it instead exposed sex workers to greater risks from clients and the police. Clayton (2019) also highlighted the confiscation of condoms under criminalisation, which did not yield positive outcomes. Instead, he argued criminalisation pushed sex workers out of sight, turning them into "victims of abuse" who had to provide sexual favours. Overall, they observed how criminalisation made "people's lives miserable" and how overall, it did not achieve its outcomes (Clayton, 2019). The CGE (2019) argued that sex workers had "no labour rights" and lacked "access to unions with collective bargaining [power] to determine prices under criminalisation." He claimed that this "undermin[ed] their constitutional rights." In addition, "criminalisation prevent[ed] them from participating in health-related matters" where "condoms [were] evidence of sex work." He claimed that "sex workers [were] less likely to report abuse under criminalisation due to the stigma involved." In contrast, the "access to protection for sex workers [was] diluted." The CGE ultimately believed that criminalisation "did not work" and constituted a "gross violation of the human rights of sex workers" (CGE, 2019).

Ntokozo Yingwana (2019) noted that while human trafficking was a significant concern, "keeping sex work criminalised" had not effectively addressed this issue. She emphasised the various negative consequences of criminalisation, including human rights violations, the killings of sex workers (including by the police), stigma, and discrimination in healthcare and government services (Yingwana, 2019). A representative from a research organisation (2019) observed that criminalisation created challenges in delivering healthcare. They emphasised the need for a "public health intervention" and argued that criminalisation amounted to the "exploitation of women." They questioned why sex workers could not receive

the same protections as workers in other challenging and unsafe professions, such as mining and policing. The research organisation (2019) drew parallels with cashiers, considered to have a profession despite facing exploitation, primarily due to low salaries and long hours. They highlighted how, under criminalisation, sex workers faced harassment, imprisonment, blackmail, child removal, and exclusion from healthcare services. The organisation argued that criminalisation dictated what people could do with their bodies, ultimately promoting HIV and trafficking. They concluded that criminalisation had no tangible benefits and failed to curtail sex work, characterising it as a "war on women," particularly on poor black women (Research Organisation, 2019).

Naomi Hill (2019), WRHI discussed how criminalisation negatively impacted sex workers' access to healthcare, citing instances where condoms were confiscated. They viewed the "criminalisation of sex work as creating barriers to healthcare" (Hill, 2019). Yodwa Mzaidume (2019) highlighted the violence against women that occurred under criminalisation, including killings. She described how police abuse of sex workers and extortion of money were prevalent issues. In SA, where HIV/AIDS was a significant concern, both clients and sex workers had limited control over HIV transmission, which was exacerbating the situation. Mzaidume pointed out that some sex workers hesitated to seek healthcare services, and when they were on antiretroviral treatment (ARVs), they often kept it secret to avoid losing clients. She emphasised the disconnect between prevention, law, and justice under criminalisation, which pushed sex work underground. Mzaidume expressed concerns that, if sex work remained criminalised, SA might not achieve the 90-90-90 strategy for HIV/AIDS (Mzaidume, 2019).

Dr Mariette Slabbert (2019) discussed how the criminalisation of sex work had profound effects on women in the field. She noted its impact on children, the challenges sex workers faced in reporting abuse, the stigma surrounding sex work, and its overall impact on families. While acknowledging the existence of human trafficking, she believed it should be addressed through a criminal perspective. Dr Slabbert (2019) argued that "criminalisation [went] against everything that SA stands for" and detailed instances of law enforcement officers exploiting sex workers, including rape. She stressed that sex workers' human rights had been compromised, and violated under criminalisation, calling for a change and urging South Africans to reflect on their stance. She outlined how criminalisation affected children while sex workers were unable to report abuse. There was a stigma around sex work that involved both the sex worker and their family. She spoke about the "discrimination that [went] with sex work." She believed that "sex workers' human rights [had] been compromised and violated" under criminalisation and that as South Africans, we "should be ashamed" (Slabbert, 2019).

The interviews and statements from the various orgainsations shed light on the multifaceted impact of criminalising sex work. Under criminalisation, sex workers found themselves confronted with a series of barriers, from limited access to crucial services like healthcare and police assistance to being unable to open bank accounts or seek alternative employment due to criminal records. This left them economically vulnerable and hindered their ability to escape the industry. Furthermore, the criminalisation of sex work contributed to higher HIV/AIDS risk, as some sex workers refrained from carrying condoms and engaged in unsafe practices. Worryingly, instances of police exploitation and bribery were reported, deepening the vulnerability of sex workers. Community stigma further exacerbated their challenges, making it difficult to seek support or leave the industry. Multiple stakeholders questioned the effectiveness of criminalisation, emphasising its failure to deter sex work and instead driving it underground. Moreover, it was widely argued that criminalisation violated sex workers' human rights, denying them labour rights, access to healthcare, and protection from abuse. Beyond the sex workers themselves, their families and children suffered the consequences, facing stigma and discrimination. To address these issues, stakeholders suggested the importance of NGOs in sensitising communities and challenging stereotypes surrounding sex work, advocating for a more compassionate and rights-based approach to policy and law.

7.2.3.3 Discussion

In the interviews conducted with various organisations, contrasting perspectives on the criminalisation of sex work emerge. Four organisations, namely Cause for Justice (2019), Corinne Sandenbergh (2019), STOP Trafficking, and Madri Bruwer (2019) Straatwerk, took a staunch stance in favour of continuing the criminalisation of the sex industry. Their advocacy was rooted in radical feminism, emphasising the harm caused by the industry and expressing concerns that legalisation or decriminalisation of the industry may exacerbate these harms. These organisations argued that the only effective approach was the eradication of the industry itself, advocating for criminalisation coupled with exit and diversion programs to make a meaningful impact. They perceived a lack of societal support for decriminalisation, contending that the broader public did not fully comprehend the detrimental consequences of the sex industry. Additionally, they rejected the notion that the industry served as a solution to poverty and unemployment, fearing that decriminalisation might attract more individuals to the sector.

Central to these interviews was the conviction that exit programs, combined with the criminalisation of the sex industry, represented the optimal strategy. They argued that criminalisation alone was insufficient for SA, emphasising the importance of offering women alternative opportunities. Advocates of criminalisation proposed exit programs that would allow women to leave the industry without acquiring a criminal record, enabling them to find employment in mainstream sectors. However, opponents of

criminalisation argued that alternative job opportunities were lacking, leaving women with few options to support their families comparable to what sex work provides. Despite the limited positives attributed to the criminalisation of prostitution, these organisations focused on what it aimed to prevent rather than the benefits it offered. They believed that criminalisation had the potential to reduce or even eliminate the industry, primarily through the implementation of exit programs. Notably, the persistence of the sex industry highlighted the current criminalisation's failure to achieve its objective of eradicating the sector, but these organisations assert that combining criminalisation with exit programs and alternative employment opportunities would be a more successful approach.

These arguments align with radical feminist perspectives that emphasised the inherent abuse within the sex industry and the harm it perpetuated. In contrast, organisations opposing the criminalisation of the sex industry aligned more with liberal feminists. They highlighted the challenges faced by sex workers due to criminalisation, including human rights violations, stigma, discrimination, restricted access to healthcare, and adverse effects on families. Critically, they emphasised that criminalisation extended to all aspects of the sex industry, impacting even those who benefited indirectly, particularly children, who faced discrimination and suffered from the resulting ripple effects. They underscored issues such as police misconduct, limited access to justice, condom confiscation, and the subsequent increase in HIV/AIDS infections in SA, highlighting how criminalisation rendered sex workers more vulnerable.

Two organisations, Sisonke and KWANELE, who worked directly with sex workers and diverged in their perspectives on how to ensure their safety and restore their dignity. While both organisations condemned the criminalisation of sex work as a violation of human rights, Sisonke aligned with decriminalisation, emphasising the need to destigmatise sex work. Sisonke forming part of the Asijiki Coalition, who assembled outside Parliament on 05 June 2019. The purpose of the assembly was to remind the President about his commitment to sex workers. During the assembly, it was noted that "the criminalisation of sex work puts sex workers in danger because they cannot access legal and health services that are enjoyed by everyone else" (Ludidi, 2019). Decriminalising sex work might possibly help get rid of the stigma against sex workers, said Buthelezi. The sex industry existed largely due to the demand. This need could be two-fold: a need for women to earn an income and men’s need for sexual services, says Ludidi (2019). These statements point to the negative effects of the criminalisation of sex work. It was also pointing to a need for sex work services in SA. As was mentioned in the interviews, the sex industry existed principally due to the demand. In contrast, Thulisile Portia Khosa, the Coordinator of the KWANELE Movement, described the sex industry in a different light, referring to it as "prostitution." She outlined how "prostitution [was] a terrible thing and something that no one [chose] to do." "Someone would treat you like you [were] nothing because they [had]

paid you," she said (Naik, 2019). She then outlined how as an organisation they "[did] not want to abolish the whole system of the sex trade in SA, but rather want[ed] partial decriminalisation" (Naik, 2019). In summary, the interviews with various organisations underscored the complexity of the debate surrounding the criminalisation of sex work in SA, reflecting a spectrum of views rooted in feminist ideologies and differing assessments of the industry's social and economic implications. These organisations advocated for a range of strategies, from eradication to partial decriminalisation, while highlighting the pressing need to address the challenges faced by sex workers and their families. This multifaceted debate underscored the need for comprehensive and nuanced strategies to address the complex challenges surrounding sex work in SA while safeguarding the rights and well-being of those involved.

7.2.4.1 Support for Decriminalisation

In the interviews conducted with various organisations, ten interviewees expressed their support for the decriminalisation of sex work in SA. This consensus reflected a prevailing sentiment among organisations working closely with sex workers, advocating for a shift away from the criminalisation of the sex industry. Interviewee 1, Clara Singende (2019), highlighted several compelling reasons for supporting decriminalisation. She emphasised the potential benefits for sex workers, including increased condom use, the ability to report abuse without fear of legal repercussions, and an opportunity for sex workers to emerge from the shadows of criminality. Furthermore, she believed that decriminalisation could offer more options to the families of sex workers, challenging the fear that it might lead to an increase in crime. Singende's (2019) observations were grounded in the belief that decriminalisation, when coupled with broader societal sensitisation, could lead to improved health care, and reduce the stigma associated with sex work.

Singende (2019), emphasised that not all sex workers collaborated with pimps. She argued that under decriminalisation, drug-related issues would likely decrease since sex workers would be more inclined to report instances of drug use or exploitation among their peers. Singende (2019) also pointed out the significant impact of trafficking on the industry, highlighting how some sex workers were coerced into drug use. She believed that decriminalisation would provide a platform for sex workers to speak out against such practices. Additionally, Singende (2019) noted that organisations working with sex workers could engage in peer education, enabling sex workers to identify and report cases involving underage girls. Singende (2019) further discredited the notion that decriminalisation would lead to an increase in the number of sex workers, citing examples from countries where decriminalisation had not resulted in such an uptick. While supporting the potential benefits of decriminalisation, such as greater freedom for sex workers, she emphasised that it alone would not solve all the industry's challenges. Singende (2019) argued for a multifaceted approach that included sensitising law enforcement, healthcare professionals, and communities while fostering a better

understanding of sex work. She also underlined that the primary aim of decriminalisation was to improve the conditions of those already involved in the industry rather than encouraging new entrants. Singende expressed confidence that decriminalisation would lead to better access to healthcare services and increased condom use, aligning with the government's goals for combatting HIV/AIDS (Singende, 2019).

Ishtar Lakhani (2019), SWEAT, echoed these sentiments by emphasising the significance of decriminalisation in addressing HIV/AIDS, providing access to healthcare, and ensuring justice for sex workers. Lakhani (2019) highlighted a global call for the full decriminalisation of sex work, portraying it as a framework grounded in evidence and supported by sex workers who sought to reclaim agency in their profession. The call for the decriminalisation of sex work had not waivered as well as growing globally. She argued that decriminalisation could empower sex workers by offering them better labour rights, access to justice, and protection against abuse. Another benefit to the decriminalisation of the sex industry was that it also assisted with trafficking as sex workers and clients would report cases to the police without fear of arrest or stigma. Lakhani highlighted New Zealand as an example of a country where full decriminalisation of sex work was successfully implemented. It had been seen, she claimed, how in New Zealand, there were "better relationships with the police and improved health care." Lakhani (2019) further highlighted the need for exit programmes which she argued would be difficult to do without decriminalisation. Simultaneously, she believed that decriminalisation could also help with trafficking and enable sex workers and clients to report trafficking. Their arguments were underpinned by the need to respect people’s choices in the sex industry and at the same time, to "empower sex workers" (Lakhani, 2019).

Marlise Richter (2019), Sonke Gender Justice, supported full decriminalisation, contending that it would place sex work under "existing labour laws," affording sex workers legal protection. By highlighting this, Richter was emphasising how sex work should be afforded the same protection in terms of labour laws that other industries received (Richter, 2019). Cherith Sanger (2019) underlined the potential for improved sexual and reproductive healthcare under decriminalisation and the removal of stigmatisation against sex workers in the healthcare sector. Decriminalisation would give sex workers labour rights and "access to the criminal justice system" as well as not being "profiled as sex workers." This view was in line with the fact that HIV/AIDS was a real issue. She maintained that poverty made the burden of HIV heavier, related to the "stigma by health care professionals" (Sanger, 2019). Constance Mathe (2019), the Asijiki Coalition emphasised the practical benefits of decriminalisation, such as tax registration, reduced human rights violations, diminished stigma, and violence reduction. She acknowledged that decriminalisation might not be able to do away with the violence entirely, but under decriminalisation, she argued that police violence might be reduced, as sex workers could come forward and report abuse. She argued that it could lead to better

relationships with the police, enabling sex workers to cooperate with law enforcement. Additionally, decriminalisation could offer financial services to sex workers such as being able to open bank accounts without undue scrutiny. At the same time, decriminalisation would mean sex workers would be able to "report the pimps that [were] violating [their] rights" (Mathe, 2019).

Matthew Clayton (2019) of the Triangle Project explained how decriminalisation made the most sense. He observed that attempting to regulate the sex industry to conform to societal norms was an impractical endeavour, given the diversity of opinions on the subject. Clayton (2019) argued that decriminalisation had the potential to transition sex work from an illegal profession to a legal one, reducing the vulnerability of sex workers. He also pointed out that decriminalisation could provide opportunities to address issues related to corruption and abuse by authorities. Clayton (2019) emphasised the adverse public health consequences of criminalising sex work, particularly the confiscation of condoms, which exacerbated health risks. He stressed the importance of allowing sex workers to move out of the shadow economy, asserting their entitlement to rights and improved outcomes. Furthermore, Clayton (2019) highlighted that most sex workers favoured a specific legislative framework, which was also guided by the sex worker coalition that supported their organisation's stance on this model. In summary Clayton (2019), the Triangle Project supported decriminalisation as a logical and effective choice, moving sex work from an illegal to a legal profession and reducing sex workers' vulnerability. He believed that it could help address corruption and abuse by authorities while resolving public health concerns, especially condom confiscation (Clayton, 2019).

The CGE (2019) emphasised that decriminalisation had the potential to grant sex workers the freedom to establish or join unions, promoting their psychological well-being. They argued that decriminalisation aligned with the Constitution, which guaranteed rights to all citizens. According to their perspective, decriminalisation could offer sex workers access to protection and address healthcare issues, thereby fulfilling their constitutional rights to choose their profession. The CGE (2019) based its approach on a rights-based perspective consistent with the Constitution's principles, emphasising the right to free choice of work. They pointed out that criminalising sex work discouraged sex workers from reporting abuse due to associated stigmas, hindering their access to protection. Simultaneously, they highlighted how the criminalisation of sex work constituted a "gross violation of sex workers' human rights" (CGE, 2019).

Ntokozo Yingwana (2019) saw decriminalisation to support sex workers legally, prevent HIV infections, and reshape societal perceptions of sex work. She argued that other unsafe industries were regulated for worker safety, and the same approach should apply to sex work. Yingwana (2019), observed how the decriminalisation of sex work enabled sex workers to support their families without legal harassment.

She explored how decriminalisation contributed to a reduction in HIV infections and a shift in society's perception of sex workers. She believed that removing the label of criminality might lead the public to engage more compassionately with sex workers. Yingwana (2019) drew parallels with other unsafe industries, such as mining, highlighting that the government didn't ban these sectors but instead worked to enhance safety measures. She pointed out that current laws treated the sale of sex as a crime, allowing the police to use bylaws related to loitering and indecent exposure to arrest sex workers. Under the existing legal framework, Yingwana (2019) explained that the police needed to catch sex workers in the act to arrest them for selling sex, often posing as clients to apprehend them. She argued that recognising sex work as a legitimate occupation would eliminate the need to catch them in the act or for the police to target them based on the constraints of the current policy. Yingwana (2019) noted that, in her experience working with sex workers, she had never seen a sex worker receive a prison sentence. She maintained that the decriminalisation of sex work would empower sex workers to come forward and report instances of human trafficking. She emphasised the importance of limiting decriminalisation to consensual sex between adults over the age of 18, distinguishing it from forced sex (Yingwana, 2019).

The Research Organisation (2019) believed that "decriminalisation made the most sense." They viewed sex work as an "occupation" and advocated for the application of "occupational health" principles to the sex industry. Their perspective was that this approach could help "remove all the barriers and establish a framework." They argued that decriminalisation would "reduce the waste of police time," allowing law enforcement to concentrate on "real police work." Simultaneously, they anticipated "less police harassment" and improved healthcare services for sex workers. They also saw decriminalisation to "destigmatise the clients," eliminating the "stigma and shame associated with paying for sex." Furthermore, they believed that decriminalisation could lead to health benefits for sex workers, ensuring better access to healthcare services. The interviewee clarified that while they "supported decriminalisation in [their] private capacity," they were not actively promoting it because their organisation did not hold a specific stance to maintain their funding. They argued that by applying occupational health principles to sex work and redirecting police resources toward genuine law enforcement. They saw it as a way to remove stigma, protect clients, and improve healthcare for sex workers (The research organisation, 2019). Dr Marcel van der Watt (2019), did not believe that full decriminalisation would occur in SA. However, he acknowledged that under full decriminalisation, women would no longer be subject to arrests and abuse by the justice system (van der Watt, 2019). Naomi Hill (2019), WRHI, explained that if sex work were to be decriminalised, it had the potential to provide "protection for women" and "easier access to health care." Nevertheless, due to the "anti-prostitution pledge" associated with their funding, they were "unable to advocate for the legalisation/decriminalisation of sex work." She observed that "different organisations play different roles" in advocating for sex workers' rights.

She emphasised the need for a "healthcare focus" and clarified that their advocacy was primarily for sex workers' rights rather than for trafficking (Hill. 2019).

Yodwa Mzaidume (2019), explained how sex work was "part and parcel of South Africans' lives," and their organisation supported the decriminalisation of sex work. However, she expressed the need to "ensure sex workers stick to specific rules or regulations" to address concerns about potential HIV transmission. Under decriminalisation, she believed that sex workers would have the ability to report abuse. She consulted with some of the sex workers she worked with before the interview, and they emphasised the need for sex work to be decriminalised. This highlighted that sex workers themselves recognised the potential benefits of such a change. Mzaidume (2019) explained that the decriminalisation of sex work had the potential to empower sex workers, allowing them to work independently and safely in their own homes, reducing the risk of harm from clients. She stressed the importance of allowing sex workers to voice their opinions and choose the best policy approach while also considering the impact on public health. Mzaidume (2019) emphasised the need for policies and procedures to safeguard the industry under decriminalisation. Sex workers should be aware of their health status and take responsibility for it. Once decriminalised, they could practice safe sex and access necessary healthcare services. She noted that sex workers currently operated discreetly, often avoiding HIV testing due to stigma. She believed that decriminalisation was crucial to effectively combat HIV/AIDS, aligning with the legislative framework advocated by sex workers themselves. She also saw potential for migrant sex workers to benefit from total decriminalisation, enabling them to work independently. Mzaidume's perspective highlighted the importance of listening to the voices of sex workers in shaping policy decisions related to decriminalisation (Mzaidume, 2019).

Dr Mariette Slabbert (2019) strongly advocated for decriminalisation, rejecting alternative policies as insufficient. She saw decriminalisation as the only framework that would truly protect sex workers' rights, enable registration, and offer labour law protection. Despite acknowledging that it might not eliminate stigma entirely, Slabbert (2019) believed that decriminalisation would bring numerous benefits to sex workers. According to her, decriminalisation was the sole legislative framework that could enable sex workers to register and conduct their businesses safely. She argued that half-measures wouldn't suffice in protecting sex workers. While acknowledging that decriminalisation might not eliminate the stigma associated with the sex industry, she emphasised the numerous benefits it would offer to sex workers. Dr Slabbert (2019) stressed the importance of respecting sex workers' choice to engage in their profession. Furthermore, she highlighted often overlooked benefits for those in the sex industry, such as the ability to set their working hours and determine leave and salary arrangements. Dr Slabbert (2019) reasoned that decriminalisation would empower sex workers to report abuse and access healthcare services. She believed that under decriminalisation, sex

work would be officially recognised as a legitimate occupation, affording sex workers rights and labour law protections. While expressing her pride in SA's Constitution, she maintained that the criminalisation of sex work contradicted the principles that the country stood for (Slabbert, 2019).

7.2.4.2 Negative effects of Decriminalisation

Mickey Meji (2019), observed how in her opinion, the "New Zealand model (for decriminalisation) did not benefit women in prostitution but rather the pimps," and she argued how the statistics "spoke for themselves." Cherith Sanger (2019), couldn't think of any disadvantages to the decriminalisation of sex work. The Anti-Trafficking Organisation (2019), felt that "decriminalisation might possibly not help to end GBV." At the same time, they argued that decriminalisation was promoting "sexual entitlement narratives." They emphasised that to "change the law then could be dangerous" since the majority of those "buying sex were biologically male" and the "things they wanted [were] of a particular type." He used the expression of "ass to mouth" to describe what the industry could be like if "this demand was normalised." The use of the sexually explicit term "ass to mouth" in this context not only describes a degrading sexual act but also contributes to the objectification and dehumanisation of prostitutes, reducing them to mere objects of sexual desire in turn disregarding their autonomy and dignity. The Anti-Trafficking Organisation questioned how the government could get "decriminalisation right on a societal level" if they were "unable to get it right within homes." They observed how women mostly carried the burden for their safety and their ability to "say no to certain types of behaviour." They argued that full decriminalisation would not assist with the safety of women, rates of poverty, and unemployment. While he was of the view that decriminalisation had the potential to open women to trafficking and therefore make them more vulnerable, he contended that this could result in the "freedom of one group over others, and in turn, privilege a few so the majority could suffer" (Anti-Trafficking Organisation , 2019).

The passage above emphasises the significance of language in reinforcing power dynamics within discussions about the sex industry. The choice of words and phrases by the Anti-Trafficking Organisation (2019) reflected biases and could stigmatise sex workers. The passage also raised concerns about how language can normalise certain practices, potentially leading to public misperceptions. Additionally, it touched on issues related to gender, sexuality, and government responsibility in regulating the sex industry. The concept of privilege and vulnerability was introduced, highlighting potential inequalities in policy outcomes. Applying a Foucauldian perspective, the passage underscored the role of language as a form of power that shapes perceptions and societal norms. Overall, it emphasised the need for critical analysis of language in discussions that influence policy, perceptions, and power structures.

Ntokozo Yingwana (2019), highlighted how the only disadvantage of the decriminalisation of sex work was that sex workers did not need to have a degree or graduate to be a sex worker, and that "people [might] aspire to be sex workers." While she noted how sex work was not a very "attractive" career choice, she observed how many people entered "transactional sex (or sex work) to finish their degree." Using this example, she reflected on how many viewed sex work as a temporary endeavour to help them achieve a greater goal, after which they left the industry (Yingwana, 2019). Dr Marcel van der Watt (2019), felt that decriminalisation had the potential to "open the door to the trade in women and children" and there was also a need to consider the "effects on migrants." He argued that the "benefits would need to outweigh the disadvantages for this model to work" (van der Watt, 2019). Corine Sandenbergh (2019), explained how in her opinion, the decriminalisation of prostitution had the potential to make "SA the biggest brothel in Africa." She also mentioned the need to include the issues around "pornography." She stressed that if prostitution were legalised/decriminalised, the police might not get into brothels to rescue girls. Sandenbergh (2019) hoped that "decriminalisation would be forgotten along the way." Cause for Justice (2019), strongly felt that "decriminalising prostitution was not the answer to helping women in prostitution." They were against the classification of prostitution as work. They believed that the only way to address the harms of prostitution was through the "eradication of prostitution." They observed how research had shown that "prostitution was a form of GBV." They argued how the "demand-side of prostitution should not be decriminalised under any circumstances." Cause for Justice (2019) maintained that decriminalisation did not "decrease illegal prostitution." Instead, "decriminalising prostitution in SA could merely have the effect of creating another level of prostitution (legal versus illegal) in the hierarchy of sexual exploitation" (Cause for Justice, 2019).

Bruwer (2019), explained the "psychological damage caused by prostitution," which she contended was seen through the "brokenness and deprivation." She observed that society was ignorant of the effects of prostitution, and she argued that prostitution had the potential to "cause a breakdown of society." She defended her argument by noting if prostitution were "decriminalised," it might possibly lead to more individuals entering the industry and in turn, the creation of an "environment for prostitution to thrive." She described how only those who were no longer "entrapped in the industry could see the bigger picture." She went on to clarify how prostitution was seen to be about "immediate gratification." This viewpoint was socially conservative as used here, necessitating an unpacking. At the same time, she claimed that "real life was about discipline." Bruwer (2019) stressed how prostitution "impoverished a person's soul," and she reasoned that people needed to be taught the "skills to manage money wisely." She hoped that prostitution would not be decriminalised as she had "no idea what this would look like," while she discussed how decriminalisation had the potential to result in "easy entry into prostitution." She gave a quote to end the interview, saying that the sector "used our dreams to steal our lives." She explained that some were "screaming

for decriminalisation," however, they were only able to "see the bigger picture once they were no longer entrapped in the industry." In contrast, if prostitution were to be decriminalised, it would be telling "certain people that their only hope was to be in prostitution." At the same time, she claimed it meant "allowing them to do what they did not want" (Bruwer, 2019).

The opinions given above provide a comprehensive overview of the multifaceted debate surrounding the decriminalisation of sex work in SA. While highlighting contrasting perspectives and concerns from various stakeholders. Gender dynamics and vulnerabilities within the sex work industry are also raised, with differing views on the potential consequences of decriminalisation. Bruwer's (2019) contested the notion that prostitution provides economic benefit, characterising it as an "illusion" and suggesting that individuals involved in prostitution merely circulate money among "broken people." However, this perspective overlooks systemic issues such as limited earning opportunities, lack of access to financial services, and the coercion to pay police bribes, which also contribute to the financial vulnerability of sex workers. Yingwana (2019) argued that education and aspiration could influence an individuals' decisions to enter sex work, challenging assumptions about motivations. Concerns were raised about exploitation, trafficking, and the societal effects of prostitution, along with diverse interpretations of what decriminalisation might entail. Additionally the views expressed shed light on the debate between those advocating for eradication and others supporting harm reduction approaches in how the sex industry is governed. Overall, this data underscores the complexity of the issue and the need for nuanced analysis to inform policy decisions regarding sex work in SA Considering diverse perspectives in discussions on sex work policy change is crucial for several reasons. It enhances the quality and balance of policy decisions, promotes the rights and safety of sex workers, minimises unintended consequences, fosters community support, addresses complex societal issues comprehensively, respects ethical considerations, and ensures the development of just and equitable legislation. In essence, it leads to well-informed, effective, and ethical policies that prioritise the welfare of all stakeholders.

7.2.4.3 Discussion

Overall, these organisations and individuals presented a compelling case for the decriminalisation of sex work in SA, emphasising its potential to empower sex workers, protect their rights, and improve their access to essential services. It's worth noting that not everyone supported the decriminalisation of the sex industry, as indicated by Cause for Justice (2019), which argued that "the acts of prostitution necessarily violate the person in prostitution's human rights." This underscores the ongoing debate and challenges surrounding the decriminalisation of sex work in SA. The interviews conducted with various organisations and individuals working with the sex industry have underscored a compelling case that favoured the decriminalisation of sex

work in SA. Advocates passionately argued that decriminalisation could empower sex workers by freeing them from the looming threat of legal consequences. Moreover, it was seen as a pivotal step towards improving public health, ensuring access to healthcare services, and reducing the risk of HIV transmission. Decriminalisation was also championed as a means to combat the pervasive stigma surrounding sex work, fostering more humane treatment, and enhancing healthcare accessibility. Protection from abuse and violence emerged as a crucial consideration, with proponents asserting that decriminalisation could grant sex workers legal safeguards against exploitation. Additionally, it was advocated as a way to secure labour rights on par with those in other industries and to establish regulations ensuring safe working conditions. Advocates emphasised that empirical evidence from countries like New Zealand supported these claims, highlighting the potential for better relations with law enforcement and improved overall well-being for sex workers. Overall, the arguments aligned with constitutional principles, respecting individual rights and freedoms while preventing further violations, and advocated for a policy approach that was humane, protective, and aligned with contemporary understandings of human rights, public health, and labour rights.

The quoted statements from various interviewees presented a multifaceted discussion surrounding the decriminalisation of sex work in SA. These perspectives touched upon several key themes and opposing viewpoints. Proponents argued that decriminalisation could empower sex workers by removing legal threats and offering protections against exploitation, while critics voiced concerns about potential vulnerabilities, such as trafficking. Public health was a central concern, with advocates highlighting the potential for improved healthcare access and reduced HIV transmission. Conversely, some critics feared the expansion of the sex industry. Stigma and perception played a role, as supporters believed decriminalisation might combat pervasive stigma, while opponents worried about negative societal perceptions. Labour and legal rights were debated, with supporters advocating for regulation to ensure safe working conditions. GBV was discussed, with varying opinions on whether decriminalisation could mitigate violence against sex workers. Regulation and oversight were key aspects for those in favour, while critics raised concerns about unintended consequences. The social and psychological impact of sex work was explored, with opinions varying on the potential damage and societal implications. Constitutional principles were invoked by advocates, framing the debate within the context of individual rights, public health, and labour rights. Overall, these diverse viewpoints highlighted the complexity of the issue and underscored the need for comprehensive consideration of its potential consequences.

Opposition to decriminalisation was grounded in concerns that it might inadvertently promote the exploitation of women. From the interviews that criticised decriminalisation, the argument surfaced that decriminalisation could potentially grant the government disproportionate control over the industry,

potentially resulting in adverse outcomes. Most interviewees expressed support for the decriminalisation of sex work in SA, contending that it represents the optimal approach for the industry. They emphasised the widespread consensus that criminalising the sex industry has proven ineffective, necessitating decriminalisation to safeguard the human rights of sex workers. Nevertheless, it was widely acknowledged that decriminalisation alone would not comprehensively address the myriad of challenges faced by sex workers in the industry. Respondents identified a need for various supplementary measures, including educational initiatives about sex work and the provision of exit programs for those involved. The prevailing sentiment was that sex work should be treated similarly to other occupations, with efforts focused on enhancing safety. Decriminalisation was seen as most effective when coupled with education and exit programs. This emphasis on exit programs underscored that sex work was not an ideal profession for women in SA. Despite this, respondents believed that education programs were crucial to destigmatise the industry among law enforcement, the judiciary, and communities, removing the criminal taint associated with sex work. Critics of this legislative framework highlighted the industry's inherent harms and expressed concerns that it could normalise the exploitation of women. They contended that the demand for women in sex work should never be decriminalised, even if it were to become a legal activity, as it could exacerbate vulnerabilities and potentially diminish the power of law enforcement. Furthermore, it was argued that such a move might create a two-tiered system within the prostitution sphere. Advocates for decriminalisation argued that many of the obstacles facing sex workers could be alleviated if the industry were decriminalised. As legally recognised professionals, sex workers could access financial services, open bank accounts, and qualify for loans, potentially affording them greater financial independence and the option to leave the industry if they chose to do so.

7.2.5 Organisations Navigating Funding Constraints in Expressing Views on Sex Work

In their respective interview, Interviewee 12, representing a Research Organisation (2019), explained the organisation's mission of "continually providing evidence that documents the issues around sex work" and conveying this data to the public sector. This information encompassed the "dynamics of people in sex work" and aimed to assist in policy development. On a personal level, the interviewee expressed support for organisations like "SWEAT or Sisonke" and endorsed the decriminalisation of sex work. However, he found the arguments presented by Embrace Dignity for the partial decriminalisation of sex work to be "incoherent." He felt that overall "people [did] not listen to sex workers." He explained how his perspective on sex work evolved over time due to their interactions with sex workers, recognising the "social coherence amongst sex workers" and refuting the notion that they are solely victims of trafficking. He also noted that sex workers often earned comparatively well, like workers in other industries the example he used was of domestic work, while he argued that exploitation was not exclusive to the sex industry and occurred in other professions

(Research Organisation, 2019). Dr Marcel van der Watt (2019), discussed how the National Freedom Network (NFN) did not take a "position on full or partial decriminalisation." He also highlighted that the Global Resources Epicentre against Trafficking (GREAT) did not "have an explicit view" on the best policy option for prostitution in SA, acknowledging the complexity of the issue within the NGO space. He provided context about NFN, stating that it was "formally launched in May 2011" to connect various counter-trafficking organisations and other stakeholders. The NFN lacked a clear statement regarding the best legislative framework but emphasised the need to 'constrain the demand" (van der Watt, 2019). Naomi Hill (2019) representing WRHI, described their organisation's role in reaching out to "sex workers where they are and providing services." They focused on monitoring "human rights violations, including police harassment," and gathered data related to sex workers' risk profiles, ages, clients, and tenure in the industry. They stressed the vulnerability of newcomers to the industry and the prevalence of human rights violations against sex workers. They highlighted the potential for the decriminalisation of sex work to grant "sex workers access to services." While they clarified that they were "not calling for legalisation," their data underscored the barriers to healthcare access under a system of criminalisation. They emphasised the importance of translating policy changes into real-world improvements and called for a policy "shift towards a state system that is friendlier to sex work" (Hill, 2019).

7.2.5.1 Discussion

The interviews with representatives from research organisations and NGOs in SA illuminate the intricate and multifaceted discourse surrounding the decriminalisation of sex work. Research organisations, like the one represented by Interviewee 12, emphasised the importance of evidence-based policymaking, using data to shed light on the realities of sex work. Their personal journey from scepticism to support for decriminalisation, driven by direct engagement with sex workers, underscored the transformative power of empathy and interaction. Van der Watt (2019), affiliated with the National Freedom Network (NFN), highlighted the complexity within the NGO landscape, where diverse perspectives on sex work coexist. This complexity reflected the challenge of reaching a consensus on such a contentious issue. Hill from the WRHI, stressed the significance of monitoring human rights violations against sex workers and the potential for decriminalisation to enhance access to healthcare services. Moreover, both the Anonymous Research Organisation (2019) and Naomi Hill (2019), WRHI underscored the need for not only changing policies but also effectively implementing them to improve the lives of sex workers. These interviews revealed that the debate surrounding sex work was multifaceted, requiring a nuanced understanding of diverse viewpoints and the application of empirical evidence in crafting informed policies.

The ACMS and WRHI received international funding from the US and were bound by conditions in their funding agreements that prohibited them from supporting a legislative model. This funding was from the "U' President's Emergency Plan for AIDS Relief (PEPFAR)" which directed that organisations funding would be affected if they had a view on sex work. PEPFAR funding "require[ed] non-US grantees to oppose prostitution and sex trafficking and prohibit[ed] funds from being used against the criminalisation of sex work" (STOPAIDS, 2019:4). Richter and Massawe (2010:1) confirmed that PEPFAR funding was "conditional on a pledge by recipient organisations that they would not advocate for the legalisation of sex work." These organisations were neutral regarding what the best legislative framework was, but instead highlighted what they found during the research conducted. The WRHI received the PEPFAR funding due to their research around HIV/AIDS in SA (WRHI Website, accessed 2020). PEPFAR funding mainly focuses on research done on HIV/AIDS. PEPFAR is seen to:

> Emphasise accelerating testing and treatment strategies, expanding prevention, using quality data, engaging with faith-based organisations and the private sector, and strengthening policy and financial contributions by partner countries. It is also intended to align with the UNAIDS 90-90-90 targets. (Global Health Policy, 2020).

There were also PEPFAR community grant programmes which "provid[ed] direct funding to community-based organisations working in the districts with the highest HIV burden in SA." This funding was meant for community organisations that worked directly with "people living with HIV/AIDS" (U.S. Embassy and Consulates in SA, 2020). Therefore, PEPFAR enabled significant research into HIV/AIDS, which could indirectly impact sex workers. However, as noted already, the funding requirements also prevented the data being used directly in the call for the decriminalisation of sex work. Advocacy limitation notwithstanding, the research that organisations such as ACMS and WRHI conduct could play an important role in demonstrating what was happening on the ground which could inform policy decisions. While they couldn't advocate for a particular view, they still acknowledged how criminalisation has adverse effects on sex workers, particularly regarding the access to health care. Through their research, these organisations were able to highlight the effects of criminalisation on sex workers. Unfortunately, despite the significant weight of this research to inform public policy, the SALRC research report (2017) did not take this data into account during the generation of their report on adult prostitution in SA. The role of this type of research was to assist in highlighting issues that could be used to direct policy change. This however was not being done with the research on the sex industry. This research contributes to the existing literature by examining the impact of international funding, particularly from PEPFAR. By uncovering the conditions tied to PEPFAR funding, which restricted support for legislative models concerning sex work, this study highlights the obstacles these organisations encounter in fulfilling their objectives within such limitations. Additionally, the research elucidates how PEPFAR funding indirectly influences research on HIV/AIDS, thereby indirectly impacting

sex workers, despite restrictions on direct advocacy for sex work decriminalisation. Despite the significant insights provided by this research for informing public policy, evident from its oversight in the SALRC's report on adult prostitution, the study emphasises the necessity for greater incorporation of such evidence in policymaking to address sex workers' challenges and advocate for their rights.

7.2.6 Summary of Questions 2 and 5

The interviews conducted presented a comprehensive view of the complex issue of decriminalising sex work in SA. A prevailing consensus among supporters of decriminalisation emphasised the imperative of safeguarding the human rights and safety of sex workers. They argued that the current criminalisation regime exposed sex workers to violence and exploitation while clients often evaded prosecution, contributing to disproportionate harm to sex workers. Another prominent argument was rooted in economic considerations, suggesting that decriminalisation would afford sex workers financial autonomy, enabling them to access financial services and potentially exit the industry. The significance of comprehensive exit programs and sex work education was widely acknowledged, although challenges in securing funding for these initiatives were discussed. The debates also brought to light the complexity of implementing policy changes in a developing nation, raising concerns about viability and potential negative consequences. Additionally, the interviews highlighted the overarching theme of addressing societal stigma surrounding sex work as a crucial aspect of any policy shift. In sum, the interviews underscored the multifaceted nature of the issue, reflecting a collective effort to balance human rights, economic empowerment, education, and policy considerations in pursuit of a more equitable framework for sex work in SA.

While the interviewees did not uniformly endorse a particular legislative framework, they collectively rejected alternative options that shared similarities. Opponents of the criminalisation of sex work emphasised the compromise of sex workers' human rights and the heightened risks they face under this approach. They contended that criminalisation exposes individuals engaged in sex work to various dangers, including violence from both clients and law enforcement. It was noted that clients, despite also being subject to criminalisation, often evade arrest by paying bribes, further exacerbating the vulnerability of sex workers. Arrested sex workers frequently experienced theft of condoms and money, as well as sexual assault in exchange for early release. Critics of partial decriminalisation expressed doubts about its viability in a country like SA, characterised by high levels of poverty and unemployment, suggesting that it was attempting to implement a policy framework that has not proven successful in other countries.

There was a consistent focus on the protection of women, whether involved in sex work or at risk of entering the industry. Regardless of their stance on legislative frameworks, interviewees concurred that the

effectiveness of such frameworks hinged on the availability of suitable exit programs and educational initiatives. However, financing these exit programs remained a significant challenge. Three funding options emerged in the interviews: support from civil society, taxes levied on sex workers, or fines imposed on clients. Each funding option was linked to a specific legislative framework. Criminalisation would not yield taxes from sex workers, whereas partial decriminalisation could generate funds through fines imposed on clients. Meanwhile, legalising, or decriminalising sex work would enable the collection of taxes from sex workers to support these programs. The SALRC report recommended maintaining the criminalisation of sex work while implementing exit programs. Combining exit programs with comprehensive sex work education was seen as the most effective approach to assist those in the sex industry. Ultimately, the debate revolves around selecting the most suitable legislative framework, as each option presents its unique challenges, making it difficult to determine the best model for SA.

Chapter 7 delved into data from the interviews with Non-Governmental Organisations (NGOs), Chapter 9 institutions, research institutes, and consultants affiliated with NGOs or Chapter 9 institutions (collectively referred to as "organisations"). Key findings from this chapter illuminated the diverse perspectives regarding the definition of the sex industry, with a majority advocating for decriminalisation, alongside support for both continued criminalisation and partial decriminalisation. Legalisation was generally discouraged due to concerns about increased government regulations on sex workers. Interviewees commonly acknowledged the challenges of documenting individuals engaged in a criminalised activity, which may result in an incomplete depiction of sex work in SA.[62] Despite varying opinions on the nature of legislative change, there was a consensus on the importance of exit programs as a critical resource for sex workers seeking to exit the industry. The precise role of exit programs may depend on the chosen legislative framework.

[62] Chapter 3, Section 3.1.4 outlines how the statistics on the number of sex workers in SA are outdated due to a lack of statistics being collected on this demographic. A lack of updated statistics on sex work in SA also contributes further to the marginalisation of sex workers. An updated study is needed to truly understand the extent of sex work in SA. SANAC in the SA's National Sex Worker, HIV, TB and STI plan (2019-2022) still quote the SANAC and SWEAT 2013 study when outlining the number of sex workers in SA. When giving these statistics SANAC highlights that "there is limited data on the absolute population size of sex workers due to social marginalisation and criminalisation of sex work" (SANAC, 2019:9).

Chapter 8: Data Analysis and Interpretation – Interviews with Organisations: Deciphering the Dynamics of Change and Transition

8.0 Introduction

In the preceding chapters, the focus has been on the responses gathered from MPLs in Gauteng and various organisations, centred around the theme of policies and policy changes concerning sex work. This chapter, focuses on data from the interviews with organisations, aiming to capture shifts in the sex worker policy, identify obstacles hindering policy reform, and outline the prerequisites for legislative change, concentrating on questions 3 and 4 from the interview guide utilised for the interviews with organisations. The data is presented in a question-by-question format, with some questions subdivided to ensure comprehensive coverage of the information.

8.1 Question 3

Question 3: In your organisation's view, how has the sex-worker policy evolved or not evolved since 1994? Has the sex-worker policy seen any significant change to date? Why not? How has your organisation been included within these processes?

Question 3 served as a pivotal point of inquiry when delving into the complex web of sex work policy in SA and its persistent stagnation. By tracing the evolution, or lack thereof, of the sex-worker policy since the dawn of democracy in 1994, this question offered a historical perspective that was instrumental in understanding the broader context within which policy debates unfolded. The question captured the nuanced changes, or the lack thereof, in policy frameworks and societal attitudes toward sex work. It illuminated whether the policy remained static or underwent any substantial shifts over time. Moreover, it delved into the multifaceted reasons behind the policy's inertia, providing valuable insights into the mechanisms that hindered its progress. This question was instrumental in addressing the overarching research inquiry regarding the stalled decriminalisation of sex work in SA. It unravelled the historical trajectory of the policy and identified pivotal junctures where opportunities for change may have been missed or overlooked. By exploring the role of organisations and their inclusion within the policy processes, it also shed light on the dynamics of policy advocacy and the extent to which stakeholders were engaged in shaping the direction of sex work policy. In essence, Question 3 acted as a temporal compass, guiding the research through the historical landscape of sex work policy in SA. It dissected the policy's evolution or persistence and, in doing so, provided a foundational understanding of the policy inertia that the broader research sought to address.

8.1.1 Question 3(a): Changes in the sex worker policy since 1994

Question 3(a) delved into the changes in sex worker policy as recounted in interviews with organisations. Interviewee 1, Clara Singende (2019), noted significant developments such as the launch of the Sex Worker

Plan (SWP) in 2016, facilitating sex workers' access to condoms, ARVs, and PEP drugs for HIV/AIDS prevention. She showcased the advocacy work done by Sisonke, including a march in 2012 against the criminalisation of sex work. There had been shifts within policing with police not arresting sex workers as they had in the past. She acknowledged how in the past sex workers used to be issued with condoms with the policy confiscating and burning them. She also highlighted the increased visibility and discourse around sex work, including support for decriminalisation. However, Singende (2019) expressed disappointment in the slow response of the GPL to resolutions from sex worker debates, suggesting that discussions often only "call[ed] sex workers for discussions when they [had] funds that need[ed] to be spent." She emphasised the importance of feedback sessions to the sector. Nevertheless, she acknowledged support for decriminalisation from various prominent entities including the Minster of Police, Congress of South African Trade Unions (COSATU), South African Communist Party (SACP), Economic Freedom Fighters (EFF) and ANC Women's League (ANCWL) (Singende, 2019).

Interviewee 2, Melodie van Brakel (2019), expressed frustration with a lack of government action, "a lot of talk but no action." She felt that the government did not care about sex workers and had lost faith in their promises. Despite this she noted positive changes in Krugersdorp due to advocacy by the Cradle of Hope, who she argued were not scared to stand up for their beliefs (van Brakel, 2019). Interviewee 3, Ishtar Lakhani (2019), representing SWEAT, highlighted the delayed publication of SALRC reports on both prostitution and pornography and the persistence of an outdated sex worker policy since 1997. She observed how the SALRC had sat on the report on adult prostitution from 2009 to 2015, with it finally being published in 2017. She showcased how SWEAT termed this report the "sell out report" viewing the "drafting of these reports is a scapegoat for not doing anything" regarding the sex work policy. She mentioned the South African National AIDS Council's (SANAC) National Strategic Plan for sex workers and HIV which was released as well as various Lancet publications on sex workers and HIV/AIDS (Lakhani, 2019). Interviewee 4, Marlise Richter (2019), Sonke Gender Justice, mentioned the SALRC report which she viewed as outdated research (Richter, 2019). Interviewee 5, Mickey Meji (2019), Embrace Dignity, noted the 2007 policy change that criminalised all involved in prostitution noting that this change was due to the CCT ruling. She observed how prostitution had been popularised resulting in it being viewed as work within society. She mentioned while there hasn't been changes in the policy there was a shift toward the use of the term "sex work" which she felt was insulting and the implementation of HIV/AIDS programs for prostituted women (Meji, 2019).

Interviewee 6, Cherith Sanger (2019) highlighted the policy change in 2007 where the buyers were also criminalised and criticised this change, which she believed drove sex work underground and increased vulnerability and "made them more at risk of violence." This change, she contended, meant that "sex workers

[were] not likely to speak out against their clients." Simultaneously, she argued that by the "state going for the clients in the current model," it forced sex workers to "operate on the margins." She also cited poor health outcomes and the inadequacy of the 2017 SALRC report which did not "include much policy development" (Sanger, 2019). Interviewee 7, Constance Mathe (2019), Asijiki Coalition, pointed out that while clients were criminalised in 2007, "no buyer [had] been prosecuted" since. Interviewee 8, Matthew Clayton (2019), Triangle Project, emphasised the lack of significant policy changes and compared the government's approach to "policing" rather than addressing issues. The approach taken by the government he argued was like that taken for other issues, for example, drugs or substance abuse. He argued that the "main thrust of what is wrong with criminalisation has remained stuck" (Clayton, 2019). Interviewee 9, the Anti-Trafficking (2019) organisation mentioned the unsuccessful attempt to legalise prostitution for the 2010 World Cup and the struggles in passing the Trafficking Act. He argued that the legalisation did not take place due to the "public outcry" against it. He also highlighted the "huge fight" to get the "Trafficking act" passed (Anti-Trafficking Organisation , 2019). The mentioning of the difficulties in getting the trafficking act passed was done in an attempt to showcase that the sex industry would not be decriminalised without a fight.

Interviewee 10, the CGE (2019), discussed the S vs. Jordan and others case, (CCT31/01 2002),[63] which they viewed as a "landmark case," the SALRC report on adult prostitution published in 2017 which was heavily criticised due its bias in the information captured in the report. Additionally, they highlighted the creation of Standard Operating Procedures (SOP) with the South African Police (SAP) to manage how they dealt with sex workers. They emphasised the significance of decriminalisation and how it would represent their "biggest achievement," along with highlighting the positive impact of "positive policing partnerships that have been established to safeguard sex workers."[64] Despite the lack of policy change, in the interview the CGE argued that they would continue to push for the industry to be decriminalised (CGE, 2019).

Interviewee 11, Ntokozo Yingwana (2019), highlighted that between 1997 and 2007, the sex work policy in SA underwent a transition from a "partial criminalisation" approach, where only sex workers were criminalised, to full criminalisation in 2007. This shift was partly in response to the S vs. Jordan and others case (CCT31/01 2002). On a societal level, Yingwana (2019) noted that SWEAT played a pivotal role in positively altering public discourse about sex workers and transforming perceptions of their profession. Lobbying efforts in Parliament and increased recognition of civil society's role contributed to the evolving

[63] S vs. Jordan and other Case, CCT31/01 2002 which "challenges the constitutionality of the Sexual Offences Act" as outlined under section 3.4.

[64] Through dialogue, policy interventions, and actions, the Positive Policing Partnership (the PPP) focuses on identifying advocacy opportunities to establish and support innovative civil society, policing, and government collaborations to catalyse positive change in the operational policing experience of sex workers. The intervention's principal organisations are Sonke Gender Justice and SWEAT (Saferspaces., 2021)

discourse. Yingwana (2019) also mentioned the emergence of Embrace Dignity as an NGO advocating for a "different ideological standpoint of partial decriminalisation." This perspective gained momentum, notably during a study tour undertaken by the NCOP. Noteworthy developments in the labour sector, such as "COSATU release[ing] a position paper on sex work which [was] pro-decriminalisation,"[65] indicating shifting attitudes. Yingwana (2019) observed how communities were directly affected by sex work, however they had been some acceptance by the "general public that sex work happens" driven in part by an acknowledgment of high unemployment rates in SA and that "sex work [was] not harming or affecting them, so why should they bother with it?" (Yingwana, 2019).

Interviewee 12, the research organisation (2019) identified the National Strategic Plan (NSP) as a significant policy change in SA. Despite a prevailing "war on sex work" aimed at eradicating the sex industry there was increased openness to addressing the issue. Efforts were also made to sensitise the police to the needs and rights of sex workers (Research Organisation, 2019). Interviewee 13, Dr Marcel van der Watt (2019), recognised various changes, including increased discretion among the police when it came to arresting sex workers. There was a shift in the language used, emphasising human rights, and the development of a "healthy awareness" that prostituted individuals are human beings, mothers, and daughters, particularly seen by the usage of the term "sex work." There was also an agreement that prostituted persons did not deserve the industry's harms and that the sector's issues needed to be address. Awareness grew regarding the need for change on multiple levels, particularly addressing issues related to race and patriarchy. Van der Watt emphasised the importance of "social cohesion" and education to deal with those entering the sex industry. He stressed the importance of remembering the "dignity" of women within the industry within the quest for change. He acknowledged that meaningful change might still take another "generation or two" and highlighted the interconnectedness of prostitution and human trafficking, showcasing how while sex work and trafficking might be two separate things, they were still very connected (van der Watt, 2019).

Interviewee 14, Naomi Hill (2019), WRHI, mentioned the publication of the Sex Workers Plan and National Sex Worker Plan which documented the needs and rights of sex workers. She highlighted how these plans provided a framework which recorded the scope of services needed by sex workers. However, they observed that what was "seen in policy [was] not always seen on the ground." At the same time, this framework recognised sex workers as a "key population" in relation to HIV/AIDS, therefore needing access to relevant health care services. They argued that the publication of these documents represented shifts that had taken place since 1994 but noted discrepancies between policy and practice seen by the fact that sex work

[65] COSATU, 2012, March. Discussion Document – Sex Work [ONLINE] Available at: http://mediadon.co.za/wp-content/uploads/2019/09/2012-April-COSATU-Sex-Work-Document.pdf

remained criminalised (Hill, 2019). Interviewee 15, Corinne Sandenbergh (2019), Stop Trafficking, explained how there was a "mafia" pushing for the legalisation of "worldwide organised crime." She justified this view by highlighting how other controversial issues had been pushed through the legal system, for example, the legalisation of dagga, abortion, and the new Trafficking act (Sandenbergh, 2019).

Interviewee 16, Yodwa Mzaidume (2019), observed that in the past, sex workers typically knew their clients, but now one client was shared among about ten sex workers. Her organisation provided services in "high HIV/AIDS transmission areas" through a mobile service centre, offering sex workers privacy and a safe space to disclose their profession. However, they needed to refer sex workers to the clinic for ARVs. In informal settlements near the mines, councillors collected medication for sex workers, reducing the need for clinic visits. She noted that the policy criminalising sex work had become less effective as the industry continued, despite its criminalised status (Mzaidume, 2019). Interviewee 17, Cause for Justice (2019) mentioned that the only change in the policy around prostitution was the criminalisation of clients in 2007. Nonetheless, they observed that the "policy of adult prostitution in SA had not changed."

Interviewee 18, Dr Mariette Slabbert (2019), expressed pride in the South African Constitution, which upholds individual human rights. She noted that SA was the "first or only country to publish the National Sex Worker Plan 2016 – 2019," along with the "National Strategic Plan for HIV/AIDS" in 2017 for the period 2017 – 2022 (Slabbert, 2019). Interviewee 19, Madri Bruwer (2019) observed how even those who were pro decriminalisation acknowledged that the industry was destructive. However, in her mind, these pro-decriminalisation organisations were willing to expose people to something they knew to be wrong. Bruwer argued how those in the sex industry were "too broken and desperate to care" and were only able to see the "deprivation" of the industry once they had "exited" the industry. Bruwer (2019), mentions the Police Commissioner's calls in 2009 to legalise "drinking and prostitution" during the World Cup. Bruwer (2019) believed that introducing prostitution in 2010 and then removing it would not have been possible. She argued that society expressed a desire to decriminalise prostitution until they realised its negative effects. She pointed out that the industry was more complicated than most people comprehended and suggested that the only way to "stop the risks of prostitution [was] for the industry to end." She mentioned the SALRC report, published in 2017 after years of study, as a testament to the brokenness in society that prostitution revealed. She maintained that "sex work [did] not create money but rather moved it around among people with serious issues." Overall, she felt that there had been no change; the government had "wanted to decriminalise sex work but recognised that [there was much more to it] than they realised." She highlighted the fact that people in the sex industry were "broken" while the industry did not improve their financial well-being (Bruwer, 2019). Overall, the interviews revealed a mix of perceptions about policy changes, ranging from optimism

for decriminalisation to frustration with the lack of substantial reforms. The discussions also underscored the intricate and multifaceted nature of sex work, as well as the ongoing challenges faced by sex workers in SA.

8.1.1.1 Discussion

Question 3(a) primarily revealed that the main change in sex worker policy since 1994 was the criminalisation of clients in 2007, a response to the S vs. Jordan and others case (CCT31/01 2002). Additionally, it highlighted the recognition of sex workers as a vulnerable population in the National Strategic Plan (NSP), aimed at providing sex workers with access to condoms, ARVs, and PEP drugs to reduce HIV infections. While this plan indicated government awareness of sex workers' issues, it appeared to be more of a band-aid solution, addressing a critical side effect of the sex industry (HIV/AIDS) rather than addressing the industry itself. In essence, the government seemed to be making minor changes to create the appearance of addressing issues related to sex work and violence against women. The interviews also reflected societal changes, even though the impact on communities directly affected by sex work may have been limited.[66] These changes allowing sex workers to openly advocate for the decriminalisation of their profession. Parliamentary debates on sex work, particularly its decriminalisation, had taken place, reflecting a shifting perspective on sex work as a legitimate employment. Support for the decriminalisation of sex work had grown, with organisations like COSATU and the CGE releasing papers in favour of decriminalisation. However, it was worth noting that the SALRC report on adult prostitution, published in 2017, did not align with this growing support, advocating for the continued criminalisation or partial decriminalisation of the sex industry. The interviews also highlighted positive changes, such as the signing of the Standard Operating Procedures (SOP) with the South African Police Service (SAPS) in 2017. This SOP aimed to improve the treatment of sex workers by law enforcement, especially during arrests, and aided those who were victims of crime and trafficking. While the SOP compelled humane and dignified treatment of sex workers by the police, it was challenging to enforce due to the continued criminalisation of sex work. Additionally, the SOP continued to use the stigmatised term "prostitutes" instead of "sex workers," reflecting the impact of ongoing criminalisation.

In summary, the interviews indicated positive societal changes regarding sex work and a growing awareness of the issues faced by sex workers, particularly related to health concerns like HIV/AIDS. However, it was crucial to recognise the negative aspects of the industry and the ongoing challenges posed by poverty and unemployment. Conversations both within Parliament and in communities were on the rise, potentially increasing support for policy change and exerting pressure for reforms. While the National Sex

[66] In the interviews there is a distinction made between society as being overall society and communities as the specific areas in which people lived. Smucker (1960: 275), as early as 1960, distinguishes between a community and a society. Smucker (1960:275) notes how "while society is an abstract term, the community is a concrete geographic unit in which the residents carry on a common mode of life." This view pointed to how communities are the places in which people live together, while society is broader. For example, the South African society, which in turn is made up of different communities.

Worker Plan had improved sex workers' rights, it remained within the context of a criminalised industry. This discussion illuminated some of the barriers to policy change in the South African sex work landscape, which are further explored in the subsequent section. The interviews revealed several key themes and challenges. First and foremost, there was a prevailing sense of limited policy changes over the years, with frustration over the government's slow response. Decriminalisation emerged as a prominent theme, advocated by many organisations to improve sex workers' safety and human rights. Documenting sex work proved challenging within a criminalised framework, potentially leading to incomplete data. The complexity of the sex work industry was evident, with diverse experiences and policy preferences. Shifting language from "prostitution" to "sex work" reflected changing perceptions, emphasising human rights. Civil society organisations played a significant role in advocating for change, while enduring challenges include stigma, exploitation concerns, and the need for a balanced regulatory approach. Despite growing support for decriminalisation, the slow pace of change was acknowledged, highlighting the need for sustained advocacy and a nuanced understanding of the issue.

8.1.2 Question 3(b): Hindrance/Stumbling blocks to policy change to the sex worker policy

Question 3(b) focused on the hindrance to policy change in the sex worker policy since 1994, as seen in the interviews with the organisations where several hindrances to policy change in the sex worker policy since 1994 were identified. Interviewee 1, Clara Singende (2019), noted that "what they say in Parliament [was] not what happen[ed] on the ground, "noting how community resistance to decriminalisation contributed to the lack of change as the "community [was] not happy to decriminsalise sex work." She was linking the lack of change to the communities being against this change, and to Parliament being more talk than action. Interviewee 2, Melodie van Brakel (2019), highlighted the influence of churches and public apathy as obstacles to policy change. She also argued that the different legislative frameworks were possibly why nothing was being done as there was no "perfect option" (van Brakel, 2019). Interviewee 3, Ishtar Lakhani (2019), emphasised a "lack of political will", incompetence, and the moral dilemma surrounding sex work as barriers to policy change. She also mentioned a contested debate between moral and human rights perspectives (Lakhani, 2019).

Lakhani (2019) highlighted how the SALRC report published in 2017 was "embarrassingly bad for them," referring to the government. She commented on the general "incompetence" in this area while highlighting that the SALRC had spent years with no Commissioners.[67] On top of this, she argued that the lives of sex workers, the poor and women were not being taken seriously. Simultaneously, the politicians felt that if they pushed for the decriminalisation of sex work, they would "be morally agreeing with sex work."

[67] The Commissioners for the SALRC are appointed by the President and work on a five-year contract (DOJ&CD, accessed 2021).

This was combined with the contestation between the "moral feeling around sex work versus the human rights" around sex work. This was exacerbated by the hesitation in getting involved in a complex issue. Simultaneously, she claims that the ANC had "watered down the issue" and "generally [tried] to avoid the actual issue," which she equated with party politics and opinions within the ANC. Concurrent to this, she observed how "particular individuals who [had] a moral issue with sex work [were] lobbying against decriminalisation." The lobbying against decriminalisation was combined with a "lack of consultation and not listening to the actual sex workers." Despite this, she claimed that there were "high-level politicians who [were] publicly supporting decriminalisation" and how the general support for decriminalisation was growing. An example of this she mentioned was the support from the "Total Shutdown Movement" which was not a sex worker movement but rather a women's movement.68 Lakhani reflected on how this was powerful in broadening the debate from sex to including issues around GBV and HIV/AIDS (Lakhani, 2019).

Interviewee 4, Malise Richter (2019), Sonke Gender Justice, pointed to a lack of "political will to change the laws" or "commitment to take the process forward" as the main stumbling blocks to political change around sex work in SA. In the interview, Mickey Meji (2019) reflected on the perspective that "decriminalisation [was] not going to work" and discussed an alternative known as the "equality model," which involved the partial decriminalisation of these industry. She pointed out that the government had explored this model during a study tour in Sweden, even though they had not visited New Zealand, where full decriminalisation existed. Meji (2019) expressed concerns about the lack of clarity regarding the government's stance on sex work decriminalisation and suggested they might lean towards partial decriminalisation, a position she believed they were more likely to support. She also identified additional challenges to policy change, such as the inherently private nature of prostitution, which made it challenging to regulate effectively. Meji (2019) emphasised that the arguments for decriminalisation were often led by academics who lacked direct experience in the industry, leading to delays and a lack of understanding of sex workers' needs among decision-makers. She underscored the importance of firsthand experience within the industry for a comprehensive understanding of its dynamics (Meji, 2019).

In the interview, Cherith Sanger (2019) discussed the influence of patriarchy on how women perceived their own sexuality and bodies.[69] She observed how SA was not ready to decriminalise sex work, citing the S vs. Jordan and others case (CCT31/01 2002) as an illustrative example. Despite government commitments to decriminalisation, there has been a lack of follow-through (Sanger, 2019). Interviewee 7, Constance Mathe (2019) representing the Asijiki Coalition, highlighted the intimate connection between sex

[68] The Total Shutdown Movement is a movement started in 2018 by women and gender non-conforming people to protest against the high levels of gender-based-violence (GBV) experienced in SA (Moosea, 2019).
[69] Patriarchy is defined in Chapter 2, Section 2.1.4.

workers and lawmakers, noting that "each sex worker [had] a client who [was] a Minister or MPL," implying that some clients of sex workers were within Parliament. As a result, there was a vested interest in keeping sex work criminalised to prevent potential exposure and embarrassment, as clients feared that their families could discover their involvement. Mathe emphasised the prevailing secrecy surrounding this issue, suggesting that anyone could be a client but would never admit to it. Additionally, she pointed out the ongoing debate regarding sex work framed as a "moral" versus a "human rights" issue, stressing that the focus should shift from moral judgment to recognising the human rights violations resulting from the criminalisation of sex work. These interconnected factors were identified as contributing to the delays in policy change regarding sex work (Mathe, 2019).

In the interview, Matthew Clayton (2019) expressed his belief that government and ANC's moral objections to sex work, along with opposition within the higher echelons of the government, have hindered policy change. He noted how these sentiments aligned with radical perspectives on sex work, characterised by the belief that all individuals engaged in sex work were exploited and lacked agency. Clayton also observed that the government tended to be sluggish in policy change, with some issues languishing in a state of limbo for extended periods. Furthermore, there was a lack of political will to address sex worker policy, as it doesn't significantly influence elections or garner votes. Additionally, the association between sex work and human trafficking, in his view, hampered progress and were counterproductive (Clayton, 2019). Interviewee 9, representing the Anti-Trafficking Organisation (2019), emphasised the absence of political will and the widespread public opposition to prostitution as the primary factors delaying policy change. Interviewee 10, from the CGE (2019), remarked on certain contentious aspects of sex work that provoke strong reactions from the public, like the debates surrounding same-sex marriage. They also noted that the sex work policy aligns with an outdated Apartheid-era mindset. The influence of religion on laws, despite SA being a secular state, was also mentioned (CGE, 2019).

Ntokozo Yingwana (2019), in her interview, found it challenging to pinpoint the exact reasons for the lack of change in policy. She suggested that it might be related to the "political climate" and fluctuations in the discourse surrounding sex work. She mentioned that the "current President [had] endorsed the decriminalisation of sex work through SANAC," but this endorsement has had minimal impact on policy change. She also raised concerns about Embrace Dignity's approach, perceiving it as consistently opposing SWEAT's initiatives without openly expressing their views on sex work. Yingwana questioned the need to "discredit other organisations" when they are all advocating for sexual rights (Yingwana, 2019). In their interview, Interviewee 12, representing a Research Organisation (2019), characterised the situation as a "war on sex work," suggesting that SA aimed to eliminate the sex work industry. They also argued that society's

conservative stance and lack of popularity in political circles were key obstacles to policy change, attributing the absence of change to societal disapproval (Research Organisation, 2019). Dr Marcel van der Watt (2019), believed that "all cards [were not] on the table" and questioned the discrepancies in views among Civil Society organisations, noting that the neglect of the issue of trafficking. He highlighted a general lack of understanding regarding the full decriminalisation of prostitution (van der Watt, 2019). Naomi Hill (2019), from WRHI, noted that sex work was perceived as a "threat to moral and social order", "gender equality", and "control and power over women's bodies." Society feared an increase in the number of women entering the industry if it were legalised. Despite this, they argued that decriminalisation would not necessarily lead to more sex work but would enable safer practices. They advocated for an "advocacy response" that emphasised sex workers' needs through a "health care lens" (Hill, 2019).

Corinne Sandenbergh (2019), STOP Trafficking, expressed doubts about the possibility of legalising prostitution in a predominantly Christian country like SA with strong moral values. She believed that only a minority, particularly in the ANCWL, discussed the legalisation of prostitution. She also questioned the role of public participation in bringing about a change in the legislative framework, believing that a change in the policy would not be due to publish participation. She used examples of the extent of public opposition both oral and verbal to the legalisation of prostitution during the 2010 World Cup. She felt that from her experience the "black mamas" did not want prostitution to be legalised. While she maintained that the public still believed in the institutions of family and marriage. She also noted how the leadership in the country were also corrupt (Sandenbergh, 2019). The usage of the term "black mamas" as used in the interview raised concerns regarding racial connotations, colloquial language, and sensitivity. However, in the context of the interview the Interviewee was not using the term to undermine these women but as a sign that she was close to them due to her work in piloting an exit programme. Despite the interviewee genuinely believing it was acceptable to use this terminology, the analysis of Sandenbergh's (2019) use of the term 'black mamas' underscores the importance of intersectional feminism. This terminology requires thorough examination through an intersectional lens, especially considering the historical context of racism within feminist movements. Acknowledging the legacy of racial discrimination perpetrated by white feminists against black women enables us to contextualise Sandenbergh's (2019) language within the broader framework of systemic inequality and bias. It highlights a manifestation of privileged racism, where her identity as a 'white woman' inadvertently undermines the individuals, she collaborates with.

Yodwa Mzaidume (2019), identified religious organisations as the primary impediment to policy change in sex work. Cause for Justice (2019), outlined three reasons for the lack of change in sex worker policy since 1994. First, they argued that there were no constitutional grounds necessitating legislative or

policy change, citing the S vs. Jordan and others case (CCT31/01 2002) as a basis for this claim. Second, they attributed the lack of change to the multitude of "serious socio-economic challenges" in SA, which diverted attention and resources away from addressing sexual exploitation. While "elected officials may already be overcommitted or overwhelmed, or simply [did] not care." Third, they pointed out the "failure to address the root/true causes of the problem," particularly the sexual exploitation and objectification of women, along with poverty and a "lack of other career choices." They emphasised the absence of political leadership and suggested that counsellors only became involved close to elections (Cause for Justice, 2019). Dr Mariette Slabbert (2019), noted a lack of widespread public support for policy change, particularly due to moral and religious objections, while acknowledging some individual-level support for policy change. She mentioned limited support for decriminalisation within Parliament (Slabbert, 2019). Interviewee 19, Madri Bruwer (2019) representing Straatwerk, attributed the lack of policy change to a lack of knowledge about the industry, which made the government hesitant to pursue decriminalisation, given its complexity. Here the lack of policy change was being linked to the industry's nature, making it challenging to implement decriminalisation.

8.1.1.2 Discussion

In the interviews with various stakeholders, several hindrances to policy change in the sex worker policy since 1994 were identified. The main stumbling blocks can be narrowed down to two main reasons, which reveal deeper structural and societal issues. First, the political reasons, namely a lack of political will due to other pressing issues and the belief that it wouldn't secure votes. The political landscape in SA is often characterised by a multitude of challenges, from economic disparities to healthcare concerns, which take precedence on the government's agenda. Sex work policy, in comparison, has not been perceived as a vote-winning issue. Additionally, many high-ranking politicians had issues with sex work, either morally or as clients of sex workers, which made them keen to maintain the industry's criminalisation. There was a fear that decriminalisation would be perceived as a moral agreement with sex work. This highlighted the significant influence of moral values and personal beliefs within the political sphere. It raised questions about the role of personal convictions versus the duty to represent diverse societal views within a democratic framework. Secondly, there was a 'moral' versus 'human rights' debate in which many people focused on how sex work was morally wrong, largely influenced by religion. This perspective is referred to as the 'social reasons.' These moral objections are deeply rooted in South African society, reflecting broader conservative values. These values are further exacerbated by religious teachings, making it challenging to build a consensus around sex work decriminalisation. The "moral" versus "human rights" debate raised critical questions about the clash between individual freedoms, women's rights, and societal norms. It underscores the need for more comprehensive public education and open dialogue to bridge these gaps.

In line with the political reasons for the lack of policy change, Ishtar Lakhani (2019), argued that politicians hesitated to get involved due to the complexity of the issue, prioritising other matters over the lives of the poor and women. This highlights the government's struggles to allocate resources and prioritise issues that may not yield immediate political benefits. Simultaneously, there was a general lack of consultation with sex workers, leading to a lack of understanding by those in power. This failure to engage with the very people affected by the policy revealed a disconnect between policymakers and the realities on the ground. The government made commitments to decriminalise sex work, but there was little follow-through, partly due to a lack of political will. This raised concerns about the accountability of policymakers and the need for transparent governance. Matthew Clayton (2019), Triangle Project, stated that the government was generally slow in implementing policy changes, compounded by delay tactics such as research and publications. This bureaucratic inertia shed light on the bureaucratic complexities of policy change, often resulting in lengthy processes. The links between sex work and trafficking also hindered policy change. Moreover, the conversations around sex work in the political context were inconsistent, further diminishing interest. These inconsistencies point to the need for a coherent, informed, and sustained public discourse on sex work policy.

Additionally, there was a lack of understanding of what decriminalisation of sex work meant, resulting in debates on its feasibility in SA. These divisions were counterproductive, especially given the industry's complexity and the absence of a perfect legislative solution. This highlights the importance of informed policymaking and the need for clear definitions and goals. Root causes linked to poverty, joblessness, and the commodification of women remained unaddressed due to insufficient funding. This funding gap underscores the challenge of resource allocation in addressing the underlying causes of sex work. The social reasons included community resistance to decriminalising sex work, often rooted in religious teachings and moral views. These perspectives resulted in a contestation between moral and human rights issues related to sex work. Those opposing decriminalisation felt sex work was morally wrong and lobbied against it. Moreover, sex work was perceived as not benefiting society, while the lives of sex workers were not taken seriously. South African society, seen as not ready for decriminalisation, was considered conservative, and clients wanted to protect their identities. This underlines the power of societal norms and perceptions in shaping policy decisions. At the same time, sex work was viewed as a threat to societal moral and social order. Sex work was seen to impact issues of gender equality and women's bodily autonomy. There was a fear that decriminalisation might lead to more women entering the industry as a viable career option, which reflects concerns about gender equity and the impact of policy changes on society's fabric. The private nature of sex work also complicated matters, and a lack of a united front calling for policy change led to delays resulting from opposing civil society views. This fragmentation within civil society suggests a need for coordinated efforts and common goals to drive policy change effectively.

The hindrances raised in the interviews with organisations pointed to issues specific to sex work in SA, including the conservative nature of society, as well as the prevailing socioeconomic conditions, particularly poverty and high unemployment levels. The historical patriarchy further compounded challenges by affecting how women defined their sexuality and bodies. Dealing with these issues had the potential to alleviate poverty and unemployment by providing alternative job opportunities, ultimately affecting sex work policy. The next section explores various aspects that could assist in driving policy change around sex work, emphasising the complex interplay of politics, morality, and societal norms in the policy-making process.

8.1.3 Question 4: What needs to take place to see a change in the sex worker policy.

Question 4: In your organisation's view, what will need to take place for a change to occur in the sex-worker policy in SA? What form do you think this change will need to take?

Question 4 played a crucial role in shedding light on the complexities surrounding the lack of policy change in the realm of sex work in SA, from a historical perspective. It aimed to extract insights from organisations intimately involved in sex work advocacy to discern the prerequisites for policy transformation. By probing their perspectives, the question explored the mechanisms and conditions that would need to be in place for a meaningful shift in the sex worker policy to materialise. It functioned as a practical guide for navigating the intricate policy landscape, offering a roadmap for overcoming the impediments identified throughout the research. The responses captured the collective wisdom of organisations with a stake in the policy debate, offering a holistic view of the necessary steps and potential forms of change required to challenge the status quo. Question 4 was inherently linked to the broader research inquiry, providing actionable insights into how civil society, in collaboration with the government, could instigate policy reform. These insights were invaluable in guiding future advocacy efforts and policy initiatives aimed at addressing the enduring policy stasis in SA.

In response to this question Interviewee 1, Clara Singende (2019) explained the need to "lobby the communities," which she felt could be done through NGOs. She argued how these NGOs could also assist with "sensitising the communities around sex work to help them understand why people are entering sex work." She clarified how there was a need to "sensitise the police, nurses, and the courts." Through these options, she looked at the civil society space to change attitudes around sex work. She believed that through altering people's views, it would be easier to obtain community support for policy change (Singende, 2019). Interviewee 2, Melodie van Brakel (2019), expressed the need for the government to be committed to change. She spoke about how there is a need for people to start helping each other and to get involved (van Brakel, 2019). Ishtar Lakhani (2019), Interviewee 3, SWEAT, believed that SA was "closer to decriminalisation than it [had] ever been before." She explained how any progress in changing this policy would only be through a

"push from civil society." She detailed how SWEAT was planning a future CCT challenge, linked to the fact that the S vs. Jordan and others case (CCT31/01 2002) was only "slimly lost" and that the new CCT challenge could have a "different argument." This argument could be linked to the various studies that could "disprove the moral assumptions" around sex work, based on more evidence around the health argument (Lakhani, 2019).

Interviewee 4, Marlize Richter (2019), Sonke Gender Justice, spoke about the need for a "GBV summit" and a "commitment by the government to decriminalise sex work." She described how politicians need to commit to an "evidence-based approach," an approach that was supported by accurate data. Decriminalisation, she said, was "a choice to make women safer." She explained the need to "adapt the New Zealand model." Adapting this bill, combined with an appeal of the sections in the Sexual Offenses Act which criminalise sex work has the potential to, in turn, decriminalise sex work (Richter, 2019). Interviewee 5, Mickey Meji (2019), expressed the need to promote gender equality for both men and women. She stressed the need to give women alternative job opportunities to sex work and to empower them economically. She contended that clients could be fined, and this money could be invested in women's economic empowerment. She observed how "fines are known to be effective in SA." She remarked on how prostitution was not sustainable and was not a money-making industry. She felt that it was an obligation of the government to support exit programs for those wanting to exit the sex industry. Overall, there was a need for a "change in mindset" as there would be no prostitute without a buyer. Simultaneously, men who use prostitutes did not want to be known by society and might, therefore, be willing to pay fines rather than be exposed. For her "decriminalisation [was] not going to work" (Meji, 2019).

The statement by Mickey Meji (2019) underscored the imperative for a broader societal transformation when addressing the issue of sex work. It emphasised the necessity of shifting prevailing attitudes and perceptions towards sex work as a fundamental step. Furthermore, it highlighted the role of clients or buyers, suggesting that they often prioritised anonymity and may opt to pay fines to avoid exposure. This perspective raised doubts about the efficacy of decriminalisation alone in improving the safety and welfare of sex workers. Ultimately, Meji's (2019) viewpoint reflected a scepticism regarding the potential of decriminalisation to address the complex challenges faced by sex workers and emphasised the importance of comprehensive, multifaceted solutions that encompass social support, economic opportunities, and a deeper understanding of the underlying factors driving sex work.

Interviewee 6, Cherith Sanger (2019), mentioned the need to "dismantle patriarchy" to give "women greater rights." She explained how legislation influenced society; therefore, through protecting the rights of sex workers, it would also positively affect their clients, families, and communities. At the same time, for

change to take place, there was a need to "work around patriarchy and what this means for women and how they define their bodies and their sexuality" (Sanger, 2019). Interviewee 7, Constance Mathe (2019), Asijiki Coalition, documented the need to view the sex worker policy from a human rights perspective. She explained how sex work should be defended as a "human rights issue, not a moral issue." Mathe maintained that sex workers needed to be included in the process. The Sisonke Movement's slogan states, "nothing about us without us" as only the sex workers could "say what [was] happening in the industry." Mathe (2019) discussed how sex work was an exchange between two consenting adults and needed to be viewed as personal matter. They claimed that for there to be a change in the sex worker policy, there was a necessity to "mobilise Members of Parliament (MPs)" to advocate for an alternative approach within the Committees, aiming to facilitate changes in the legislation concerning sex work. At the time of the interview, the Asijiki Coalition was working with MPs who supported decriminalisation to help facilitate this process. There MPs had the potential to sway their colleagues within the system, while a workshop with MPs was necessary to sensitise them on issues faced by sex workers. Mathe also mentioned the CCT challenge being planned and how the funds were still being raised. This challenge would focus on the evidence and life testimonies of how the criminalisation of sex work affect sex workers (Mathe, 2019). Mathe further clarified that the impact of the criminalisation of sex work needed to be highlighted, linked to the need for protection, health-related issues, and the advancement of human rights. However, she mentioned the need to sensitise individuals on a societal level as most people had a "particular picture of a sex worker." She described how society needed to understand the type of sex work advocated for, combined with what decriminalisation means. She mentioned how it was essential to clarify who would benefit if sex work was decriminalised. Those who could benefit included the sex workers and their children (families). Mathe stressed the need to "ask sex workers what they want[ed];" as if sex workers were asked questions directly, they would respond (Mathe, 2019).

Interviewee 8, Matthew Clayton (2019), Triangle Project, observed the ANC's need to commit to decriminalising sex work and add it to their political priorities (agenda). He outlined the need for a "push from within the ANC" to ensure that people voted for change in the policy. Clayton (2019) remarked how the change in the policy had the potential to be a compromise as the government in his view was not interested in a hands-off approach, which would mean that they might lose control. He explained that if change were to happen, it would probably be a combination of both worlds, "some form of decriminalisation/criminalisation" that "nobody wants" (Clayton, 2019). Interviewee 9, the Anti-Trafficking Organisation (2019) interviewed, mentioned how the commercial sex industry should remain criminalised but that the people in the industry should be diverted through the court system. In so doing, people in the industry would not have a criminal record and through the court system could be assisted in exiting the industry in the form of divergent (exit) programs. However, they argued that for divergent (exit) programs to succeed, there was a need for political

will and MPs to take it seriously. They explained that these divergent programs could incur significant costs and suggested that the government should collaborate with civil society organisations to secure funding for these initiatives. They felt that this would only be possible if there were "open conversations" on the issues around people in prostitution. Furthermore, they contended that there was a need for "specialised police units to deal with this" especially in cases of "trafficking where cases [were] difficult." They focused on divergent programs as the only change needed in the legislative framework and maintained that prostitution should remain criminalised. (The Anti-Trafficking Organisation, 2019). The Anti-Trafficking Organisation's perspective on the commercial sex industry highlighted a unique approach to addressing the issue. By advocating for the continued criminalisation of the industry but diverting individuals through the court system, they aimed to provide a pathway for those involved to receive assistance without acquiring a criminal record. This approach aligned with the belief that divergent exit programs could be effective tools for supporting individuals in transitioning out of sex work. However, it also underscored the importance of political will and collaboration with civil society to fund and implement such programs effectively. This perspective reflected a nuanced viewpoint that sought to balance the need for addressing the negative aspects of the sex industry while also providing opportunities for individuals to exit and rehabilitate without the long-term consequences of a criminal record.

Interviewee 10, the CGE (2019), explained how the "standard operating procedures" (SOP) have been put in place with the SAPS. They noted how despite this, it was still necessary to "educate the SAPS" through "sensitisation workshops." At the same time, they outlined how there was a need for "health care strategies," "for their profession to be legitimate," and "for sex workers to be free from arbitrary arrests." Under criminalisation, they observed how sex workers were arrested for "loitering" and linked to this, they argued for the need for police accountability. The policy approach towards sex work, they reasoned, needed to be "based on the constitution" and "protect all citizens' rights." They also spoke about a need for political will for sex work to be decriminalised. They explained that the sex industry was making a "voiceless plea for assistance" in a sector where it was "difficult to voice your demands." While if "sex workers [did] not have a space to raise their concerns in urban areas, what about those in rural areas? " They mentioned how the law on sex work "has not changed to meet the current societal needs" linked to the socio-economic conditions in SA and that there was overall a "need for policy change." They detailed how a church in Cape Town which supporting the "decriminalisation of sex work" went as far as to put up a banner that stated, "Jesus was the first to decriminalise sex work." Despite this only representing one church it still reflected how religious views were starting to shift but overall, they observed that the "religious or cultural umbrella [was] only brought up when it suit[ed] people's viewpoints" (CGE, 2019). This symbolised how societal attitudes were

changing, however despite pockets of progress; broader religious and cultural viewpoints may still be largely resistant to change and may only accommodate shifts that align with existing beliefs or opinions.

Interviewee 11, Ntokozo Yingwana (2019), explained the need for the right MPs to be in place to push for policy change. She remarked how there had been declarations in the media to decriminalise sex work. However, there was no follow-through, with a need to hold the President to account. She observed how the current political climate allowed Civil Society to be more aggressive in their advocacy for the decriminalisaiton of sex work. However, she argued that for change in the policy to occur, there was a need for a draft bill on the decriminalisation of sex work linked to the New Zealand model. She maintained this draft bill needed "to be specific on what the sex workers want" as she felt that people had "crazy ideas in their heads." There was a need for a "win all or nothing at all." She believed that the present time was the "opportune time to draft a bill" and get an "MP to push the bill." She mentioned how another CCT challenge based on health-related evidence, such as the one being planned by civil society organisations, could assist with the needed policy change (Yingwana, 2019). Using the terms "crazy ideas" the interviewee was referring to the various misconceptions, stereotypes, or unrealistic assumptions that people may have about sex work and the needs of sex workers. These misconceptions can often hinder productive discussions and policymaking. By emphasising the need for a specific and well-defined draft bill linked to the New Zealand model, the interviewee was advocating for a clear and evidence-based approach to policy change.

Yingwana (2019) believed that all stakeholders had already been consulted regarding what policy approach sex workers wanted and what was now needed was for government to "drill down to the actual details" of the decriminalisation of sex work. To do so she outlined how a committee could be appointed "to iron out the details" rather than to simply continue the debates around "which model" was for SA. She acknowledged that while there were "opposing camps" regarding the best policy approach towards sex work, all approaches were "driven by a desire to protect women in the work that they do." Simultaneously, she believed there was a need to empower women, which she argued, should not only be done once they had been arrested. She spoke about how migrant sex workers sadly did not have rights as they were not documented. Therefore, they faced further "human rights violations." She explained a need for more studies to be done on "migrant sex workers" and the effects of the "decriminalisation of sex work" on them directly. However, she stressed that migrants should not be allowed in the country to practice sex work and that in the draft bill it "should be clear that people must be documented and not excluded from sex work" (Yingwana, 2019). The mention of migrant sex workers emphasises the importance of a holistic and inclusive approach to addressing the complexities of the sex industry.

Interviewee 12, the Research Organisation (2019), explained the need for more openness around dealing with the sex work issue. While there was a need to work with the police and "help them be more sensitive towards sex work," the policy changes, he argued, needed to be "pushed through politically." They were also of the opinion that another "CCT challenge" could be successful. In their opinion, those who linked sex work to trafficking were what they term as "nutters." They gave an example of the fear of trafficking during the 2010 World Cup, noting that there was "not a single case in the end." They remarked how "women [were] available, so why [did] women need to be trafficked?" They mentioned how "rape [was] common" but how this is also an issue all women faced and was not limited to sex workers. They viewed trafficking as a "form of slavery" or "brutal kidnapping" questioning what "VAW [had] to do with sex work" when "violent sexual assaults [were] common gender norms in society." They maintained that "gender issues [were] not sex worker issues" (the Research Organisation, 2019).

Interviewee 13, Dr. Marcel van der Watt (2019), spoke about the need to address police harms and the "buyers who exploit/rape" people in prostitution. Simultaneously, he observed a need for a "culture change in society" where patriarchy was the center. He combined this with an awareness that the sex industry promoted "women and children as commodities." At the same time, he felt that "frank conversations on the sustainability of the sex industry as well as the effects on the health of people in prostitution" need to take place. He observed how "not having open conversations is obscuring the agenda" (van der Watt, 2019). Interviewee 14, Naomi Hill (2019), WRHI, mentioned the need for "sex workers to be placed at the center of the policy" and how the process should be "peer education driven." They explained how women leaving sex work could work in peer education. Overall, there was a need for a "health policy approach" with a "recognition that sex workers cannot be helped in the health care system" promoting the need for "stand-alone clinics." The new political approach needed to be "sensitive to the needs of sex workers" and for sex work to be viewed through a "health care lens" including the sensitisation of health care providers to the needs of sex workers (Hill, 2019).

Interviewee 15, Corinne Sandenbergh (2019), focused on the need for the continued criminalisation of prostitution but with exit programs. Through the exit program, she argued the prostitute could be "decriminalised," so if they (prostitutes) agree to join the exit program, they would be "decriminalised." Therefore, the only change she is calling for is the inclusion of exit programs. She is in the process of piloting an exit program to show the success of these programs (Sandenbergh, 2019). Her views were in line with the views given by the Anti-Trafficking Organisation (2019), showing support for the continued criminalisation of sex work but also recognising that criminalisation does not help sex workers. Interviewee 16, Yodwa Mzaidume, observed the need for measures to be put in place to allow sex workers to report abuse. This

should be combined with a change in the thinking and behavior of the police. She further highlighted how the law around sex work needed to be debated in Parliament., while "Parliamentarians need[ed] to understand the difference between criminalisation and decriminalisation." She stressed how "Sex workers need[ed] to be allowed to express their views and choose the best policy approach" as they understood their jobs and the dangers involved. She mentioned how there was a need to look for the best approach that would "benefit the health of our citizens." Overall, she felt that there was a need for it to be an "individual's choice to be a sex worker and whether to continue in sex work" (Mzaidume, 2019).

There was a need for a shift in focus to address (reduce and eliminate) the key factors that created and drove the supply and demand for prostitution according to Interviewee 17, Cause for Justice (2019). While Cause for Justice (2019) argued that it was necessary to change the focus from the repercussions of prostitution to why prostitution remains. Simultaneously society must be informed that prostitution was a type of sexual exploitation and that they couldn't continue to stay indifferent to sexual exploitation in their midst. Furthermore, the commitment to eliminate all forms of sexual exploitation did not fall solely, or even primarily, on the shoulders of the state. Sexual exploitation and violence they believed must be eradicated as a primary concern on their local agendas. They highlighted the significance of policing and prosecuting users of prostituted services in a proactive and effective manner. They stressed that the consequences of prostitution must be properly recognised and understood. They explained that once the damages were recognised, the required political will to prevent and abolish this kind of sexual assault and exploitation may be generated. For Cause for Justice (2019), viewing prostitution as anything other than a human rights violation would not change the essence of prostitution. While society may be unable to thrive if human rights breaches were tolerated. Those asking for prostitution to be reclassified as work, according to Cause for Justice (2019), should leave the discussion since their arguments contradicted the CCT's findings in the S vs. Jordan and others case (CCT31/01 2002). They emphasised how the importance of scientific research that recorded and confirmed the effects of prostitution should not be underestimated. They regarded the counterarguments as "irresponsible, anti-women," and based on a fiction that prostitution may be considered work (Cause for Justice, 2019).

Interviewee 18, Dr. Mariette Slabbert (2019), explained the need to "keep the argument and the advocacy alive," explaining how the public health issues around sex work had managed to keep sex workers on the agenda. However, she stressed that funding was still needed for it to remain on the agenda. There was a need to understand the issues around sex work within a "human rights framework." The National Sex Worker Plan had highlighted sex workers as a critical population, especially regarding HIV/AIDS prevention. Whereas she was positive about the process," she was "not sure that much would change" (Slabbert, 2019).

Interviewee 19, Madri Bruwer (2019), highlighted what she terms as the "trauma upon trauma" of prostitution, which often starts with "childhood abuse." She observed the need to "communicate hope" and to "speak up for those who are unable to speak for themselves," and how this needed to be combined with "very accessible exit programs." These exit programs, she believed, would encourage people to exit prostitution and in turn, "deter entry into prostitution." She stressed the importance of ensuring that "home-based care services are accessible to those in poverty." Because prostitution was related to "instant satisfaction," she believed it was critical to teach those who left the industry how to "use money wisely." Bruwer (2019) believed that "people [didn't] realise how much money they need[ed] to survive," adding that "regular life [was] so [ordinary]" in comparison to the "wow of prostitution." She believed that "God [was] the source of life" and that she had to be "part of the change," noting how nobody needed to be imprisoned in prostitution. She saw a "world without prostitution as possible" if individuals in prostitution were "helped to exit" the industry (Bruwer, 2019).

8.1.3.1 Discussion

Question 4 delved into the necessary steps to change the legislation governing sex work, as reflected in the interviews. Several key points emerged from the interviews, including the need to sensitise society to sex work, which could be achieved through NGOs working closely with communities. Simultaneously, the government's commitment to change was considered crucial. Civil Society organisations were seen as instrumental in pushing for change, with plans for another CCT challenge based on new health-related evidence. The proposal for a Gender-Based Violence (GBV) summit was mentioned to educate society and the government about sex workers' challenges. Generating a comprehensive draft bill outlining sex workers' desires and conducting workshops with Parliamentarians to sensitise them to these issues were emphasised. Additionally, the idea of forming a committee to address sex work issues and develop a policy based on the New Zealand legislative framework was put forth.

The interviews revealed two opposing arguments: one group called for advocates of decriminalisation to step aside, while the other stressed the importance of keeping the discussion alive to drive necessary changes. Those advocating decriminalisation highlighted the need for increased commitment and education among MPs, focusing on the potential benefits of decriminalisation. Conversely, the opposing viewpoint emphasised MPs' understanding of the industry's adverse effects and the need for alternative job opportunities, particularly linked to exit programs for sex workers. Both sides emphasised the significance of political will in championing any successful outcome, including holding the President accountable for commitments made to sex workers. The interviews underscored the importance of education in influencing policy change, with differing objectives. One group sought to educate Parliamentarians about the harms of the sex industry, potentially leading to its eradication, while the other aimed to convey the impact of criminalisation on sex

workers, potentially driving legislative changes to improve their lives. Exit programs, coupled with financial education for sex workers, were highlighted as critical. Addressing the root causes of sex work, such as poverty and unemployment, necessitated open conversations about the industry's sustainability. A health care approach that prioritises sex workers' health and agency in any policy change was deemed essential, along with effective policing and client prosecution, particularly under criminalisation or partial decriminalisation. Interviewee 9, the Anti-Trafficking Organisation (2019), emphasised the need for specialised police units to ensure effective enforcement.

Furthermore, the interviews illustrated the presence of radical versus liberal feminist debates within SA's civil society space. Those supporting continued criminalisation aligned with radical feminists, emphasising the industry's harms, and advocating for its complete overhaul. They viewed the sex system as inherently patriarchal and detrimental to women's liberation. In contrast, proponents of decriminalisation focused on sex work as a space for free agency and contended that harm resulted from the industry's criminalisation. The core difference lay in the source of harm, which led to differing solutions for addressing it. To advance policy change in the realm of sex work in SA, a multifaceted approach was essential. Stakeholders, including policymakers, civil society organisations, and sex worker-led groups, must unite in collaborative efforts. Education and sensitisation campaigns should target both policymakers and the wider society, shedding light on the challenges faced by sex workers and the potential advantages of policy reform. Evidence-based decision-making, supported by academic research and reports like those from the South African Law Reform Commission (SALRC), should guide legislative reviews. A dedicated committee comprising experts, policymakers, and sex worker representatives must assess existing frameworks, identifying areas in need of reform. Crafting a new legislative framework tailored to the unique South African context requires meaningful engagement with sex worker communities. Robust exit programs, alternative employment opportunities, and financial literacy training should be established to empower sex workers. Healthcare accessibility, including sexual and mental health support, is pivotal. Community participation, through initiatives like Gender-Based Violence (GBV) summits, could help challenge stereotypes and secure public support. Identifying political champions within government was crucial, while specialised police units may enhance safety. Monitoring progress and ensuring accountability are imperative, drawing inspiration from global best practices such as those in New Zealand and Sweden. Collectively, these steps offered a comprehensive strategy to foster policy change that prioritises the rights and well-being of sex workers in SA.

8.2 Conclusion

The obstacles to policy change were present both in societal and political domains. Education emerged as a fundamental factor in grasping the intricacies of the sex industry, underscoring its significance regardless of the preferred legislative framework. The forthcoming CCT challenge, initiated within the civil society sector, was recognised as a potential catalyst for reshaping SA's legislative landscape. MPLs primarily directed their efforts towards political avenues for driving policy change and considered the impact of research, while organisations concentrated on areas more within their control. Their initiatives included educating MPs and communities and preparing for the CCT challenge. Education remained a recurrent theme, closely intertwined with the sex industry and its consequences, whether viewed positively or negatively. The subsequent chapter details the conclusion and key findings of this research.

Chapter 9: Conclusion and Key Findings

9.0 Introduction

As the discussions have demonstrated so far, efforts to bring about change in SA's sex worker policy confront a range of challenges deeply rooted in the country's political landscape. The foremost challenge lies in the necessity of placing sex work on the ANC's political agenda. Political priorities tend to prioritise issues that secure votes during elections, which may divert attention away from social concerns like sex work. Furthermore, the pivotal role played by government ministers cannot be underestimated; their commitment to exhibiting 'political will and leadership' is essential for advocating policy reform. Public participation emerges as a potent catalyst for change, with avenues such as referenda, petitions, and inquiries enabling advocacy efforts. Simultaneously, government-initiated research, often undertaken by bodies like the SALRC, seeks to provide empirical foundations for policy reforms. These research endeavours contribute to informed decision-making, albeit within a complex policy landscape. While facing delays in overarching policy change, the government demonstrates awareness of the health and social consequences associated with the sex industry, notably HIV/AIDS. Initiatives led by provincial governments, like Gauteng, exemplify this awareness and underscore the pressing need to address sex workers' challenges. Engaging with marginalised populations, including sex workers, remains pivotal in raising issues directly affecting them within the policy discourse.

9.1 Overview of the thesis

Chapter 1 focused on introducing the context of sex work legislation in SA, tracing its historical evolution from the inception of the Sexual Offences Act in 1957 to the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. It emphasises the complexity of the issue and its intersections with gender-based violence and femicide (GBVF), feminism, and socio-economic disparities. The chapter outlined the research objectives and methodology, including document analysis and interviews with key stakeholders, with a focus on applying a feminist lens. The researcher's motivations and goals for advocating for the rights of sex workers in SA were also discussed, underscoring the importance of the chapter in setting the stage for the subsequent research and analysis.

Chapter 2 provided foundational insights into sex work terminology and legislative frameworks, distinguishing between criminalisation, legalisation, decriminalisation, and partial decriminalisation. It examined case studies from New Zealand, Sweden, Netherlands, and Senegal to illustrate real-world implications on the different legislative models utilised to govern the sex industry. The chapter highlighted the importance of tailored approaches and the influence of governance feminism in shaping policy debates.

Overall, it advocated for comprehensive, rights-based approaches to sex work policy, tailored to local contexts like SA.

Chapter 3 provided a detailed historical analysis of sex work legislation in SA, tracing its evolution from pre-1994 to 2020. It highlighted the complex interplay of socio-cultural, political, and economic factors influencing policy development in this area. Despite international influences and constitutional mandates promoting gender equality, the criminalisation of sex work persisted, with debates hindered by concerns over human trafficking and moral objections. Efforts for legalisation gained momentum, especially in preparation for the 2010 Soccer World Cup, but legislative changes did not materialise. The period from 2010 to 2020 saw continued debates and initiatives aimed at addressing the needs of sex workers, including dialogues organised by the GPL and the publication of the SALRC report on adult prostitution. Despite divisions between those advocating for continued criminalisation, partial decriminalisation, or full decriminalisation, persistent campaigns for decriminalisation reflected societal shifts and evolving political interests. The trajectory of sex work policy in SA underscored the importance of historical context in shaping current debates and policy decisions.

Chapter 4 provided a thorough examination of previous research on sex work, emphasising its impact on policy and societal views. It highlighted the scarcity of empirical research, particularly in crucial areas of the sex industry. The chapter categorised research into government-sanctioned studies and academic inquiries, focusing on themes such as HIV, stigma, stereotypes, and the link between sex work and trafficking. Critiques of government reports, notably from the SALRC, were discussed, along with advocacy for decriminalisation by civil society organisations like the Asijiki Coalition. Additionally, the chapter integrated contrasting perspectives on decriminalisation's potential impacts, illustrating the complexity of addressing sex work policy in SA. Overall, Chapter 4 underscored the importance of evidence-based approaches and highlighted ongoing tensions among stakeholders in shaping sex work policy.

Chapter 5 focused on feminist perspectives on sex work in SA, shaped by the dichotomy between liberal and radical feminism, each offering distinct viewpoints on the decriminalisation or abolition of sex work. These perspectives emphasise the intersections of gender, race, class, and sexuality in sex work discourse. African feminism added a unique perspective that challenged traditional gender roles and colonial legacies, complicating the simplistic victim-agency dichotomy often applied to sex work. The application of Foucauldian theory further enriched this discourse by highlighting power dynamics and disciplinary practices enacted on the female body. Foucault's theories elucidated how power operated through systems of knowledge and surveillance, influencing societal perceptions and policies regarding sex work. Additionally, Foucault's exploration of biopower and discipline provided insights into the regulation of bodies within the

sex industry, revealing the complexities of power relations and resistance. These theoretical frameworks offered valuable tools for analysing the stagnation of sex work legislation in SA and understanding the diverse perspectives and obstacles hindering policy reform. Through interviews and analysis, the thesis explored the interplay between feminist theories and Foucauldian perspectives in addressing the complexities of sex work regulation and advocating for policy change.

Chapter 6 delved deep into the intricacies of policy formation in SA regarding sex work, drawing insights from interviews with Members of the Provincial Legislature (MPLs). These discussions encompassed various perspectives on the recognition of sex work as legitimate labour and the ensuing policy recommendations. While MPLs advocated for a range of policy approaches, there was a consensus against the continued criminalisation of sex work, signalling a notable shift in legislative attitudes. Amid debates surrounding feminism, autonomy, and the regulation of intimate activities, MPLs explored the merits and drawbacks of decriminalisation versus continued criminalisation, with most favouring legalisation or decriminalisation coupled with regulation. However, none supported partial decriminalisation, emphasising the need for comprehensive protection of sex workers' rights. The interviews revealed concerns about enforcing criminalisation or partial decriminalisation, highlighting practical challenges and ethical considerations. Furthermore, MPLs' divergent views from the SALRC 2017 report underscored internal governmental conflicts regarding sex work policy. Despite challenges, there is a call for comprehensive strategies, including community education, civil society engagement, and governmental leadership, to drive meaningful policy change effectively. Overall, the chapter illuminated the complexities of sex work policy and the diverse viewpoints shaping legislative reform in SA.

The interviews in Chapter 7 delved into the multifaceted discourse on individuals' entry into the sex industry in SA and the diverse perspectives on sex work policy. Economic necessity emerged as a primary driver for many, with poverty being a significant factor. While some argued for sex workers' agency and empowerment, others highlight systemic constraints. Organisational viewpoints on policy revealed a spectrum of perspectives, from advocating for decriminalisation to continued criminalisation. The discussion underscores the need for nuanced policymaking that balances empowerment and addresses vulnerabilities in the industry, considering factors like sex worker rights, public health, and societal attitudes. This highlights the complexities of choice, coercion, and socioeconomic dynamics, emphasising the importance of comprehensive approaches to prioritise sex workers' rights and well-being. It also underscored the complexity of sex work policy and the importance of balancing empowerment with addressing vulnerabilities within the industry.

Chapter 8 of the research explored the dynamics of policy change regarding sex work in SA. The chapter examined the evolution of sex worker policy since 1994, revealing progress such as the Sex Worker Plan (SWP) but also persistent challenges like slow government response and stigma. The chapter further delved into the prerequisites for policy change, with organisations emphasising the need for political commitment, evidence-based approaches, and collaboration between civil society and government. Strategies ranged from sensitising society and policymakers to the realities of sex work to drafting specific legislation and implementing exit programs. Differing perspectives on decriminalisation versus continued criminalisation reflected broader ideological debates. Ultimately, organisations stressed the importance of empowering sex workers, prioritising their rights, and challenging societal norms to drive meaningful policy reform.

9.2 Summary of Interviews: Support for Legislative Frameworks

9.2.1 Decriminalisation

From the interviews with organisations, there was an emphasis on the health-related benefits associated with the decriminalisation of sex work. These advantages encompassed better responses to HIV/AIDS and other STIs, facilitated access to condoms, and improved access to sexual and reproductive healthcare. Peer education, as mentioned by Naomi Hill (2019), Interviewee 14, was also highlighted as a potential tool to impact the HIV/AIDS infection rate. Furthermore, decriminalisation was seen as providing sex workers and clients access to the criminal justice system, potentially affecting crime rates, and fostering greater trust in the justice system, among others, according to Cherith Sanger (2019) Interviewees 6 and Ishtar Lakhani (2019) Interviewee 3. Additionally, it could enable sex workers and clients to report criminal activities such as trafficking and underage girls, potentially leading to a significant decrease in criminal activity within the sex industry and saving police resources. Decriminalisation was believed to make sex workers safer during their work, offer more options to their families, reduce police harassment, remove the stigma associated with paying for sex, and promote collaboration between sex workers and the police, as noted by various interviewees. Another set of benefits tied to decriminalisation included potential improvements in labour rights, the freedom for sex workers to identify as such openly, application of occupational health standards to the industry, and a rights-based approach that could enhance sex workers' psychological well-being and reduce their vulnerability to stigma and violence.

Decriminalisation could also ensure the protection of women in the industry and respect for their agency. Furthermore, it could lead to sex workers benefiting from the taxes they already pay and create a framework for women to earn a better income safely. Lastly, it was considered crucial for the success of exit programs related to the sex industry. The MPLs shared similar views on the benefits of decriminalisation,

including respect for sex workers' agency, the right to work and protect their rights and choices, freedom from harassment or victimisation, and improved accessibility to health services and preventative measures. Decriminalisation was seen as an opportunity for sex workers to work openly, free from negativity, and without clients needing to hide. It could also facilitate better management of STIs and the implementation of preventative measures. Labor rights would be extended to the sex industry, and brothels would be registered as workplaces with minimum employment standards. Taxes could be levied on sex workers, and stigma could be reduced. Overall, the responses from both organisations and MPLs highlighted similar advantages associated with decriminalising sex work, particularly regarding health, labour rights, access to justice, and crime reduction.

9.2.2 Criminalisation

The continued criminalisation of sex work, as highlighted by some organisations, was seen as having a few potential advantages. These included the belief that, if properly enforced, it could eliminate both the demand for and supply of prostitution, sending a clear message that sexual exploitation of human beings is unacceptable. Additionally, it was seen to counter the adverse effects of the sex industry, discouraging women from entering it and making the state responsible for managing sex work. However, the MPLs found no positive aspects of criminalisation, generally believing it was not the best approach for sex workers. On the negative side, organisations pointed out various drawbacks associated with the criminalisation of sex work, particularly concerning the rights and well-being of sex workers. Under criminalisation, sex workers faced challenges in reporting crimes such as rape and robbery, accessing healthcare services, and opening bank accounts due to the inability to declare their income. Limited job opportunities were available to those leaving the industry with a criminal record. Sex workers often had issues with corrupt police officers, including demands for bribes and harassment. Criminalisation negatively affected sex workers' families, limiting their access to education and leading to child removal in some cases. Access to healthcare services was restricted, and the fear of arrest led to unsafe sexual practices and increased HIV/AIDS risk. The lack of labor rights made sex workers vulnerable to long hours and exploitation.

Additionally, criminalisation exposed sex workers to increased violence, rape, and abuse, leading to higher murder rates. It removed their agency and pushed them further into the shadows, making them even more vulnerable. Furthermore, criminalisation was seen as ineffective, fostering crime, pimping, and trafficking while increasing stigma against sex workers. Some argued that it went against human rights principles and did not achieve its intended objectives. It also led to more women entering the industry due to a lack of alternatives. MPLs generally did not mention positive aspects of criminalisation but focused on its negative effects, including infringing on the rights and freedom of choice of sex workers and being difficult

to enforce by the police. The arguments for keeping sex work criminalised were often linked to the perceived shortcomings of other legislative frameworks, and there was a consensus that criminalisation alone was not successful, emphasising the need for exit programs. Some believed that exit programs could help women leave the industry and prevent others from entering it.

9.2.3 Organisation Navigating Funding Constraints in Expressing Views on Sex Work

The impact of international donor funding, particularly PEPFAR funding on sex workers and advocacy for policy change, has been nuanced, with both positive and negative consequences. While PEPFAR funding has facilitated access to essential HIV/AIDS services for sex workers, such as testing and treatment, its restrictive funding conditions, including the anti-prostitution pledge, have limited organisations' ability to advocate for policy changes that would benefit sex workers. This has resulted in challenges in addressing the specific needs and rights of sex workers and perpetuated harmful policies such as the criminalisation of sex work. Navigating these constraints require strategic collaboration and advocacy efforts, leveraging evidence-based research and engaging in policy dialogue to promote policies that respect the rights and dignity of sex workers while addressing the broader challenges of HIV/AIDS prevention and treatment. Despite these challenges, there are opportunities for organisations to contribute to positive change and advance the rights and well-being of sex workers within the framework of PEPFAR-funded programs.

Further study or exploration in this area could delve into the long-term effects of PEPFAR funding on sex worker communities, including both positive and negative impacts, to assess the effectiveness of HIV/AIDS interventions and the influence of funding conditions on advocacy efforts. Additionally, investigating alternative funding mechanisms and strategies for supporting sex worker-led organisations and grassroots advocacy initiatives would provide insights into addressing structural barriers and advancing sex worker rights within HIV/AIDS response frameworks. Exploring the intersectionality of factors such as gender, race, and socio-economic status in shaping sex workers' experiences within PEPFAR-funded programs would deepen our understanding and inform more inclusive and equitable approaches to HIV/AIDS prevention and treatment.

9.3 Findings

9.3.1 The Process of policy change linked to understandings of sex work.

In the context of policy change linked to understandings of sex work, five key drivers identified as "content," "context," "commitment," "capacity," and "clients or coalition" (Mukonza and Mukonza, 2015:96) play a pivotal role. These factors collectively shape the dynamics of policy transformation. To bring about change in the sex worker policy, each of these elements needs to align. Clarity in policy objectives is essential, as the

context heavily influences the nature of the policy itself. Commitment from policy makers is crucial to initiate and sustain change, backed by the government's capacity and resources for implementation. Equally vital is the support and buy-in from all stakeholders, forming a robust coalition. Effective communication among stakeholders, including the sex work industry, government, and communities, is paramount in navigating the complexities of this policy landscape.

As demonstrated in this thesis, the path to policy change often hinges on parliamentary support, yet the multiparty nature of the South African Parliament can complicate matters. Disagreements among top parties on the best approach to sex work after more than 25 years of democracy further contribute to the policy's stagnation. The contradiction arises when political parties, such as the ANC, include the decriminalisation of sex work in their election campaigns to secure votes but fail to act post-elections. This discrepancy raises questions about the authenticity of election manifestos and reveals a broader societal stance on women's rights. The lack of consensus within the political space regarding the categorisation of sex work as legitimate labour intensifies the debate around its decriminalisation, as it could imply formal recognition. Despite this division, many respondents assert the government's responsibility to safeguard those in the sex industry, though opinions on the best policy approach vary. These nuanced views underscore the need for a unique legislative model tailored to govern sex work in SA effectively. The interviewed organisations hold diverse perspectives on the sex industry, reflecting the broader ideological divide between liberal and radical feminists. These differences revolve around whether sex work can be considered legitimate employment and whether women can genuinely engage in the industry voluntarily.

Central to this discourse are questions surrounding agency and the extent to which women in the sex industry can exercise it. The true scope of the sex industry remains elusive, with consensus that previous studies significantly underestimate its size. The industry's clandestine nature, coupled with its criminalisation, poses challenges to obtaining accurate data. Moreover, the varying definitions of sex workers further complicate the issue, as not all individuals involved in "transactional sex" identify as sex workers. The complexities surrounding trafficking versus sex work further blur the boundaries, making it difficult to determine the exact number of sex workers. However, there is a consensus that the sex industry is a persistent reality that cannot be disregarded. According to the interviews with organisations, women predominantly enter the sex industry out of financial necessity, like any other occupation. Many women in the industry are mothers with significant dependents. Limited employment opportunities, higher income potential and flexible working conditions in the sex industry often drive this choice. Poverty, coupled with minimal education and a lack of alternative prospects, leaves women with few options for sustainable livelihoods, making the sex industry a pragmatic choice. This raises complex questions surrounding consent, as financial imperatives may influence their decision. Numerous factors contribute to a woman's choice to engage in the sex industry,

including experiences of abuse and, in some cases, rape, exacerbated by a culture normalised to abuse and childhood grooming. Doctors For Life International (2023) compared rape to sex work, noting that "in rape, the security of a women's person [was] assaulted and stolen; in prostitution, it [was] assaulted, stolen and sold." In certain situations, involvement in the sex industry becomes a multi-generational issue, with children inheriting the profession, often linked to endemic drug addiction. The sex industry may also be a refuge for women seeking emotional connections or love. Different interpretations exist regarding whether women enter the sex industry voluntarily or because of trauma, abuse, grooming, or neglect. Poverty and inequality are identified as the primary drivers of the sex industry, particularly for vulnerable women with limited alternatives, turning to it as a last-resort survival strategy. These diverse understandings of the sex industry have further complicated the process of policy change and finding a consensus on the sex worker policy.

9.3.2 Hindrances/delays in policy change

The culmination of insights from the interview process has been instrumental in addressing the overarching research inquiry: "Why has the decriminalisation of sex work in SA encountered persistent stagnation?" The data from the interviews conducted for this research delineates an intricate web of obstacles that collectively underpin the protracted delay in reforming sex worker policy. These impediments coalesce into several overarching categories,[70] each representing a distinctive facet of the challenge: *Political Obstructions*, characterised by the paucity of political will and the intricate landscape of competing interests within the ANC, often obscuring the urgency of sex work policy reform. This conundrum is exacerbated by the issue's contentious and electorally unattractive nature. *Social Complexities* stem from SA's deeply conservative, predominantly Christian society. These cultural influences, entwined with patriarchal norms dictating women's sexual agency, create reluctance to advocate for policy change. A *Moral versus Human Rights Debate*, pitting moral objections to sex work against the stark human rights violations perpetuated by its criminalisation, engenders prolonged discord and impedes consensus-building.

Economic Deterrents, characterised by the government's failure to address the socioeconomic roots of sex work and the absence of viable alternative employment opportunities, divert attention and resources from this pressing issue. *Legislative complexities* manifest as an absence of consensus on an ideal legislative framework, exacerbated by the misconception that decriminalisation equates to moral endorsement, dissuading progress. *Client Influence* as 'big fish' in legislative circles, bolstered by the persistent criminalisation of sex work, enables clients to maintain dominion over sex workers while remaining shielded by anonymity. *Sex Worker Engagement*, marked by a dearth of active participation and interest from within

[70] These views provide insights into the reasons why policy change has yet to occur, and it's noteworthy that they often intersect, despite differing opinions on specific legislative frameworks.

the sex worker community itself, along with societal failure to treat the lives of sex workers with gravity, perpetuates the stigmatisation associated with the industry and exacerbates misperceptions regarding exploitation and trafficking links. This narrative effectively weaves the diverse challenges hindering policy transformation in SA's sex work domain, creating a cohesive and insightful overview of the issue.

The interview data underscores the intricate interplay of factors contributing to the stagnation of policy change in sex work. These factors are deeply interconnected, creating a complex web of challenges. Socio-economic issues, pervasive throughout the country, significantly impact the social and political dimensions surrounding the sex worker policy. Notably, the conservative nature of South African society plays a pivotal role. This conservatism translates into the decriminalisation of sex work is a politically unpopular stance for political parties, diminishing its prospects for gaining votes. Concurrently, the country's economic conditions also wield influence. Government priorities tend to focus on addressing pressing economic concerns, often overshadowing issues related to sex work policy. While these economic conditions are identified as underlying factors contributing to the prevalence of sex work, they paradoxically hold the potential to be part of the solution. By creating more job opportunities and implementing educational exit programs for sex workers, viable alternatives to the sex industry can be presented. The conservative societal values further muddle the discourse surrounding sex work, framing it as a moral issue rather than one rooted in human rights. This moral versus human rights debate significantly affects the development of legislative frameworks, particularly concerning the decriminalisation of sex work. The conflict between these differing perspectives inhibits the formation of consensus on an appropriate legislative framework to govern sex work in SA. Additionally, the involvement of clients, some of whom hold positions within the government, directly impacts the policy gridlock. These multifaceted challenges collectively contribute to the current stalemate in sex work policy change. A novel approach is imperative to address these issues effectively—one that transcends existing models and navigates the complexities of socio-economic, political, and moral factors. An alternative model to govern sex work is required to break the impasse and offer a comprehensive solution that accommodates the diverse causes behind the policy delays.

9.3.3 Strategies to assist with policy change.

The impediments to policy change in the context of sex work, as extracted from the interview data, provide valuable insights into the persistent stagnation of sex worker policies. This analysis combines the interview findings with the broader research presented in this thesis to formulate strategic arguments for catalysing policy change. The first argument underscores the importance of academic research conducted by institutions to illuminate the challenges faced by sex workers. Such research can serve as a solid foundation for advocating policy responses. Secondly, civil society organisations should intensify their advocacy efforts to

generate enough momentum to keep the issue consistently on the political agenda. This may include innovative approaches such as a Constitutional Court challenge to amplify the demand for change.

A third argument calls for a shift in focus from merely addressing the consequences of sex work to understanding the root causes, potentially leading to a more nuanced policy approach. The fourth argument posits that recognising and comprehensively addressing the harms intrinsic to prostitution may galvanise the political will required for industry eradication. The fifth argument advocates for transforming societal mindsets surrounding sex work, including sensitisation workshops targeting Members of the Provincial Legislature (MPLs) to foster a human rights-based approach. Sixth, political commitment and leadership are crucial for pushing and sustaining policy change. The African National Congress (ANC) is encouraged to incorporate this issue into its political agenda while ensuring clear policy direction and rigorous implementation monitoring.

Seventh, the argument asserts the need for more meaningful government engagements, with sector parliaments playing a pivotal role. Resolutions derived from consultations with sex workers should be promptly implemented. As a key province, Gauteng is positioned to lead in advocating for change, with the public empowered to engage through avenues such as petition submissions or Private Members bills. The eighth argument suggests studying New Zealand's legislative framework for sex work as a model for creating a new South African policy while repealing existing laws. Promoting gender equality and dismantling patriarchal norms constitute the ninth argument, as these actions can reshape societal perceptions of sex workers. The tenth argument encourages programs designed to sensitise law enforcement, healthcare providers, the judiciary, and communities, fostering support for sex workers and the decriminalisation of sex work. Collaboration between the government and communities is imperative for this change to take root. The eleventh argument stresses the importance of altering mindsets around sex work and implementing mechanisms for sex workers to report abuse, particularly incidents of client-perpetrated violence. The twelfth argument proposes the establishment of a specialised police unit to address issues related to sex work and trafficking. Lastly, the thirteenth argument underscores the significance of exit programs and their funding. These programs are instrumental in supporting sex workers, and their financing can be sourced through client fines or contributions from civil society.

These strategies span various legislative frameworks for governing sex work, each aimed at safeguarding the rights and well-being of sex workers. Whether through decriminalisation, partial decriminalisation, legalisation, or continued criminalisation, they all emphasise the need for political will to drive these changes. While stakeholders may hold differing opinions on the best approach, a common thread is recognising the importance of exit programs to empower women in the sex industry. Given the absence of

consensus on the preferred approach, this thesis posits a unique policy strategy that accommodates this research's multifaceted challenges and strategies. A central question emerging from the interviews revolves around whether the negative consequences associated with the sex industry result from the industry itself or its criminalisation. This divergence of opinions leads to varying viewpoints on the optimal legislative framework governing sex work. However, a shared objective among all stakeholders is the protection and welfare of women in the sex industry. Whether sought through decriminalisation, which grants rights to sex workers within the industry, partial decriminalisation targeting the sources of harm, continued criminalisation aimed at deterring entry into the industry, or legalisation placing the industry under government regulation, the commitment to their welfare remains unwavering. Likewise, the imperative need for exit programs, albeit with differing goals, all aim to provide women in sex work with the means to exit the industry and attain financial independence for themselves and their dependents. Thus, while consensus remains elusive regarding the ideal approach to safeguarding women in the sex industry, the commitment to their welfare remains a shared objective.

9.3.4 Benefits to changing the Sex Worker policy.

This thesis underscores the pressing need for a fundamental shift in SA's sex work policy, a recommendation that stems from the inherent challenges in reaching a consensus on the most suitable legislative framework. While sex workers' issues are acknowledged as social concerns in politics, they often take a backseat to other pressing challenges. Fragmentation within civil society has hindered the development of a cohesive approach to regulating sex work, resulting in disparate petitions to the government. This research highlights that civil society share the common goal of protecting sex workers but hold differing perspectives on how to achieve this protection. These divisions create a disjointed image of the sex industry, undermining government commitment. In this context where stakeholders have diverse views on sex work, effective collaboration can be achieved through strategies such as open dialogue, research sharing, coalition building, adaptable advocacy, public awareness campaigns, legislative compromises, expert consultation, community engagement, conflict resolution mechanisms, and continuous evaluation. While complete agreement may be challenging, these approaches can help stakeholders work together toward meaningful progress in sex work policy reform. An organised civil society can facilitate consistent awareness campaigns, conveying a unified message to the public and potentially garnering support and understanding for sex workers' challenges. Strong leadership is essential for these entities to work together effectively toward a common goal of policy reform.

Changing the legislation governing sex work in SA could yield significant socioeconomic benefits, including reductions in unemployment, sexual and GBVF, hate crimes, cruel treatment, the spread of HIV/AIDS, and the stigma associated with the sex industry. It could also enhance SA's reputation

internationally for its commitment to gender equality and fulfilling international obligations. Policy change could lead to a shift in government spending related to sex work policing, with potential tax revenues funding exit programs, improved healthcare access, and a specialised police unit to address trafficking issues. This reallocation of resources could reduce overall expenditures on the sex industry while expanding services to marginalised women, ultimately helping to reduce GBVF in the country. The ongoing debate on the optimal legislative framework for sex work governance in SA underscores the lack of consensus, with advocates for decriminalisation prioritising sex worker protection and proponents of partial decriminalisation seeking to address industry-related harms. By placing sex workers at the center of this transformation the government could demonstrates their commitment to safeguarding a vulnerable group, akin to protections offered to the LGBTIQA+ community under the Prevention and Combating of Hate Crimes and Hate Speech Bill B9-2018. Achieving this progress hinges on policy change, as continued criminalisation perpetuates vulnerability and marginalisation.

9.3.5 Partial Criminalisation / Decriminalisation

Partial decriminalisation of sex work, while seen as a potential middle ground by some, did not garner widespread support among MPLs. The main support for this legislative framework came from Interviewee 5, Mickey Meji representing Embrace Dignity in the interviews with organisations who believed it could compromise between full decriminalisation and criminalisation, often referring to it as the "equality model." She argued that this legislative framework could restore dignity to women in the sex industry and oblige the government to support exit programs while clients could be fined to help fund these programs. Under partial decriminalisation, sex workers could operate without fear of prosecution, and police interference would be reduced. It was also suggested that this model could constrain the demand for sex workers, potentially resulting in fewer women entering the industry. Overall, partial decriminalisation was considered a way to decriminalise women in sex work, assist those leaving the industry, and mitigate its associated harms. However, there were also significant concerns raised about the negative aspects of partial decriminalisation. Interviewee 1, Clara Singende argued that it would disadvantage sex workers and force them underground, as clients would fear arrest. This underground operation, as mentioned by interviewee 3, Ishtar Lakhani, SWEAT, could lead to sex workers conducting business in secluded and potentially dangerous places. Some argued that this could give clients more control and increase criminal cases, ultimately putting sex workers at greater risk. It was suggested by Interviewee 19, Madri Bruwer, that while some believe it would empower women, it might shift the power dynamic in favor of clients.

In the context of SA, it was unclear who would manage and enforce this legislative framework, leading to concerns about loopholes and difficulties in monitoring. Some argued that it might only work in

smaller countries where management is better. The anonymity of clients under partial decriminalisation was seen as potentially harmful, allowing them to exploit sex workers. The regulation of working conditions within brothels could become challenging, according to Interviewee 16, Yodwa Mzaidume, as brothels themselves would be criminalised. Overall, this model was viewed as potentially undermining the rights of sex workers and leading to more discrimination, with limited success seen in countries that have implemented it. Interviewee 12, the Research Organisation emphasised that any form of criminalisation of the sex industry is believed to harm sex workers. To make partial decriminalisation successful, clear, and well-managed exit programs were deemed essential by Interviewee 5, Mickey Meji, to help sex workers transition out of the industry and access alternative opportunities. The concern was raised that without access to other job opportunities, women could remain in the sex industry due to economic necessity. Some argued that men (clients) might have undue control in this legislative framework, taking advantage of the desperation of sex workers. However, Interviewee 19, Madri Bruwer had a contrasting view, suggesting that women would have more control as they would essentially be "decriminalised." The MPLs recognised that partial decriminalisation could be challenging to enforce by the police and could clutter the court system with pending litigation. It was also seen as potentially infringing on clients' rights and freedom of choice, making it challenging to prove their guilt and enforce the model effectively. Some suggested that a specialised unit might be needed to monitor and enforce this legislative framework successfully. Ultimately, a feasibility study was considered necessary to determine whether SA had the capacity to make this model work.

9.3.5 Legalisation

The idea of legalising sex work garners limited support from organisations, with only one respondent offering some potential positives. Interviewee 2, Melodie van Brakel, suggested that legalisation could create specific areas for sex workers to operate and establish service hubs to address their health issues. However, MPLs presented several benefits of legalising the sex industry, such as enhanced government control, increased support for sex workers, and the creation of safer spaces for women in the industry. Interviewee 1, Godfrey Tsotetsi, believed it could establish controlled operating environments, improving safety for sex workers. Interviewee 2, Thokozile Magagula emphasised that the industry's managers could be identified and trained, and brothels could be registered for better control and oversight. Registration would require brothels to provide condoms and implement measures to prevent STIs/STDs. Legalisation would also entail sex workers and brothels paying taxes and obtaining approved-registration certificates, potentially positively impacting the government's health budget with regular health check-ups. Legalisation could lead to better monitoring, control, and improved health conditions within the sex industry, potentially reducing violations and promoting regulation.

However, no negatives were mentioned for this legislative model in the MPLs' interviews. This positive perception of state control and sex worker registration contrasted with the views of those directly working with sex workers, who raised concerns about potential negative impacts. In the interviews with the organisations according to Interviewee 6, Cherith Sanger, and Interviewee 8, Matthew Clayton, Triangle Projects, the designated working areas could be located on the outskirts, marginalising sex workers. This legislative framework, as argued by Interviewee 12, Research Organisation, and Interviewee 15, Corinne Sandenbergh, Stop Trafficking, might not adequately protect sex workers and could potentially lack control over organised crime. Interviewee 17, Cause for Justice contended that it might prevent police from rescuing women in brothels, essentially legalising sources of harm. These divergent views on the legalisation of sex work highlight a split in perspectives. MPLs, with a legislative background, emphasise the need for regulation to manage the industry effectively, reduce government expenses, and increase tax revenue. However, those working directly with sex workers do not view these controls as beneficial, seeing them as an attempt to push sex work out of sight and condone activities that could harm sex workers rather than protect them.

9.4 Recommendations for relevant stakeholders

Drawing from the strategies delineated above, the ensuing recommendations outline pragmatic steps that can be taken to facilitate the realisation of policy change within the sex work policy framework. These recommendations are structured in alignment with the pertinent stakeholders, recognising that effective policy transformation in sex work necessitates concerted collaboration among these diverse actors. By offering actionable insights, these recommendations harbour the potential to instigate tangible shifts in the sex work policy landscape.

9.4.1 Academic Organisations/Researchers

This thesis underscores the urgent necessity for comprehensive, unbiased research on sex work that encompasses all facets and strata within the sex industry. A critical observation is the inherent bias present in one of the most fundamental studies on sex work in SA, namely the 2017 report by the SALRC concerning adult prostitution. This report disproportionately accentuates moral arguments surrounding sex work, while inadequately addressing crucial medical and human rights aspects. Such evident bias indicates a predilection for sources supporting criminalisation over alternative legislative frameworks. The report's perceived lack of impartiality has consequently contributed to substantial delays in reforming sex work policies, necessitating protracted engagements and debates to rectify these shortcomings. To overcome these inherent limitations and foster more informed policymaking, there is a pressing need for academically rigorous research devoid of political bias.

While this thesis has predominantly centered on elucidating the causes behind policy inertia, it has unveiled some of the dire challenges sex workers endure under the current criminalised framework. However, a notable research gap remains concerning indoor sex workers, as much of the existing research primarily spotlights street-based, more visible sex work. Investigating the experiences, vulnerabilities, and needs of indoor sex workers would significantly contribute to a more comprehensive understanding of this multifaceted issue. Future research endeavours would be substantially enhanced by the active involvement of key government institutions such as the CGE and the Human Rights Commission (HRC). Collaborative research efforts between academia and governmental bodies could carry more weight and authority, leading to more robust and unbiased findings. By bridging the gap between politically motivated research and academic inquiry, SA can progress toward a more evidence-based and equitable approach to sex work policy reform, safeguarding the rights and well-being of sex workers while addressing the broader socio-economic issues entangled with this complex issue.

Academic organisations and researchers play a pivotal role in shaping evidence-based policymaking regarding sex work in SA. Emphasising the urgent need for comprehensive, unbiased research, academia can contribute to informed decision-making free from political bias, reflecting liberal feminist ideals of equality and individual autonomy. Addressing research gaps regarding indoor sex work is crucial, as it broadens the scope to include diverse experiences within the industry, resonating with radical feminist critiques of mainstream research focusing primarily on visible, street-based sex work. By adopting a rigorous and inclusive research approach, academia can provide valuable insights into the multifaceted nature of sex work and inform more equitable policy reforms. Foucauldian theory highlights the role of knowledge and power in shaping social institutions and practices. Informed by this perspective, academic organisations and researchers are encouraged to critically examine power dynamics and biases inherent in research on sex work. By adopting a Foucauldian lens, researchers can uncover the ways in which dominant discourses and moral frameworks influence research agendas and perpetuate inequalities. By striving for unbiased research and inclusive methodologies, academia can challenge existing power structures and contribute to more equitable policymaking processes, aligning with Foucault's call for critical inquiry and resistance to dominant forms of knowledge production.

9.4.2 Civil Society Organisations

Within civil society, a rich body of research exists that delves into the myriad of health-related issues stemming from the criminalisation of the sex industry. These studies are a foundation for a potential Constitutional Court (CCT) challenge, a strategic avenue for catalysing policy reform. An illuminating example arises from interviews conducted in 2019 with prominent organisations like SWEAT and the Asijiki

Coalition, which have expressed their intent to spearhead such a challenge. Nevertheless, it is crucial to underscore that funding remains a paramount concern, necessitating additional support. A concerted, unified effort within civil society could substantially alleviate these financial constraints. By coalescing around a common message rooted in the medical and human rights violations inherent in the current policy framework, advocacy efforts become more potent and poised for success. It is imperative to recognise that even a favourable CCT ruling may not immediately translate into legislative change or provide a blueprint for the nature of the reforms to be adopted. A pertinent example is the Constitutional Court's declaration of same-sex marriage legislation as unconstitutional, a momentous ruling that took eight years to manifest into legislated reform. This underscores the importance of perseverance and sustained advocacy efforts in the face of potential bureaucratic delays. Moreover, the sex industry can be pivotal in advocating for its rights and dignity. A strategic avenue lies in petitioning the HRC to address the multifaceted human rights violations endured by individuals within the industry. By harnessing legal mechanisms and invoking human rights principles, the sex industry can further elevate its struggle for equitable treatment and justice, compelling the nation to reckon with the profound issues that have long afflicted this marginalised community.

Collaboration among organisations with diverse views is crucial for effective policy change. To work together effectively, they should establish common goals, promote open dialogue, share research and data, build coalitions, develop joint advocacy strategies, raise public awareness, consider legislative compromises, consult experts, engage with communities, offer advocacy training, establish conflict resolution mechanisms, and continuously evaluate and adapt their efforts. Embracing diversity can lead to more comprehensive and balanced policies, but it requires patience, compromise, and a shared commitment to their common goal of improving society through policy change. The benefit of different opinions regarding the legislative frameworks would ensure that all areas of concern are addressed or taken into account during the development of the legislative framework to govern the sex industry.

Civil society organisations are essential actors in advocating for the rights and well-being of sex workers in SA. Grounding advocacy efforts in health and human rights violations echoes radical feminist calls for structural change and social justice, emphasising the systemic oppression and exploitation faced by marginalised groups, including sex workers. By emphasising collaboration and coalition-building, civil society organisations align with African feminist approaches, which prioritise collective action and community engagement. Through united advocacy efforts and inclusive dialogue, civil society can amplify the voices of marginalised communities and advocate more effectively for policy reform that addresses the intersecting injustices faced by sex workers. Foucault's analysis of power relations emphasises the importance of collective action and resistance in challenging oppressive structures. Civil society organisations, informed by this perspective, advocate for the rights of sex workers by challenging dominant discourses and power

dynamics that marginalise and stigmatise marginalised communities. By fostering collaboration and coalition-building, civil society organisations disrupt existing power structures and amplify the voices of marginalised groups, aligning with Foucault's emphasis on collective resistance and subversion of dominant power relations. Through their advocacy efforts, civil society organisations contribute to the creation of more inclusive and equitable policies that challenge entrenched power hierarchies.

9.4.3 Government

9.4.3.1 NCOP

The study tour undertaken by the National Council of Provinces (NCOP), as detailed in Chapter 3, emerges as a pivotal component of the research landscape. However, it becomes evident that the NCOP's study tour was incomplete, limited to exploring only the initial facets of prostitution policies, primarily centered on partial decriminalisation. This exclusive focus raises concerns about potential biases within the NCOP's perspective. The completion of the second leg of the study tour by the NCOP assumes paramount significance, as it holds the potential to illuminate the myriad advantages and positive outcomes associated with a shift in SA's legislative framework concerning sex work. By venturing further into exploring comprehensive decriminalisation, the NCOP can glean valuable insights into the holistic implications of policy reform. This uncharted territory offers an opportunity to assess the multifaceted benefits of a more progressive approach to regulating the sex industry, encompassing improvements in the lives and working conditions of sex workers, a reduction in violence and exploitation, and a substantial contribution to public health outcomes. Moreover, the NCOP's findings may underscore the alignment of such reforms with constitutional imperatives, human rights principles, and international best practices. Therefore, the timely and comprehensive completion of the second phase of the study tour by the NCOP stands as a testament to its commitment to evidence-based policymaking and as a potential catalyst for informed, progressive, and equitable policy reform in the sphere of sex work in SA.

9.4.3.2 Members of Parliament/Legislatures

At the intersection of politics and policy reform lies a promising avenue for change in SA's sex worker policy, as expounded upon throughout this thesis. One potent mechanism for driving this transformation is initiating a Private Members Bill (PMB) by a Member of the Provincial Legislature (MPL). The potential impact of such a bill transcends political affiliations, as it can transcend party lines and unite legislators under a common cause: the welfare and rights of sex workers. An MPL, regardless of their provincial or national standing and political allegiance, can seize the opportunity to champion the cause of sex worker policy reform by introducing a PMB. However, the efficacy of this legislative endeavor lies in its foundation of robust research

underpinned by extensive engagement with the sex industry. In this context, the MPL serves as both an advocate and a conduit for elevating the issue of sex work to the political agenda. Through their PMB, backed by comprehensive research findings and substantive interactions with stakeholders from the sex industry, they can articulate a compelling case for reform. The success of this endeavor may reverberate from the provincial level to the national stage, ultimately resulting in substantive policy change that transcends regional boundaries. By employing this tactic, the political environment in SA may change to incorporate sex worker legislation that is more inclusive, rights-based, and data-driven. Such a transformative process is compatible with the nation's commitment to upholding constitutional and human rights principles, guaranteeing justice for all, and protecting everyone—including sex workers. The seeds of change may be planted, fostered, and finally harvested inside this political arena to create a fairer and more just environment for people working in the sex industry.

9.4.3.3 Government engagements with sex workers

The engagement with sex workers within the framework of the sector parliament, as outlined in this thesis, underscores an essential but currently underutilised channel for dialogue and policy change. However, the effectiveness of these engagements has thus far been hampered by a range of obstacles that must be addressed to ensure their fruitful outcomes. One of the primary challenges faced in these engagements is the insufficient participation of the sex industry and the government. This lack of participation has resulted in a stagnation of progress and has impeded the resolution of critical issues affecting sex workers. The government's perceived lack of commitment further compounds these challenges, deterring meaningful industry involvement. To foster a more conducive environment for meaningful engagement, the government must demonstrate unwavering commitment to these sessions. This commitment should manifest in various ways, including consistently acknowledging and implementing resolutions generated during these engagements.

Moreover, the government must provide transparent feedback to the sex industry, thus validating the importance of their participation and contributions. Such proactive measures would signal the government's dedication to addressing the needs and concerns of sex workers, ultimately fostering greater confidence within the industry regarding government involvement. This renewed trust could encourage broader and more enthusiastic participation in future sessions. While these engagements have predominantly occurred within the Gauteng province, it is crucial to expand similar initiatives to other provinces and, ultimately, at a national level. This expansion would ensure that the diverse voices and experiences of sex workers across SA are heard and considered in the policymaking process. The inclusion of multiple perspectives would enrich the dialogue, enable a more holistic understanding of the challenges faced by sex workers, and promote the development of comprehensive and equitable policies. In summary, a renewed commitment from the

government to engage with sex workers, along with increased transparency and feedback mechanisms, holds the potential to revitalise these sector parliament sessions as a dynamic platform for shaping sex worker policy in SA. Expanding these engagements to a national scale would amplify their impact and further solidify SA's commitment to safeguarding the rights and dignity of all citizens, including those engaged in the sex industry.

The government plays a critical role in facilitating evidence-based policymaking and inclusive engagement with sex workers in SA. By emphasising evidence-based decision-making and comprehensive research, the government can demonstrate a commitment to rationality and progress, aligning with liberal feminist principles. Additionally, engagement with sex workers and acknowledgment of their voices and experiences reflect African feminist values of inclusivity and empowerment. By involving marginalised communities in the policymaking process, the government can demonstrate a commitment to social justice and human rights, consistent with African feminist principles. Through proactive engagement and inclusive policymaking, the government can create more equitable and rights-based policies that address the systemic injustices faced by sex workers. Foucauldian theory highlights the role of government institutions in regulating and governing populations through mechanisms of power and control. Informed by this perspective, government engagement with sex workers involves a critical examination of power dynamics and the ways in which policies and regulations shape the lives of marginalised communities. By acknowledging the voices and experiences of sex workers and involving them in the policymaking process, governments can challenge existing power structures and foster more inclusive and equitable policies. Through transparent and participatory policymaking processes, governments can create spaces for marginalised communities to resist and challenge dominant forms of power, aligning with Foucault's call for the democratisation of knowledge and decision-making processes.

9.4.3.4 A Feasibility study/cost-benefit analysis on exit programmes

To pave the way for a successful transition to an alternative policy approach, the government's engagement in a thorough feasibility study and cost-benefit analysis becomes paramount. This comprehensive study holds the potential to play a crucial role in determining the fiscal implications of any legislative change. By meticulously assessing the costs associated with policy transformation, the government can make informed decisions that balance economic considerations with the broader social and human rights imperatives of the policy shift. Exit programs, regardless of the selected legislative framework, emerge as an indispensable component of the policy change process. To ensure their effectiveness, existing exit programs demand in-depth research, documentation, and cost estimation. This research would not only serve to quantify the financial investment required but also shed light on the specific components necessary for successful exit programs. These components may encompass skills development initiatives, the provision of shelters for sex

workers seeking to leave the industry, psychological support services, and prudent financial management guidance, among others. These represent just a subset of potential elements to be incorporated into exit programs, underscoring the need for a holistic approach that addresses the multifaceted challenges faced by sex workers in their transition to alternative livelihoods.

Crucially, understanding how these exit programs may need to adapt based on the chosen legislative framework becomes pivotal. The nuances of different policy approaches could influence the nature and scope of exit programs, necessitating flexibility and tailored strategies. For example, a decriminalisation model may require distinct support mechanisms compared to a legally regulated framework. Consequently, an in-depth understanding of these nuances is essential to crafting effective and contextually relevant exit programs. Additionally, devising sustainable funding strategies for these exit programs is equally critical. The financial viability of these initiatives depends on securing the necessary resources to support sex workers seeking to leave the industry. Identifying potential funding sources, such as government allocations, international grants, or tax revenue allocation, and designing sustainable financing mechanisms ensures the long-term viability of these crucial support programs. In sum, the success of any policy change in the governance of the sex work industry hinges on a well-informed, meticulously researched, and financially viable transition plan. The government's commitment to conducting a feasibility study and cost-benefit analysis, coupled with the development of robust exit programs and sustainable funding strategies, forms the bedrock upon which a more equitable and rights-based policy framework can be built.

Developing sustainable exit programs for sex workers transitioning out of the industry requires a holistic approach grounded in feminist principles of autonomy and empowerment. By providing comprehensive services and resources, the recommendations aim to empower sex workers to make autonomous choices about their futures, aligning with feminist principles of agency and self-determination. Additionally, the focus on sustainable funding strategies reflects Foucauldian critiques of power dynamics and economic structures. By addressing financial barriers and challenging existing power imbalances, the recommendations seek to create more equitable opportunities for marginalised groups, fostering a transformative approach to sex work policy reform that prioritises the well-being and autonomy of sex workers. Foucault's analysis of disciplinary power and governmentality highlights the ways in which institutions regulate and control individuals' bodies and behaviours. Informed by this perspective, the development of exit programs for sex workers involves a critical examination of power dynamics and the ways in which existing structures perpetuate inequality and exploitation. By providing comprehensive support services and challenging existing power imbalances, the recommendations aim to empower sex workers to make autonomous choices about their futures, aligning with Foucault's emphasis on individual agency and resistance to disciplinary mechanisms of control. Through their focus on sustainable funding strategies and

holistic support services, the recommendations seek to disrupt existing power relations and create more equitable opportunities for marginalised communities, consistent with Foucault's call for resistance and transformation of oppressive structures.

9.5 Limitations

This thesis used feminist methodology through document analysis of both primary and secondary documents and semi-structured interviews. Document analysis was limited in my analysis of the information, which could lead to possible bias. The other limitation of document analysis was linked to the documents that were analysed; if these documents did not take all aspects of the decriminalisation or criminalisation of sex work into account, it could lead to possible research bias. In contrast, the final limitation of document analysis was linked to the information in the documents and whether the documents included all the detail needed for the research (Bowen, 2009:31-32). Semi-structured interviews could help overcome the limitations found in the document analysis as the interviews could be utilised to obtain information missing within the documents utilised. In contrast, the documents analysed were used to develop the interview guide to ensure that all necessary information was received for this research, providing a beneficial and accurate report on the question being asked (Mogalakwe, 2006).

The limitations of semi-structured interviews were linked to any influence that I, as the researcher, may have had on the research interview process and whether the research respondent told the truth in the interview and not only what they thought the interviewer wanted to hear (Alshenqeeti, 2014:43; Kirby, Kidd, Koubel, Barter, Hope, Kirton, Madry, Manning and Triggs, 2000). These limitations were overcome by cross-referencing the data (information) received through the interview process with the data (information) received through document analysis. Another limitation of semi-structured interviews was that some of the interviews were done through skype or telephonically, which may have affected the interviewer's ability to read the interviewees' body language during the interview. A further limitation was that those interviewed were limited to those who were willing and able to be part of the research. The interviews conducted with MPLs of Provincial Parliaments were limited to the Gauteng Province. The province had previously made attempts to change the policy around sex work in the Province and SA. Limiting it to the Members from Gauteng Province was a possible limitation as members' views in other Provinces were not considered during this research process. This limitation would also affect the generalisations that could be accurately made to the whole of SA. On the other hand, the interviews with the staff working at NGOs, Chapter 9 institutions and research institutes, and consultants who work for sex-work NGOs/Chapter 9 institutions were done with organisations from different Provinces and did not only focus on organisations within the Gauteng province.

A further limitation of this research was that I, as the researcher, was writing from a privileged position concerning an industry to which I, as the researcher, did not belong. This created power differentials as I, the researcher, had the power to narrate their stories. Sex workers in SA were mostly "African" lower-class women. I also did not interview sex workers directly; their stories were filtered through the organisations that worked with them. I, as the researcher, am of a different race and class to most sex workers at the time of conducting the research. Therefore, this may have impacted how the data was analysed and was a possible limitation to the comprehensive research report. The theoretical framework, Chapter 5, section 1.1.5 considers the intersection of race, class, and gender, which affected the experiences of particularly "black" women in sex work. The purpose of this section was to account for the unique experiences of "black" sex workers due to the triple discrimination they experienced. TA was utilised to analyse the data received in the interview process in line with specific themes directly linked to the interview questions asked. This assisted me in analysing the data in line with these themes, therefore helping to prevent bias on behalf of the researcher. To accurately capture the information received, the information was also given per interview respondent.

This thesis started in 2015/2016 with fieldwork in 2019 and early 2020 before the impact of the Covid-19 pandemic in 2020/2021. Due to the fieldwork taking place before the Covid-19 pandemic, this impact was not reflected in this research. The effect of Covid-19 on sex workers was an area that would require further research, particularly on how sex workers were affected, mainly linked to the continued criminalisation of the industry. If the data for this research had included aspects of the Covid-19 pandemic, it could have resulted in different outcomes. The Covid-19 pandemic resulted in sex workers moving more online through chatrooms and online camera sessions (Tshikalange, 2020). This pushed sex work in SA into the digital age, catching up with other countries. As sex work remained criminalised, it would raise issues of policing the industry in the online space and how it was regulated. For example, could websites be removed from the internet? While the changes may also affect the legal definition of sex work, the regulation of the online space would be different from how sex work had previously been policed. Sex work in SA has largely remained more of a physical activity due to a lack of resources by many sex workers and, in turn, their inability to access the online space. As a result, what would it mean for sex work to shift into the digital space? Would this shift affect the number of sex workers? For example, will the numbers decrease due to a lack of access to technology?

A final limitation of this research was the fact that interviews with sex workers did not form part of the research methodology. Not conducting direct interviews with sex workers, themselves, but rather with organisations that collaborate with them, presents a potential limitation to this research. While engaging with organisations offers valuable insights into the broader dynamics of the sex work policy landscape and the challenges faced by sex workers, it may not capture the nuanced, individual experiences, and perspectives of

sex workers. Their voices, which are central to understanding the impacts of policy decisions, may not be fully represented through this indirect approach. Furthermore, organisations, despite their expertise, may introduce a degree of interpretation and bias into their accounts. Therefore, while this research provides valuable insights into the organisational dynamics related to policy change, it should be acknowledged that the firsthand experiences and perspectives of sex workers themselves are not directly incorporated, which may limit the depth and comprehensiveness of the study.

9.6 Conclusion

This research embarked on an in-depth exploration of the complex nexus between policy change, legislation governing the sex industry, and the persistent delays plaguing the transformation of this legal framework. The subject of sex work has historically been ensnared in a web of contentious discourses, each grappling with diverse facets of the industry and the individuals engaged in it. Central to this discourse was the profound issue of commodification inherent in the sex industry. This commodification inherently involved the sale of an individual's services, a concept that some discourses categorised as the temporary ownership of the individual being traded. The inherent complexity lay in the commercial exchange of an act that was previously sanctified, reserved for the confines of marriage and procreation. Moreover, the dichotomy between sex for pleasure and procreation further complicated matters, historically perpetuating a narrative wherein women were expected to maintain purity while men enjoyed the exploration of their sexuality. In catering to the supposed needs of "male sexuality," a disconcerting disparity emerged between women perceived as pure and those who were not. Consequently, societal stigmatisation led to the sacrifice of women from marginalised social strata, further exacerbated by poverty, ultimately giving rise to the sex industry as individuals sold their bodies to meet perceived male sexual demands.

Nonetheless, the industry's original intent was distorted as issues of power dynamics and violence encroached, shrouding the initial notion of monetary transactions for sexual services. Moreover, religious doctrines vehemently condemned sex outside the confines of marriage, denouncing it as sinful and morally reprehensible. Throughout history, the regulation of the sex industry by government entities served various purposes, including disease control, the maintenance of consensual agreements in sexual transactions free from violence, and the prevention of inter-racial sexual encounters. However, within the context of contemporary SA, plagued by endemic poverty, high unemployment rates, and alarming levels of GBVF, the government faced mounting pressure to address the intricacies posed by the sex industry. SA bears witness to a thriving sex industry, a stark consequence of widespread unemployment and poverty. Any legislative acknowledgment of this industry as a legitimate profession implicitly underscores the government's inability to alleviate the dire issues of poverty and unemployment. This predicament places the ANC government,

which has promised job creation and poverty reduction, in a difficult position, particularly when religious groups and communities vehemently opposed the legitimisation of perceived illicit sexual activity. Sadly, the government lacked a viable strategy to combat poverty and could not generate sufficient employment opportunities to obviate the need for the sex industry. Consequently, the government was compelled to focus on the regulatory aspects of the sex industry.

Advocacy from Chapter 9 institutions, NGOs, and sex workers have intensified the calls for the decriminalisation of sex work. Proponents argued that such a move would ameliorate the harm inflicted upon those within the industry, curtailing violence perpetuated by law enforcement, clients, and communities, while enhancing access to healthcare, reducing stigma, and legitimising sex work as a profession. This recognition would also afford sex workers the protection and benefits of labour laws in SA. Contrary to arguments attributing stigma to the sex industry itself, some asserted that it was the criminalisation of the industry that propagated the stigma endured by sex workers. However, decriminalisation was just one among several potential legislative frameworks to govern the sex industry. The challenge lay in the absence of a precedent for such a model within a developing country like SA. Consequently, the outcomes of applying an identical legislative framework to a disparate context remained speculative. The government's primary objective in addressing the sex industry was to implement a legislative framework that would mitigate the harm inflicted upon sex workers. Achieving this goal necessitated potential amendments to existing legislative frameworks, tailoring them to accommodate the unique needs of South African sex workers. Crucially, garnering support for the chosen legislative framework was paramount, requiring endorsement from political leaders, community leaders, and the broader society.

In the labyrinth of debates surrounding sex work, the South African government found itself ensnared, grappling with how to define and address the industry's multifaceted challenges. What became evident was the imperative need for a resolute political leader to navigate the complex terrain of policy change. This thesis immersed itself in these intricate debates to unravel the rationale behind the imperative for legislative change in the sphere of sex work. Additionally, it gave insight into how the sex industry has been comprehended, furnishing substantiated evidence to underpin these perceptions. By delving deeply into SA's contemporary and historical context, this research unravelled the enigma of why policy pertaining to sex work remains stagnant. Moreover, it elucidated what transformative change should encompass, incorporating elements such as exit programs and educational initiatives, to foster societal acceptance and yield tangible benefits for those engaged in the industry. Furthermore, as Spies (2021:333) astutely observes that if exit programs fail to offer "alternative livelihood opportunities" that provide a "superior economic choice," they could render individuals "more financially vulnerable than they were before they entered" the sex industry. Many programs offering conventional female-centric employment options merely present positions that were

available to sex workers prior to entering the industry, albeit often disregarded due to their low-income potential (ibid). Crucially, while the government must actively consider diverse viewpoints, it's vital to remember that SA upholds constitutional supremacy. Therefore, policies and laws should be guided by constitutional principles and rights rather than public sentiment. By emphasising the role of PEPFAR and its impact on advocacy efforts, the research identifies a critical gap in the existing literature and underscores the need for further exploration of the intersection between foreign funding, conservative ideologies, and sex work policy reform. Overall, the research adds valuable insights to the discourse on foreign funding for programs affecting sex workers, offering a nuanced analysis of the complex dynamics shaping advocacy efforts and policy outcomes in this field.

In conclusion, while this thesis provides an analytically rigorous examination of the issues surrounding sex work legislation in SA, there are several avenues for further research that merit exploration. Firstly, investigating the influence of Mokgoro's role in AFLA on her views regarding sex work decriminalisation presents an outstanding area of study, particularly regarding the implications of her position. Further exploration into potential funding sources for organisations such as PEPFAR and the implications of this funding would be beneficial. Additionally, exploring generational differences in the political actors' perspectives on decriminalisation could provide valuable insights into evolving social attitudes. Moreover, the rare policy consensus among political actors, including the EFF's support for decriminalisation, hints at shifting societal norms that warrant further investigation. Furthermore, examining macroeconomic factors contributing to the prevalence of sex work in SA and assessing the government's role in providing sustainable livelihoods for women to exit the industry are crucial areas for future research.

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Interviews with Members of the Gauteng Provincial Legislature (MPLs)

1. Godfrey Tsotetsi, ANC / MPL / Chairperson: OCPOL, date of interview February 2019
2. Thokozile Magagula, ANC Chief Whip Gauteng / Chairperson of the Multi-Party Women's Caucus, date of interview February 2019
3. Mike Madlala, ANC / MPL / Chairperson of Committees, written submission April 2019
4. Lebogang More, DA / MPL – Petitions Portfolio Committee, date of interview May 2019
5. Nkhumeni Ramulifho, DA / MPL – Education Portfolio Committee, date of interview May 2019
6. DA Member, Health Portfolio Committee, written submission May 2019
7. Ntombi Mekgwe, ANC / Speaker of the Gauteng Provincial Legislature, written submission April 2019
8. Mpapa Kanyane, ANC / Deputy Chairperson of Committees, written submission March 2020

Interviews with NGOs / Chapter 9 Institutes / Research institutes/Consultants who work with sex-work NGOs (Organisations)

1. Clara Singende, Lifeline Johannesburg / Member of Sisonke Board / Sex Worker, Date of interview March 2019.

2. Melodie van Brakel, CEO Cradle of Hope, Date of interview March 2019

3. Ishtar Lakhani, SWEAT – Advocacy and Human Rights Defence Manager, Date of interview April 2019

4. Marlise Richter, SONKE Gender Justice – Head of Sonke's Policy, Development and Advocacy unit, date of interview April 2019

5. Mickey Meji, Embrace Dignity – Advocate Manager / KWANELE, date of interview April 2019

6. Cherith Sanger, Former SWEAT employee / sex worker advocate / lecturer – Department of Criminal Justice and Procedure, Date of interview May 2019

7. Constance Mathe, Asijiki – Coalition for the Decriminalisation of Sex Work in South Africa – Coordinator / Sex Worker, Date of interview May 2019

8. Matthew Clayton, Triangle Project, Research, Advocacy and Policy Manager, Date of interview May 2019

9. Anti-Trafficking Organisation , Date of interview May 2019

10. Commission for Gender Equality (CGE), Legal Officer, Date of interview June 2019

11. Anonymous, Research Organisation, date of interview June 2019

12. Ntokozo Yingwana, Former SWEAT employee / Member of the Sisonke Board / sex worker advocate / African Centre for Migration and Society Wits University, Date of interview June 2019

13. Dr Marcel van der Watt, UNISA, National Freedom Network (NFN) and Global Resources Epicentre Against Trafficking (GREAT), date of interview June 2019

14. Naomi Hill, The Wits Reproductive Health, and HIV Institute (WRHI) date of interview July 2019

15. Yodwa Mzaidume, Mothusimpilo Aids Project, date of interview July 2019

16. Corinne Sandenbergh, STOP Trafficking, date of interview July 2019

17. Cause for Justice, written submission July 2019

18. Dr Mariette Slabbert, Consultant, Political Work / World Health / SANAC UNA, date of interview August 2019

19. Madri Bruwer, Straatwerk, date of interview August 2019

Appendices:

A. Policy Process in South Africa

B. Ethics Clearance Certificate

C. Letter of consent to participate in the research.

D. Participation information sheet – Interviews with Members of GPL (MPLs)

E. Interview Guide - Interviews with Members of GPL (MPLs).

F. Participation Information sheet – Interviews with NGOs / Chapter 9 Institutes / Research institutes/Consultants who work with sex-work NGOs/Chapter 9 institutes (Organisations)

G. Interview Guide – Interviews with NGOs / Chapter 9 Institutes / Research institutes/Consultants who work with sex-work NGOs/Chapter 9 institutes (Organisations)

H. Transcripts:
Interviews with Members of GPL (MPLs)

I. Transcripts:
Interviews with NGOs / Chapter 9 Institutes / Research institutes/Consultants who work with sex-work NGOs/Chapter 9 institutes (Organisations)

Appendix A: Policy Process in South Africa

The ANC government came into power in 1994 after winning the first democratic elections in the country. As Coovadia et al. (2009:819) noted, between 1948 and 1994, SA was led by the "right-wing National Party" (NP), who instituted the "state policy of apartheid" in 1948 which was seen to merge the "political exclusion, economic marginalisation, social separation and racial injustices of the preceding 300 years" In line with this, most of the policies during this period were formed against a "backdrop of racial discrimination" (ibid). During this period the "discrimination" was not limited to "race" but was also seen to occur along "gender" lines (ibid, 817). Due to the "combined pressure from resistance and reformers" in 1994, the first elections in 1994 took place, which ended the apartheid era in SA (ibid, 819).

In 1994 the policy focus for the ANC government was on "nation-building and social cohesion" and "economic growth" in line with SA being a developmental state (Gumede, 2008:8-9). The first step in the process of policy change in SA after 1994 was the passing of the Constitution of the Republic of SA in 1996 on which all other policy developments were based and according to which all policies needed to comply. SA was a democratic state and Chapter 4 of the Constitution outlined the role of the Parliament, which was divided into two Houses, the National Assembly (NA) and the National Council of Provinces (NCOP). Both Houses of Parliament "participate[d] in the legislative process in the manner set out in the Constitution" (Constitution of the Republic of SA, Act 108 of 1996, Chapter 4 42(3):23).

The role of the NA included "holding the executive accountable, fulfilling a judicial role, considering petitions and passing legislation including implementation and facilitation of public involvement" within the process (Gumede, 2008:11). The role of the NCOP, on the other hand, incorporated "ensuring that Provincial interests [were] considered in the National Sphere of Government" as well as being the "National Legislative Forum for considering issues affecting Provinces" (ibid). As part of its mandate, the NCOP was by legislation expected to also "facilitate public involvement" in all its process to ensure that the Provincial concerns were brought to the attention of Parliament (ibid, 12). This meant that the NCOP was made up of MPLs from all nine provinces in SA.

Gumede (2008:12) outlines how for a bill to be passed into law in SA it must be passed by both Houses of Parliament following various steps. The starting point was a discussion document drafted by the Ministry or Department, called a "green paper." This document was then published for inputs by all interested parties. These inputs were included in the green paper, and it was reworked into what was called a "white paper," known as a "broad statement of government policy" (ibid). The "white paper" would also be published for further inputs and once finalised was sent to the relevant "parliamentary committee" where further

adjustments could be advocated. Following this, the ministry was given a chance to have "further discussions and make final decisions" (ibid). The document was then sent to the Law Commission and Cabinet for approval, followed by the State Law advisors for them to assess. Once it had passed all these stages, it could be presented to Parliament as a draft bill. There was a need for public participation during all these processes, and a list of all stakeholders had to be submitted to Parliament. Once both Houses of Parliament had adopted the bill, it was sent to the "President for sign off" making it "an Act of Parliament (ibid). The Act [was] then published in the Government Gazette." The President had the power to make further amendments to the bill and could also choose to send it back for further discussions (ibid, 12). The Parliamentary Monitoring Group (PMG) noted that the normal timeframe for an Act to move from "introduction to adoption [was] 153 days" (PMG, accessed 2020).

The Constitution outlined the following types of bills that could be brought before Parliament:

- Section 74 Bills which amend the Constitution,
- Section 75 Bills which are ordinary Bills not affecting provinces,
- Section 76 Bills which are Bills affecting Provinces, and
- Section 77 Bills which are Money Bills.

(Constitution, 1996, Chapter 4: Parliament:38-44)

Appendix B: Ethics Clearance Certificate

Research Office

HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)
R14/49 Spengler-Gathercole

CLEARANCE CERTIFICATE	**PROTOCOL NUMBER: H19/02/32**
PROJECT TITLE	Decriminalising sex work: The politics of policy making in South Africa 1994 - 2018
INVESTIGATOR(S)	Mrs C Spengler-Gathercole
SCHOOL/DEPARTMENT	Political Sciences/
DATE CONSIDERED	15 February 2019
DECISION OF THE COMMITTEE	Approved
EXPIRY DATE	26 February 2022

DATE 27 February 2019 **CHAIRPERSON** J. Knight
(Professor J Knight)

cc: Supervisor : Dr S Dube

DECLARATION OF INVESTIGATOR(S)

To be completed in duplicate and **ONE COPY** returned to the Secretary at Room 10004, 10th Floor, Senate House, University. Unreported changes to the application may invalidate the clearance given by the HREC (Non-Medical)

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee. **I agree to completion of a yearly progress report.**

Signature

27/02/2019
Date

PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES

Appendix C: Consent form to participate in the research



Consent Form: Research on Decriminalising Sex Work

Title of Project: "**Decriminalising Sex Work: The Politics of Policy Making in South Africa 1994 – 2018**"

Name of Researcher: **Corey Spengler-Gathercole**

I _____ agree to participate in this research project. This research has been explained to me and I understand what my participation will involve.

I agree that my name can be utilised within the research report when using direct quotations.	YES	NO	(please circle)
I request to remain anonymous in the research report when using direct quotations.	YES	NO	
I agree that the interview may be audio recorded.	YES	NO	
I agree that the information I provide may be used by other researchers following this study provided that they obtain their own ethics clearance	YES	NO	

Signature: ……...

Name of participant: ……

Date: …….

Appendix D: Participant Information Sheet – Interviews with Members of Legislatures

Participant Information Sheet: Research on Decriminalising Sex Work

Dear Sir/Madam

My name is Corey Spengler-Gathercole, and I am a PhD student in Political Science at Wits University Johannesburg. As part of my studies, I have to undertake a research project, and I am investigating "**Decriminalising Sex Work: The Politics of Policy Making in South Africa 1994 – 2019**" The main research question being "**Why has the decriminalisation of sex work in SA stalled? A study of the legislative change and policy-making in democratic South Africa.**" The aim of this research project is to **identify and investigate the factors that have substantially delayed the ANC government (which has been in office since 1994) from committing to and executing the decriminalisation of sex work.**

As part of this project, I would like to invite you to take part in an interview process. The interview will take approximately an hour. With your permission I would also like to record the interview using a digital devise. You will not receive any direct benefits from participating in this study, and there are no disadvantages or penalties for not participating. You may withdraw at any time or not answer any question if you do not want to. Due to the nature of the research and your participation as a public figure your details will be attached to the information when used in the final research report. However, if you do not want your name to be utilised in the final report then I will be able to use a pseudonym (false name) to represent your participation, in my final research report. Please note that due to your participation as a public figure the researcher will do their best to assure anonymity and confidentiality where required, however due to the nature of the research the researcher may not be able to provide anonymity in the final research report since the researcher is interviewing a small pool of experts in this field. If you experience any distress or discomfort, we will stop the interview or resume another time. For interviewees that are not based in Johannesburg Skype can be utilised as a method to conduct the interview however the signed consent form would need to be received before the interview takes place.

If you have any questions afterwards about this research, feel free to contact me on the details listed below. This study will be written up as a research report which will be available online through the university library website. If you wish to receive a summary of this report, I will be happy to send it to you upon request. If you have an queries, concerns, or complaints regarding the ethical procedures of this study, you are welcome to contact the University Human Research Ethics Committee (non-medical), telephone +27(0)11 717 1408, email: Shaun.Schoeman@wits.ac.za. A copy of the final research report will be available once the research has been finalised.

Yours Sincerely,

Corey Spengler- Gathercole

Researcher - Corey Spengler-Gathercole / 0312348g@students.wits.ac.za / 079 493 1705

Supervisor - Dr Siphiwe Dube / siphiwe.dube@wits.ac.za / 011 717 4358

Appendix E: Interview Guide: Interviews with Members of Legislatures

Interview Guide: Interviews with Members of Parliament / Legislatures

Question 1: Can you give me an overview of your understanding of how policies are generally changed in SA and what needs to take place before a policy is changed? Considering whose inputs are considered during the process?

Question 2: Can you outline your views on sex work (such as whether it should be viewed as work or not)? What policy recommendation will you propose for SA, considering the different policy approaches taken in other countries? What are your views on the call for the decriminalisation of sex work in SA?

Question 3: In your view, how has the sex-worker policy evolved or not evolved since 1994? And, if not, why has the sex-worker policy not seen any significant change to date?

Question 4: In your view, what will need to take place to see a change in the sex-worker policy in SA? What form do you think such a change, if any, will need to take?

Question 5: What do you think the benefits or disadvantages will be of the decriminalisation of sex work versus the continued criminalisation of sex work in line with the current policy in SA? Will you, consequently, recommend partial decriminalisation or partial criminalisation as a possible policy option? Please give reasons.

Appendix F: Participant Information Sheet – Interviews with Organisations

Participant Information Sheet: Research on Decriminalising Sex Work

Dear Sir/Madam

My name is Corey Spengler-Gathercole, and I am a PhD student in Political Science at Wits University Johannesburg. As part of my studies, I have to undertake a research project, and I am investigating "**Decriminalising Sex Work: The Politics of Policy Making in South Africa 1994 – 2019**" The main research question being "**Why has the decriminalisation of sex work in SA stalled?" A study of the legislative change and policy-making in democratic South Africa**". The aim of this research project is to **identify and investigate the factors that have substantially delayed the ANC government (which has been in office since 1994) from committing to and executing the decriminalisation of sex work.**

As part of this project, I would like to invite you to take part in an interview process. The interview will take approximately an hour. With your permission I would also like to record the interview using a digital devise. You will not receive any direct benefits from participating in this study, and there are no disadvantages or penalties for not participating. You may withdraw at any time or not answer any question if you do not want to. Due to the nature of the research and your participation as an employee of an NGO your details will be attached to the information when used in the final research report. However, if you do not want your name to be utilised in the final report then I will be able to use a pseudonym (false name) to represent your participation, in my final research report. Please note that due to your participation as an employee of an NGO the researcher will do their best to assure anonymity and confidentiality where required, however due to the nature of the research the researcher may not be able to provide anonymity in the final research report since the researcher is interviewing a small pool of experts in this field. If you experience any distress or discomfort, we will stop the interview or resume another time. For interviewees that are not based in Johannesburg Skype can be utilised as a method to conduct the interview however the signed consent form would need to be received before the interview takes place.

If you have any questions afterwards about this research, feel free to contact me on the details listed below. This study will be written up as a research report which will be available online through the university library website. If you wish to receive a summary of this report, I will be happy to send it to you upon request. If you have an queries, concerns, or complaints regarding the ethical procedures of this study, you are welcome to contact the University Human Research Ethics Committee (non-medical), telephone +27(0)11 717 1408, email: Shaun.Schoeman@wits.ac.za. A copy of the final research report will be provided to the NGO once the research has been finalised.

Yours Sincerely,

Corey Spengler- Gathercole

Researcher - Corey Spengler-Gathercole / 0312348g@students.wits.ac.za / 079 493 1705

Supervisor - Dr Siphiwe Dube / siphiwe.dube@wits.ac.za / 011 717 4358

Appendix G: Interview Guide - Interviews with Organisations



Interview Guide: Interviews with Organisations

Question 1: Can you give me an overview of how your organisation views sex work or prostitution, indicating the extent of sex work in SA and why people enter the sex work industry?

Question 2: How does your organisation view the current policy on sex work in SA? What will their preferred policy approach be towards sex work in SA, considering various other countries' approaches?

Question 3: In your organisation's view, how has the sex-worker policy evolved or not evolved since 1994? Has the sex-worker policy seen any significant change to date? Why not? How has your organisation been included within these processes?

Question 4: In your organisation's view, what will need to take place for a change to occur in the sex-worker policy in SA? What form do you think this change will need to take?

Question 5: What do you think the benefits or disadvantages will be for sex workers in SA if sex work is decriminalised? How will this compare to the continued criminalisation of sex work under the current policy? Considering your answer, will your organisation recommend partial decriminalisation or criminalisation as a possible policy option? Why or why not?

Appendix H: Transcript: Interviews with Members of Gauteng Provincial Legislature

Key:
I – Interviewer
P – Participant

Interview 1:

Godfrey Tsotetsi	ANC / Chairperson: The Oversight Committee on Premier's Office and Legislature (OCPOL)	February 2019

Interviewer: My first question is to understand how policies change in SA in general and what needs to take place for that to change? And what inputs – NGOs, from different sectors of society etc do you take into account. Not necessarily linked to sex work policy but in general in SA.

Participant: Remember that the policies is initiated by the executive. Once it has been drafted it is referred to the legislature or parliament to be looked at. The parliament will call the public hearings and for people to make inputs with amendments. These amendments go to the executive. Once these inputs are in the proposed policy then it will be taken to government legal advisors. Does it comply with the constitution and other related laws here? Then it is referred to the president to sign. Once the gaps have been identified, that particular… will make a proposed amendment. The legislature and that specific committee will call a public hearing where stakeholders can make input. Once it has gone that process. There are two levels of interaction with public: it is advertised through the media. Once it has solicited inputs those inputs will be taken into account when drafting that policy and that will go back to ministry which has initiated proposed amendments. It is the same process to make sure amendments are complying with the constitution. When they are satisfied, the president can decide to amend it. This is the whole process.

Interviewer: They're mainly initiated through the ministry?

P: Yes

I: The public can't initiate changes?

P: They could lobby the parliament. The parliament represents the public. Through the public representative the public can amend the policy

I: Should sex work be seen as work? What are your views for decriminalisation?

P: My views on sex work – the so-called sex workers – are products of socio-economic issues. High unemployment specifically in rural provinces. Yes, there are poor families in Gauteng, but what do we put on the table especially if they are single mothers. It is a reality to acknowledge. They are subjected to terrible conditions though. And if it's the only thing to support themselves and their children and to put something on the table to eat…The govt must assist them in helping them. Regulating that service. If I can call it a service. This will save sex workers from brutality and for getting their pay and not being raped or hit. Also legalising means there can be health standards and that there are regular health inspections. The government – the tax benefit – it's both ways. It will help everyone. The sex workers can be protected from a safety perspective. My view is that I support legalisation like other countries like Holland. They are fully institutionalised services.

I: So, do you consider them as workers or not?

P: yes, they are offering a service. You are offering your labour. There are work hours and so on.

I: so, in your opinion is it a viable occupation and career option?

P: Yes

I: Ok

P: I don't think there can be full employment in this economy. Each and every person can't get work. We have capitalism and exploitation. Capitalism is a brutal system. The big companies are there to make profit at the expense of the workers. But I still I am not sure about people selling their bodies. It is not good for their dignity.

I: Linked to terms used? Cos it moved from prostitution to sex work which is a service.

P: Yes, they must still maintain their human dignity.

I: You've been talking about legalisation?

P: yes, this is a policy option

I: why do you differ this from decriminalisation.

P: My understanding is that legalisation is decriminalisation?

I: Legalisation is a lot more government control; decriminalisation means no government control and they operate as any other profession in SA. Legalisation is about control of movement, when to go for check-ups.

P: But there are advantages to having this control. What do you call this thing? Cost-benefit analysis. But yes, on the top of my head legalisation is more important. Like in the Red-Light District Legalisation is an option but is controlled. Yes, in a controlled space is better. Dark corners are dangerous. They are open to be raped. We need a cost-benefit of decriminalisation and delegalisation.

I: How has the sex worker policy evolved since 1994.

P: Even at the legislature here we want to introduce a policy, but we don't carry it through. Prostitution is a problem. Policy is an instrument to improve socio economic conditions in a society. They are human beings, and they deserve health and security.

I: Why hasn't there been a change though?

P: Lack of leadership in terms of how policies are followed through. Those in public office have the duty to follow through. Myself included. We must agitate. In Gauteng, there is this notion that there are better chances of getting work. Poor ladies they face a harsh reality, and no one protects them. Even the police are perpetrators in this abuse of these ladies.

I: It can be changed if pushed from the Gauteng level?

P: Yes, and also academic institutions can help. Research can alert the government. They can see the scientific evidence. Role of researchers is really important.

I: My research is to look at this as social problem. This policy however has not received change. Many policies are changed and receive attention. Since 1994 this policy has only had one change.

P: There was an attempt to change this. You can go to the archives.

I: What happened to that attempt?

P: It stopped. This year we go to elections. Now new people…. There are lapses. There needs continuity. It creates a problem with this change of leadership with projects and research work.

I: I can see what I can find…. But is there not enough time within 5 years to implement change?

P: There could be those particular issues that are important, like the lack of water. But if there are vocal civil society and academics to push for policy initiation… The voice must sustain, and people must make noise and so on. Aggressive agitation for the policy change.

I: Bring it to the light of the leadership?

P: There is a lack of passion, and leadership and then a change in leadership. These all affect this.
Let me make an example. When Mbeki was president, he wanted the African agenda… The African renaissance. Then Zuma came and this wasn't a major issue for him. He focused on other things. These priorities then shift.

I: What would have to take place for there to be change in SA?

P: Policy is also participation of active participation of public. We must lobby hard. That's why we have social movements. There must be a loud noise. There is this LGBTIQA+ and so on forum. There is enough noise to the legislators so they can make a policy.

I: There has been a sector parliament, but nothing has changed. Why is this platform not working?

P: They aren't lobbying enough… I can make an example. Look at the issue of the e-toll. It's an issue even now.

I: you mention it effects poor people. But are poor people in a position to lobby government?

P: yes, Gauteng Leg is open to poor people through the sector parliaments, but it must be sustained.

I: Well, if they did a petition. What other platforms do they have?

P: Petition committee around the lack of action is helpful. Here it is specific that if the issue has been raised through the petition committees and therefore government must pay attention. The public can actually go to the constitutional court if they aren't being heard. So, in SA there's this feeling that unless you destroy something government won't pay attention. That is the wrong way, but as leadership we need to be compassionate. But with the new premier of Gauteng and the president this arrogance is changing.

I: You tell people to be heard…. But if we don't make enough of a stink they don't care (government).

P: If you destroy though you take yourself back! These are public properties. We must continue using the right platforms. And this is through leadership. Not only those in high up places.

I: If we saw change, what would it look like? Legalisation? Decriminalisation? In SA what shape does this take?

P: It must improve the lives of sex workers…. Safety and abuse… If I just used their service and not pay, it's abuse.

I: In SA, is the only thing that is sex work is survivalist? Can't it also be a viable profession?

P: I don't want to commit to myself because I don't know enough. I am just advocating for an improvement for the quality of life for those selling their bodies. We must create a conducive environment whether its survivalist or something else. Regardless. It's a responsibility of the government. They are entitled to safety and security which government must provide.

I: What are the advantages of partial decriminalisation. Where the sex worker is not criminalised but where the John, the buyer, is decriminalised.

P: Eish. Is it currently criminalised? You get arrested?

I: Now the women and men are both criminalised. This is the change since 1994 in legislation. The buyer and the sex worker are criminalised. The purpose of decriminalising is creating a safer space. Sex work is a profession and subject to standard labour laws. They can have the same. That's if you decriminalise. Legalisation however is about registration, compliances and more and you can be illegal.

P: It's a thin difference between the two. You must do a cost-benefit analysis. The main thing is a safe environment. This is the central goal. At the end of this exercise, where are the advantages outweighing the disadvantages? That is what should guide you.

I: The current policy is criminalisation.

P: No, I don't advocate for that.

I: So why are you against criminalisation?

P: Because it doesn't help them. You are throwing them to the bush for the animal to eat them. They need protection and this comes through the policy.

I: how has your view on sex work shifted and changed since you came into leadership?

P: There must be a safe environment for sex workers. Their harsh reality hasn't changed before or after 1994. Those meant to protect also abuse. There is lack of a clear policy to regulate or know about the industry. People are now exploiting this gap. Both the purchaser and seller must be protected from the health issues.

I: lack of leadership explains to a large extent why this policy hasn't shifted or changed since 1994. It's so strange that these women are exploited and marginalised but there's no drive to change. Why is this not an important issue?

P: There may be something in the NDP (National Development Plan) that could look at this particular thing?

I: The ANC went to their conference. They promised to look at sex work. But the policy document only says engage sex workers and to find the best response. Actually, at the end of the day they are only asking for criminalisation. They only use the word engagement that actually purposefully encourages criminalisation?

P: There may be religious factors? But the reality is that sex work happens. By researching is a good exercise how can we make an intervention.

I: Why does the ANC specifically call for decriminalisation, but no actual policy calls for it?

P: Leadership is needed. At this tournament they called prostitutes and then these people actually took their goods. But a policy to guide this behaviour.

Interview 2:

Thokozile Magagula	ANC Chief Whip Gauteng / Chairperson of the Multi-Party Women's Caucus	February 2019

I: Policy development. What is the outline in terms of policy changes and what needs to be done? What are the different steps in terms of policy creation and change?

P: Prior to 1994 there was no democracy; it was only a one-party state, which dictated…. For any policy change there was no communication to the people. That's why people revolted to dismantle apartheid government. They weren't involved in decision making in their country… On the issue of sex work.

I: I just want to talk about policies in general so let's look at policies in general only.

P: Now in democracy everyone has a say. If people aren't satisfied with service delivery or policy, they have the right to protest. As long as the protest is manageable. Everyone can voice his or her voice in terms of what they need in the community or as individuals. You have the right to write to parliament or the legislature for that policy to be changed to suit the situation. Prior to 1994 there was no vote for Africans. They weren't allowed to vote. After than everyone can vote. On the 27th of April 1994 everybody, black and white could vote. Those who don't want to vote don't have to. But no one can prevent you from voting. You cast your vote from the party you like. Nothing is dictated about your choice. Every party can campaign, and everyone can vote. In parliament, the vulnerable are represented. People with disability. They also have a say. If they are not represented. Nothing for us without us. This is what they say: women, youth, disabled. These are the vulnerable.

I: What does the process follow for the policy? What happens to those letters of petition?

P: Whether they have written to the legislature, or the secretary of parliament. It must be processed through the speaker of the legislature. There are those policies it must go through the committees for implementation.

I: Just to bring in sex worker policy. Have sex workers in your knowledge written to parliament for the policy to be changed?

P: Um, not now. Maybe before I came. There were those. There was that policy change processed through the LGBTIAQ+. That they wanted to be recognised as they are. These sex workers should be commercialised and that there should be a policy change. It was the early 2000s, maybe 2004/5, I don't remember the year exactly, there was this policy. I was then a councillor for the ANC. When there is a policy, we differ and debate but at the end of the day we agreed that it's part of their work. They must be protected by the state. They are abused by their pimps. Even their clients, they abuse them. They don't pay them and sometimes they even kill them. We wanted a policy to protect them. Not to be harassed either by the police. In other countries, there's places where they are displayed and then you know that person is protected and will be paid accordingly. They can also pay tax. I don't know what has happened around that. It didn't come to legislature. Only to parliament.

I: How do you view sex work? Is it work? The main policy recommendations – decriminalisation, criminalisation, legalisation and policy approaches in other countries. What are your views?

P: It should be legalised industry. They are there whether we like it or not. Even them they shouldn't skip the law. They know the policies and laws in our country. This is what you can and can't do.

I: Would you go for legalisation versus decriminalisation?

P: It's the same thing?

I: The literature differentiates it. decriminalisation is where there is basically governed by same labour laws. But legalisation the government regulates it… more government control…

P: Then it should d be legalised. In this country there is so much crime. Like human trafficking, they can be trafficked anywhere and anyhow. We are not saying government should be strict but there should be a law. The pimps and the workers must be trained in this too. This is my own opinion.

I: So, you should see it as work? In parliament they are calling for more decriminalisation.

P: I don't agree with that as a person.

I: So, as a person in the ANC, you would recommend legalisation. It's not an option yet, but you would recommend this?

P: Yes.

I: How has the policy evolved since 1994. What are the significant changes in the policy? There has been minor changes. But there's a delay. They went to parliament; they gave recommendations. Why has none of this…

P: I don't know what happened. Sorry. What has changed is that they are not harassed like before. Now they are all over. They used to just be in Sandton. After they raised it, the harassment and abuse has gone down. But as to why I don't know. I have to do my own research. Three years back they came with the resolution, but I don't know what happened. They spoke about decriminalisation. They wanted it to happen. I should follow up.

I: If you do a follow up, can I get permission to interview you again?

P: Yes

I: the updated policy is now to criminalise the clients too. It's difficult to pin down the client. On the client it is hard to charge them. But anyway, they are actually mainly affecting the sex workers. The NGOs are making these arguments. It's not really affecting the clients. What are the stumbling blocks? Is it a moral issue? Is it a

biblical issue with sex within marriage? Since 1994 we have put vulnerable people at the forefront but sex workers, who are vulnerable, are not there on the agenda?

P: Even the police these are clients… That's what they will say. In 2010, one of the sex workers said you know mina my stable clients are big shots. I have my house in Sandton. They don't pay me less than R3000 and then they pay R20 000 per night. It's big shots.

I: Why would these top shots want it criminalised? Why not decriminalised?

P: Once you break the law. They know they are breaking the law and once it is legalised you cannot remain anonymous. Criminalisation actually gives them more control over the sex workers.

I: Yes, that's interesting. I never thought about that, about the control…

P: If it's regularised, then the sex worker could take the client to court.

I: That makes sense. I didn't think about that. I know that the big shots from governments might put them in the spotlight. It covers them – criminalisation – to make it secluded.

What still needs to take place in SA, but based on the policies debated in parliament, would it be decriminalised or legalised or even partial decriminalisation?

P: With the trend it would be decriminalisation.

I: What needs to change?

P: Consultation and a resolution from the sex workers. We need a national conference with the sex workers themselves. So, when it's supposed to be implemented it mustn't affect others… It would be an embarrassment when there is a decision made without consultation.

I: The ANC policy conference – they said they'd decriminalise sex work. Nothing has happened beyond that. Even the NGOs came. Where does it now need to go for there to be change? Who has the deciding power?

P: I am saying the actual industry is not involved and this is a problem. We need to consult the actual effected people.

I: How?

P: There are structures. We must go the structures and ask if we can have a national consultative meeting or conference then we can take a decision. They know what they want these affected people. They know that if 1,2,3 can be done then it's fine. We can't leave them behind or outside of decision making.

I: Are you saying that the government must go further down and speak to the sex workers. Right now, the NGOs represent them. At the GPL we have the sex worker parliament and their views have been voiced. But now the sex workers come and give their views directly. Why aren't they being used?

P: That's the question. The right unit in parliament who must take responsibility is the women's committee.

I: The multi-party caucus?

P: Yes, but also there is a department in the presidency. Department of Women, Children and People with Disabilities.

I: Why aren't they leading it?

P: It's the changing of ministers from time to time. To me at least. That time of the submission, that person who is responsible for that it is Mme Nkosazana. This chop and change. The minister doesn't follow up at all. How must I take this forward where someone else has started.

I: Now we have elections again!

P: But others will say, yes in 1994 we want 1,2,3. Then it happened again in 2010 and 2019. Until the protests happen only.

I: Maybe if the sex workers started a riot, something may happen? Quite sad? The staff within the offices are consistent. Surely, they can push these processes. It's definitely because government is static and keeps changing.

P: The gender issues, it can't be only in the women ministry. All departments should deal with gender issues. We must enforce the women ministry to have a terms of reference with this specific issue.

I: So, it should be led by the department? And if not there won't be any change? I know you can have member's bills, and if a member can push for the change… Could this help?

P: Certain committees will be responsible for that. They provide oversight.

I: it has to go for that route – it can't through individuals?

P: Yes.

I: Change must take place on the national level?

P: The national follows Gauteng.

I: Could Gauteng push for this change?

P: I am definitely sure we may achieve something and the national will follow.

I: So, we can change it in Gauteng even if it doesn't change on the national level?

P: Gauteng is the hub.

I: With the sex worker parliaments there is no one in Gauteng even pushing for change.

P: We need to speak to the speaker: our sector parliaments should have teeth and processed accordingly so people can have confidence in us.

I: You need to speak to sex workers directly. Gauteng has actually done that! Why are we not then ging beyond listening and doing something?

P: It's like a talk show. We need to take a stand. The sixth administration, the women's caucus it should start from there.

I: So, Women's caucus can push for change on the local level?

P: We have done with the sanitary towels. We can do something similar.

I: One of the first sector parliaments, sex workers say they are not getting home loans etc because they don't have formal work. But Gauteng still does nothing. These women have to go to loan sharks and so forth.

P: I think it should be partially decriminalised. Through piloting you can see the opportunities and strengths.

I: If you look at decriminalisation on its own, what are the disadvantages.

P: There would be chance takers to abuse more. That's my opinion.

I: would there be benefits to decriminalisation?

P: No, I don't see that.

I: You were calling for legalisation. What are the pros?

P: the processes would be regulated according to the SA government. Anyone who goes against it can be penalised.

I: Any disadvantages to legalisation?

P: the actual workers can't do as they feel. They can't wake up and say I don't want to be paid badly.

I: So, it's payment regulation? It may be good as lower income people may be paid better rates. What about the payment of tax?

P: If they break the law they must be penalised. The sex workers and the pimps know they can't harass or abuse the sex worker. We need to look at issues of security.

I: You don't believe there's a benefit to decriminalise? This won't benefit them? You are saying there won't be any control.

P: Once its legalised even the client will be penalised for breaking the law.

I: You were saying you believe in separate areas for them. Red light districts. But sometimes the communities around there complain.

P: But it's better because of the securities. They can't be protected, and no one is watching or knowing. They immediately know they are making money and they may be robbed.

I: That does make sense. In SA, would the communities accept these designated areas? Wouldn't there be protesting and riots?

P: I can't say anything about that but maybe it can be destigmatised. Like HIV – it is better now as people can see that these people are human beings. HIV is a chronic condition. It's one and the same. We can have a sex workers industry corridor. An industry. You see.

I: We are saying the stigma can be helped.

P: The communities will argue and legalising to make it acceptable as a professional, then the communities will be more accepting. Right now, people don't know that it's work. My wife is going to work is the same issue as any other work. The sex worker is the only one that can provide for us. I also used to be like I don't want to talk about it.

I: What changed for you?

P: There was this organisation called Doctors for Life. They came with sex workers. When I heard their stories, I felt we were unfair to these people. There was this lady saying she was from KZN, and she was almost killed. They can't negotiate the money and so forth. When you say we are going to give you so much (extortion)… It was horrible to hear these stories. There was this other lady who was a street kid and had to go to the industry for survival.

I: These stories helped?

P: Meeting the people behind the industry. That these women are also vulnerable. They were saying it's difficult to leave the profession because they can kill you. So, if it's regularised then it's better for them. Then they also won't be criminalised. It makes them more vulnerable. If they have a criminal record, they can't even apply for another job so then they go back. Your change is from people speaking to the industry. So now national must go down and hear these stories to buy-in and to foster change.

I: Who needs to buy in?

P: The government at large and the community for input.

I: But what happens if the community is actually against it? It stalls the whole process even if national agrees.

P: If they are well educated on the topic and taken through the process. They can be aware. The women may come forward more freely and share what is happened to them. Pension fund – 50 percent…. Must go to the victim.

I: You'll let me know about a potential second interview?

Interview 3:

Mike Madlala	ANC / Chairperson of Committees	April 2019

RESPONSE TO QUESTIONS

Thank you for the questions as I could not find time to sit with you as per your request and Akhona could not schedule an appointment, I felt I should respond to your questions in writing. I know you may not probe on the responses, but I am available for further enlightenment regarding the subject matter.

1. Policy formulation and generation in SA

It is normally said that government succeeds another government and thereby effecting changes to policy. From time immemorial we had different forms of governments which include autocratic government, fascist governments, democratic governments, participatory governments, etc. In all these governments, there were policy changes with or without public consultations. The South African government is a constitutional state which means the constitution reigns supreme. The constitution of the Republic of SA, Act 108 of 1996 explicitly direct in terms of Section 118, that National, Provincial and local governments must facilitate public involvement including in committees towards policy formulation.

It is normally in the process of execution by the executive government where policy gaps are identified that officials of government proposes a remedy to resolving the policy gap which then results in policy changes. Some of the policy proposals emanate from the ruling party manifesto which is a shopping list of demands or promises the party provides to the electorate in order to be voted into power. Some of the policy changes may be as a result of both internal and external political pressures. In autocratic governments, policy changes are made by powerful leadership whose wishes cannot be overruled. In SA there is an investigation of a state capture by capitalists who determines terms and conditions to government thereby imposing policy change.

2. Policy considerations for sex work

The primary consideration is to define what work is in order to ascertain whether "sex work" could be considered as work. It is my contention that for work to be classified as work the must be an achievement of a desired resultant product. For instance, if you are a cleaner the desired result will be a clean place. The desired result for cooking (as work) is the meal. I am here not referring to the payment for cleaning or the payment for the meal. Can we also refer to "sex work" on the same terms? "Sex work" is satisfaction like drinking a beer or whisky. One cannot say after drinking whisky that s/he was working though the person will be drunk (satisfied), therefore "sex work" is not necessarily work but a soft cushioning of the word prostitution which is considered to have a bad connotation in society generally.

In SA, it is argued that because of the level of unemployment in the country, prostitution should be considered as work as this is how the unemployed man and women derives their livelihood even if there are no commodities or goods produced. Work of course is defined as a socially necessary time taken to produce a commodity or goods with a used value according Carl Marx. Commodities considered as being goods produces for the sole purpose of exchange, which in the case of sex there is no one taking another person's sex. In simple terms, there is nothing called sex work.

Prostitution dates back to more than 200 years BC and has prevailed throughout as it is unstoppable. It is a wide view that government must not legalise or make it illegal anything or conduct that it cannot enforce. Sex is an action taking place not in public places therefore no amount of police action or laws would be able to prevent or enforce criminality in that regards. The problem with uncontrolled sexual activities is that it results in untold sexual transmission deceases which has serious impact or repercussions on government resources. The best view therefore is that the government should legalise prostitution with legalised brothels which are registered for

control purposes. In some of the countries like Denmark and Netherlands, the government has legalised prostitution and brothels which are termed "red windows". Prostitutes are regulated that they should regularly visit a doctor for a checkup and brothels are compelled to supply condoms or to ensure preventative measures are in place to prevent sexually transmitted diseases. Prostitutes and brothels are required to pay tax, and no one is allowed to practice without an approved registration certificate.

3. Evolution of the policy changes on sex work in SA

There is no observable significant policy change in SA regarding the subject matter as even the sector itself is not properly coordinated. The Gauteng Provincial Legislature, through its programmes of Public Participation and citizen responsibility has coordinated a number of sector parliaments for the so called sex workers with a view of finding a properly coordinated resolutions that represents their aspirations but they have instead been demanding that the Gauteng Provincial legislature must pay them for their time spent in the sector parliaments as they are losing business with their client and have no interest to contribute on policy formulation to legalise their industry.

4. What would need to take place in order to change policy in SA and what form the policy should take?

It is a viable option for governments to consider legalising prostitution in SA in order to control transmitted diseases associated with prostitution as there have been serious health implications to citizens while the South African Constitution in terms of the Bill of Rights obligatory states that, "everyone has the right to have access to health care services, including reproductive health care," the constitution further provides that, "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights." This reasonable measure by government will not totally eradicate illegal prostitution and the spread of sexually transmitted diseases as I said earlier that sexual conduct takes place in obscured private places which are not easily police enforceable.

The proposal to legalise prostitution above will certainly not be pleasant to some of the cultural and religious stakeholders in the country which is a secular state as they will argue why government in terms of their culture and religion should not consider such action as acceptable to a reasonable society. That in terms of the Bill of Rights, their culture and religion may not be denied the right to fight against prostitution as an evil to society. The views of the cultural and religious activist will not necessarily supersede the limitation rights in the Bill of Rights which states that, "the rights in the Bill of Rights may be limited only in terms of laws of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity and freedom, taking into account all relevant factors, including –

(a) The nature of the right.
(b) The importance of the purpose of the limitation.
(c) The nature and extent of the limitation.
(d) The relation between the limitation and its purpose; and
(e) Less restrictive means to achieve the purpose."

The policy formulation therefore will require extensive consultation with all forms of stakeholders with government providing reasonable and relevant information as to why it is justifiable for it to take the route of legalized prostitution. This justification may include reasons already highlighted above of –

(a) Constitutional compliance on health matters and obligatory requirements
(b) Prevention of sexually transmitted diseases which are endemic like HIV/AIDS
(c) Implications to healthcare institutions and health resources
(d) Regulation and registrations of prostitution and brothels
(e) Cost implications to South African revenues of unregulated prostitution in the country, etc.

Consultation with all relevant stakeholders must be in the form of pamphlets and posters, radio and TV debates, drama and plays, interviews with politicians and experts on the subject matter, adverts on both print and electronic media, public hearings such as izimbizos, bua lese Chaba, sector parliaments, etc.

5. Criminalisation, decriminalisation or partial – decriminalisation of prostitution/sex work

The views expressed above is to decriminalise prostitution/sex work in to. To criminalise or partially - decriminalise will not be enforceable by the police agents and our courts system will be glutted with pending unresolved litigation. As I said above, legalisation will not resolve the problems of prostitution completely but necessarily it will alleviate government action and resources to the benefit of society in general. Accompanied with civic education, a number of people will rather opt to support government legalised brothels than to be in conflict with the law.

With some of the malfunctioning families they would better support safe government approved brothels with safe sex to prevent not only sexually transmitted diseases but even unplanned pregnancies and save some of the unnecessary divorces. When one partner does not get sexual satisfaction at home, s/he goes to a brothel and does not bring problems at home thereafter. It will be like, when for whatever reason a partner does find food at home, and s/he goes to a restaurant and goes back home without bothering the other partner. This state of affairs in the beginning, it will be construed negatively by partners in the same ways as in the past condoms in pockets or bags of partners were construed. Today if you discover condoms in your partners private domain, you become happy that s/he is practicing safe sex and it not a big deal. We do not tell lies to our partners that at work there was a sex awareness day and we all received condoms.

In Denmark as a visitor, you are advised on arrival that you should not meet anyone on the street if you want to fulfill your sexual needs, but you must visit the state regulated brothels where there are inspectors and prostitutes which are safe. Working prostitutes are being attended to by medical doctors on a regular basis. As a result of their policy, their health budget is shrinking, and their population growth is shrinking. There are limited unwanted babies and termination of pregnancies in that country. In the case of Denmark, the prostitutes are employed full time, working for a brothel to provide a service to the brothel clients and are paid as regulated by government and as such they can be regarded as sex workers.

Interview 4

Lebogang More	DA / MPL – Petitions Portfolio Committee	May 2019

P: The question is a bit too broad.

I: My research is focusing on the sex worker policy. Why there has been no change. The policies exist but what are the processes to change a policy?

P: We are legislators. We are here to implement. Our role in the legislator and parliament is to make laws. Laws when enacted are given to executive to implement. In the executive process of implementing law. They call what they do establishment of regulations and policies. It is at that level. Not at our level. We make laws. Members of executive will then formulate regulations and policies. This responds to the law only. We can't do policies or regulations that are outside what the law requires.

I: The sex worker policy – what is the first step to change any policy?

P: We should have a law that governs the establishment and recognition of sex workers. The relevant ministry would then have to formulate the policy. There will be a serious and extensive consultation process with all the role players. So, the established policy enjoys contributions from role players. The relevant MEC and minister they would then have to put a draft policy and have stakeholder workshops. This policy would then be concluded and implemented.

I: How would the law be changed? In terms of law in general.

P: At the moment if sex work was a criminal, was an offence. You need an amendment to decriminalise. Also, after that how do you protect the sex workers? You can't just leave it at decriminalise. I wasn't involved when years back when it was criminalised. But I think the intention was to protect them. But if you decriminalise, how do you then protect them now from abuse and so on? Therefore, while you amend your amendments must not only speak about decriminalisation but also about regulating the industry. I think religious workers would be upset for example if there are sex workers in or outside their buildings for example.

I: When it's decriminalisation is a lack of control; it's only regulated by labour laws.

P: When you speak about regulations then there must be regulations. For example, before I could be a member here. I saw one article where the premier was announcing. There was something about decriminalisation but with regulations. Maybe identifying specific areas where they can operate. But I am not sure where it ended up.

I: I think a lot of people confuse decriminalisation and legalisation. Sex workers want decriminalisation like in New Zealand. With legalisation – there are regulations by government. Like registration and regular tests.

P: So, it's no longer a crime either way? You have decriminalised?

I: So, this is the difference: say the government says I can work in Hillbrow, but I am not a criminal. But outside there, I am a criminal. In Sweden, you can't rent a place for sex work because it is partial decriminalisation. As soon as women it is classed as a brothel.

My second question is how you view sex work. Maybe in line with the DA? Do you believe it's work and so on. What is the best option?

Firstly, what do you think of sex work?

P: For me it's more of a trade. It's a service. Maybe not to call it work.

I: How is it different?

P: Work it's an amount of effort put in someone's initiative and receiving a salary or stipend out of it. A service is there is a service provider in exchange of money and benefit.

I: Like a consultant?

P: I often hear the word clients.

I: ja the Johns are being called clients.

P: There is a service rendered to clients.

I: So, you wouldn't say it's work, you'd say it's service?

P: You are talking about adults. People can choose how they want to live their lives. And from a liberal perspective it is a right of individuals. Unless we are talking about someone who is being forced. As long as their rights don't infringe on the rights of others.

I: Ok… For you what is the best policy option? (Interviewer repeats 4 policy options).

P: So, with decriminalisation someone can operate from a church? Personally, I support criminalisation.

I: Criminalisation?

P: No decriminalisation. It is a right for everyone but not to infringe on others. I must see a policy on sex work. There are a lot of policies. I don't know if there is a DA party policy on sex work.

I: Can you see if there is one?

P: I can check it quickly.

I: Why do you think there hasn't been one? Maybe it doesn't affect the DA? Maybe it's not a pressing concern?

P: It is not because it doesn't directly affect the DA. It's just that there's so many things. Abject poverty, corruption, crime levels. Once we have a clean government from corruption then we can create conducive policies for other issues.

I: What do you know about the sex worker policy since 1994. What has delayed the change in the sex worker policy? Why has there been a delay. Because sex work is a big gender issue. Why has this not been made a priority?

P: I suspect because of the consternation of views. Government is stuck between a rock and a hard place. Many think it's wrong. On the other side then there's high levels of poverty and unemployment. How can people even fend for their families.

I know that in the legislature we have sector parliament.

There is policy uncertainty. One minute we have criminalised, the next we are calling a dialogue. What is the clear position? Is it criminal? Is it not criminal? Is it a partial criminal offence?

I: SA Law commission report. Their recommendations were to keep it criminalised or partial decriminalisation. Government hasn't stated clearly what they agree on.

P: But I don't personally agree on those two options to be honest. If it's partially criminalised what has the client done? It's not rape. It is consent between two people. It has nothing to do with the state. Maybe someone can also say lobola is transactional. Like sex work.

I: What is wrong with partial decriminalisation?

P: It infringes on the right of the client. It is my view.

I: So, you are concerned about the client. What about the women?

P: How do you prove it? If you find me with someone in a bedroom, am I a client or a boyfriend? How is this law going to be forced? What happens if I stopped at a robot, and they are alleged a sex worker? It's like that law that says farting in public is illegal. (Laughs) How will you even enforce this?

I: Yes, I am enjoying these views. Exactly with partial, how do you even enforce?

P: There is a constitutional law that speaks about… in the bill of rights – criminalisation is also an infringement. It can be contested.

I: They took it to the Con Court and lost….

So, which is better?

P: Let's say decriminalisation. But I am worried about their safety. Issues of safety. And if they are making money, how are they contributing to tax.

I: It's like someone working for themselves. They declare income tax. If it's decriminalised.

It sounds like you are actually going towards legalisation… You are concerned about the churches.

P: It's not only about churches. There's a brothel in Roodepoort next to a school. What are these kids learning from such an environment…. In Krugersdorp there is a place called Majestic. Next door is a Mogale tourism office. The CEO told me that they have terrible experiences especially after weekends. They're throwing used condoms out of the window. There's blood on the floor. I think then there must be an area that is controlled. Health hazards addressed and so forth.

I: This is legalisation.

…What needs to take place within society to implement change?

P: Extensive stakeholder consultation. Public reps must also be determined to bring about change. There must be a clear policy direction. Also monitoring of this. Making a policy decision is just the beginning. We need proper implementation and monitoring.

I: Like an implementation plan? What will ultimately be chosen though? What do you think?

P: Legalisation.. A complete decriminalisation will upset too many people. Partial will be discrimination which will be contested (it's discrimination against individuals). It seems to be a better compromise.

Therefore, legalisation seems to be the best. It protects everyone.

I: I hear what you are saying.

P: If it were up to me, I'd completely decriminalise.

I: I am not so sure if you'd decriminalise.

P: At the end of their day, it's their responsibility.

I: Do you feel sex workers have agency?

P: What do you mean?

I: Do they choose to be sex workers or is it forced?

P: There are those forced by circumstances and there are those who did because they enjoy the career path. This may be choice. I was speaking to a former sex worker. She's now working at a hospital and now has a family in Johannesburg. She never wants to go back there.

I: What did she say?

P: She was from Zimbabwe and was really poor. She came to SA and promised a job which never materialised. She had people to feed at home. There was no other income generating opportunity other than sex work. Once she raised enough money she went to school and now has a job.

I: That's an example of someone using sex work as a steppingstone. Did she see it as work?

She doesn't want to go back?

P: have you had interviews with sex workers?

I: No, but there are good views from those who work at sex worker organisations. I did speak to two sex workers, but organisations can be spoken to, and they really know a lot. They work with sex workers on the ground.

…We were looking at decriminalisation vs crim and whether you'd recommend partial decriminalisation. But if you look at criminalisation, why would you say it's not an option?

P: It goes against freedom of choice. Number 2, it doesn't allow us to deal with the unfortunate aspects of poverty. That money feeds family. Someone can go to school from this money. Criminalisation is not an option.

I: Sex workers have rights?

P: yes, like everyone has a right to be a doctor or an MP. It's the same with sex work.

I: So, policy should change? You are calling for policy change?

P: Yes

I: Why don't you push for it in the DA?

P: I am a young Parliamentarian, and I can push for change.

I: Hope I have inspired you to push for change. If you push for change. Can you implement change at a national level though?

P: If the GPL adopts a view, it can give this to it's NCOP delegates to lobby the issue in parliament. I can put a motion but if I don't have a majority support.

I: So, you can't do it as an individual?

P: Democracy dictates that we need a majority.

If the motion is accepted with recommendations, we can then take the recommendations to carious people – NCOP, Members etc so it can be put on the national agenda.

I: Once the law is changed, Gauteng can deal with the safety issue.

P: Community safety

I: In Line with the national law.

P: Also, social workers and psychologists.

There is a lot government can do.

I: Thanks for the interview.

Interview 5:

Nkhumeni Ramulifho	DA / MPL – Education Portfolio Committee	May 2019

Interviewer: The purpose of my research is to look at policy change. And to look at this particular policy. Policy changes, the dynamics around that, then we can delve into the sex worker policy, views and what inputs are taken into account when policies are changed.

Participant: There must be political will and to make amendments to existing policies. You are providing a solution to a problem. Pertaining to your issue. It's the stereotyping views mostly informed by Christianity religion is seen as a sin. I am liberal ideology. You make a policy that you can regulate. The current president addressed sex workers, and when he was deputy president, he made commitments to be attended to. If you consider the disease like HIV and AIDS. If you ensure that sex work is managed through policy, then the stigma attached to it can be not there. We must recognise sex workers formally now. They are in business. And it's individual choices for those who use it.

When it is regulated, you can get tax from them which goes into the economy. Which can deal with sexually related diseases. What people must do to protect themselves. If it's legal, it won't be stigma. If it's legalised, then there is no stigma.

I: If any policies were to change, what is the process?

P: At national, minister of labour must introduce policy and must be tabled and then present to the cabinet. If minister is happy, and not affecting the constitution, then it is gets approved and it gets implemented.

I: It can be done at cabinet level?

P: Yes, but if there are constitutional amendments, you must take to different sectors. At constitutional level, you need public consultation and different sectors for comments. When comments are made driven by executives. If it's a minister, they submit to cabinet then refer to parliament. Parliament through speaker can then be directed to committee, like department of health or it can be dept of labour. So, both departments can be involved. It goes to provinces through NCOP. Comments are made. When these are done, parliament will affect such an amendment. Then parliament sends to NCOP.

When NCOP is done after parliament sends it to them, then president signs off.

I: Thanks. Ok so I have some of your views about sex work. My next question is whether you view sex work as work, and what would your policy recommendations be, whether you'd call for the decriminalisation of it. Is it the best policy? Or maybe legalisation

P: Most of the regulations are confined to a small environment. If it's a policy, then it is available for reference purposes throughout. It's when you next implement some of your laws.

If you look at sexual work as people who are employed. How do you then regulate with the labour laws? Do you need people to disclose their HIV status.

I: Which policy are you calling for? Decriminalisation means the government doesn't get involved and it's just labour law. You are mentioning legalising aspects. Which is the best approach for sex work in SA.

P: Decriminalising so people don't get arrested. When you decriminalise, it doesn't mean they are exempted from acts and guidelines. You can't arrest them because it's not illegal. As government we can still create conditions. You can see with marijuana. It is decriminalised. If people are smoking, you can't arrest them. When you are found having more than what is required. If it's a hotel or a room or do you, do it in a place where you sell liquor? As time goes by you can see gaps and then you can close the gaps.

I: So, even if they are decriminalised, they'd still be subject to government laws? That's fine. My next question is what has happened to sex worker policy since 1994 and why hasn't it changed? Has it evolved?

P: We only have commitments, but it doesn't go far. We don't have it as we speak right now. That's why we need to decriminalise. They are not subjected to victimisation. They get humiliated for something they feel comfortable practicing. But decriminalising makes it easier for them. We haven't done this as legislators. It must be done within this term.

I: And why would you say there hasn't been change?

P: It's only conversations which have not resulted in conclusions. Even at the legislature. Every June or so we call a sex worker summit. What we do with their views it just ends there. We must take their views and make necessary changes. We must move away from talk shops.

I: What changes can be pushed from a Gauteng perspective?

P: We can initiate the bills at the legislature. Private amendments bill looking at lobbying your NCOP delegates. NCOP represents all provinces. Gauteng can make a submission and it can be workshopped across the whole country. We have seen with the proposed increased seats of leg. Gauteng started that. We tackled that motion and then it was workshopped through the NCOP across the provinces. Then the president made an undertaking. It must be taken up. How far are we? What about the resolutions? People who attend these summits they must be asked how far they are. What have the requested to be done? Even from speakers and secretary side. Those who attend the summits.

I: So, hold the president accountable.

P: yes, and even the speakers. They facilitate the summits.

I: accountable to their commitments? And then my next question although you've answered part of it. What needs to take place to see change and what form should this take?

P: Relook at resolutions submitted by sex workers themselves and establish processes from speakers and president. What are the next steps? They mustn't reinvent the wheel. Establish where it is? Give it timeframes?

I: What do you think the final outcome/policy will be?

P: Decriminalisation and a platform where they can operate. We don't know whether they will be taxed But regulation in terms of business and health and preventable diseases can be prevented. We don't want to open up …. They must take a responsibility especially as practitioners in this industry. Perhaps a documentation to show they have regular checkups. When it is decriminalised, these must be in place.

I: Would they not be against that they have to do regular checkups? And they have to disclose health status. Would sex workers not challenge that?

P: It might be, but it is an issue. As government we must take care of our own citizens. So as much as it is an industry. When communities are sick governments take responsibilities. So, if they regulate it and say, you don't need to disclose to us or not, but as long as you tell your client. You know you can say you have a right not to, but a client is at least aware of the nature of why you don't want to disclose. As long as you know that this is what is required.

I: I wanted to look at benefits of decriminalisation of sex work. Versus the continued criminalisation of sex work. Also, I wanted to take into account the option which has been given in the governmental report as well as Embrace Dignity's report for the partial decriminalisation of sex work. Let's look at three main options for SA and also partial decriminalisation as an option with the NCOP doing a study. There has been work on this. Why criminalisation is not an option and why decriminalisation is a better option.

P: I think when you decriminalise you give people the right to make choices for themselves. Then second thing you protect sexual workers from ongoing harassment, ongoing victimisation, and persistent stigma attached to them, so they get reduced as human beings as subhuman. Decriminalisation means you don't have that same negativity attached to them. It's not associated anymore. Also, you stand a chance of managing sexual transmitted diseases because these people will not be hiding anymore.

The DOH (Department of Health) can provide necessary preventative measures to them without them feeling singled out as prostitute or what they usually get told. So, when you do this, you allow it. When you continue with criminalisation the stigma continues, it is difficult to deal with STIs. Equally you can't deny people to do their job. They must be doing their jobs with pride. They can do it openly. The clients won't go and hide in the wings and see what they are doing has been wrong. It's not criminalised anymore. Do you must just fully decriminalise without giving it any reservations

I: As I said there's also been a lot of work done around partial decriminalisation where the client is only criminalised. Why are you anti that approach?

P: There is a stigma so if you only do it partially you are still stigmatising… You will find this more common in your urban areas. But when it is decriminalised. You won't find sex workers getting burnt or abused. This thing is allowed. It is people who have rights. If you want to use their service, you can.

I: the major report, SLRC recommended continued crim, or as a second option, partial decriminalisation. Why do you think that report would have gone that particular route?

P: Our country is dominated with Christianity as an ideology, and they have a huge influence in certain aspects which talks about morality or ethics or religion. They feel it's wrong from their religious point of view. But this is a constitutional democracy! AS long as these rights are not infringing on anyone's rights. Mostly they will be propagating for marriage but actually sex workers need to make money. Being a constitutional democracy, you must decriminalise and give people the opportunity to make a choice.

I: Just as a last question, what would you say that women in SA…

P: the majority of women yes. Men also do this even if they are gay and straight, they are also in this industry. You find them in shebeens and clubs it becomes women proposing men and we think women are only part of it.

I: Why do you think people join the industry?

P: For some it's to get an income. For others, the love of sex, there is addiction attached to it. And due to poverty, unemployment. Many people start as students, and they are from rural areas. When they come here and date guys, they can get money to live better lives to pursue studies. They use their bodies to study. It is about not affording to pay for studies and accommodation. When they complete their studies, they work for themselves and leave the sex industry. But even say if you're addicted it's very hard to get out of the industry.

I: From a DA perspective, has the DA done anything to advocate for policy change in this area?

P: I don't think we have done that for say. We stand for decriminalising and giving people an option or a choice. We are advocating for choice. We must come out and support. It's like the minority rights and we must stand for what they believe. Our emphasis is also that the health and safety aspect get looked after.

I: Is there anything else to add around this question.

P: I urge you to look at the legislature summit has reached. What are their concerns and expectations and also where are we as the legislator. That would guide in getting perspective. How do these people prefer to be treated and the type of environment they want to operate in.

Interview 6:

Anonymous DA MPL	DA MPL – Health Portfolio Committee	June 2019

Interview Guide: Interviews with Members of Parliament / Legislatures

1. Can you give me an overview of your understanding of how policies are generally changed in SA and what needs to take place before a policy is changed, including whose inputs are taken into account during the process?

There needs to be a push from the ruling party and preferably a particular champion within that party to ensure that a particular policy change does not stall. This is particularly the case in controversial and complicated areas. It is helpful to have a commission or study group that makes input and then legal drafters get involved so that something useable can be put through the parliamentary process.

2. Can you outline your views on sex work, such as: whether it should be termed as work or not, and the policy recommendation that you would propose for SA in light of the different policy approaches taken in other countries, as well as your views on the call for the decriminalisation of sex work in SA?

In my own political party, I think some of this would fall under a personal conscience clause, so there would not be an imposed party view. I am personally wary of terming it works, others in my party would differ.

I don't feel qualified to take a firm view on decriminalisation.

3. In your view, how has the sex worker policy evolved or not evolved since 1994, and, if not, why has the sex worker policy not seen any significant change to date?

It's a difficult nettle to grasp, and political parties are internally divided on it. It's politically easy to just kick it down the road.

4. In your view, what would need to take place in order to see change in the sex worker policy in SA and what form do you think this change should/would need to take?

Decriminalising and prosecuting the user could get some public support, but there will never be huge public support for any change, it would need to be initiated from above.

5. What would be, do you think, the benefits or disadvantages of the decriminalisation of sex work versus the continued criminalisation of sex work in line with the current policy on sex work in SA? Would you, consequently, recommend partial decriminalisation / criminalisation as a possible policy option; why or why not?

I am personally conflicted on this. We have a context of massive police incompetence and corruption that makes correction of abuses and law enforcement/implementation difficult. It would be best to do a trial change in a delineated area first and then move on from there.

Interview 7:

Ntombi Mekgwe	ANC / Speaker of the GPL	May 2019

How policies are changed in SA

Individuals and groups must acknowledge that there is a problem. They will identify areas of the problem that need to be tackled propose solutions. They will then engage the government in different activities to influence and pressurize government to address the problem. Officials inside the government structures, especially those whose work are affected by the problem to be tackled, can also initiate policy change or policy formulation process.

What needs to take place before policy is changed?

- There should be an identification of a problem that is acknowledged by individuals or a group of individuals.
- This identified problem should be a matter that is under discussion and is highly visible.
- Then the agenda is set up to address the identified problem
- Public participation where citizens or targeted stakeholders are engaged by policy makers and government officials.

Whose inputs are considered during the process.

Policy makers are supposed to consider the views of the majority citizens or people who are directly affected by the problem to be dealt with. Experts and policy implementers must all share their views on the issue. Recently we have seen those that make the loudest noise being listened to; like in the case of Fees must fall campaign who received the attention of the Minister of Higher Education and the majority of South Africans sympathised with them.

My view on sex work

Sex work should be defined as work. My reason for suggesting this way is sorely based on the purpose of the activities that are performed by sex workers which are the advancement of economic development, social justice and labour peace. Most sex workers are not posing any threat to anyone as they engage in sex work. But they are subjected to unsafe working conditions and stigma which needs to be changed under the Constitutional democracy SA is. One of the tenets of democracy is to ensure the protection of the rights of all irrespective of who they are and what they do under the sun.

Democratisation of the workplace

Policy recommendations that I propose for SA

To amend the Basic Conditions of Employment Act (BCEA) and the Labour Relations Act (LRA) to include sex work as an identified trade whether selling or buying of sex as the purpose of economic development, social justice and labour peace are fulfilled by sex workers.
It will also eliminate the abuse that many sex workers are confronted with in their day-to-day work performance and give protection of sex workers. They will also be liable to pay income tax like all other workers in the country.

Has the sex work policy evolved or not since 1994?

- An attempt was made by brothels and some sex worker challenging the unconstitutionality of laws that discriminate against sex workers. But their appeal was dismissed in 2002.

- In 2007, the criminal law amendment act on sexual offences and related matters was change, with the addition of section 20 – any person who has an unlawful carnal intercourse or commits an act of indecency with any person for reward, is guilty of an offence. It criminalises sex work.
- The ANC WL has been discussing that sex work should be decriminalise and to influence the ANC policy that would be a law later since the ANC is governing the country since 1994. This view was supported by the Gender Commission
- The South African law reform commission recommended that the law be retained, or sex work be decriminalised in 2017.
- The Gauteng Provincial Legislature has also included, as part of their public participation mandate, the sector parliament of commercial sex workers. Members of the Provincial Legislature engaged once a year with the sector with the hope of understanding their issues and as law makers take up those matters with the Executive led by the Premier. Since the sector parliaments were established, much still needs to be done and its success on issues raised still need to be seen.

Why has it not changed?

- It is my view that many do not have the full understanding on challenges facing sex workers.
- The stigma that is attached to sex work. That is seen as many people still use the term "prostitute" when referring to sex workers. Even those that are trying to raise these matters are also looked down.
- Majority of South Africans are religious and view sex work as a sin.
- Not enough pressure has been put on government to change the laws in favour of sex workers, like in the case of Fees Must fall campaign.

What must take place before change?

- Radical awareness needs to be done.
- Gender activists and public representatives must put the item on the agenda.
- Lobby influential people and organisations to support.
- The women's organisations, civil society groups, the Gender Commission and the Human Rights Commission should take this matter up and work together.

Benefits or disadvantages of decriminalisation

- Sex workers will be protected.
- The stigma associated with sex work will be changed.
- To secure Human rights for all
- Health services will be accessible to all.

My proposal for what needs to be done.

Total decriminalisation is needed so that the stigma can be removed. Brothels to be registered as workplaces for sex workers and minimum standards be set as to how they should be structured, where they should be located, children under the age of 18 years not to be allowed so as to protect children who are often used as sex objects. Protection of sex workers by the laws and the brothels. Brothels owners will be found to have committed acts of criminality if they don't meet certain minimum standards like safety and provision of condoms and other related health services.

Interview 8:

Mpapa Kanyane	ANC / Deputy Chairperson of Committees	March 2020

1. Can you give me an overview of your understanding of how policies are generally changed in SA and what needs to take place before a policy is changed, including whose inputs are taken into account during the process?

Policies are generally changed in various ways: through referendums, petitions, inquiry, through public participation that might take the form of sector parliament, Bua le Sechaba, road shows, Integrated Development Plans, etc.

2. Can you outline your views on sex work, such as: whether it should be termed as work or not, and the policy recommendation that you would propose for SA in light of the different policy approaches taken in other countries, as well as your views on the call for the decriminalisation of sex work in SA?

I don't affiliate to the notion of sex work since my understanding of sex is an activity out of natural compulsion which requires mutual understanding that lays consensual agreement as a base. It is an activity that is underpinned by lust, pleasure and naturally for procreation. Therefore, a policy elicited should be geared towards regulating the act and preventing infringements.

3. In your view, how has the sex worker policy evolved or not evolved since 1994, and, if not, why has the sex worker policy not seen any significant change to date?

A policy is an end results of a consultative process, especially relevant key stakeholders. Therefore, in this case the state did not pay attention to the matter, and it was never entertained properly at all levels. Activities such as sector parliaments, serve as a tick box and needed to be explored further for a meaningful impact.

4. In your view, what would need to take place in order to see change in the sex worker policy in SA and what form do you think this change should/would need to take?

Consultations with relevant stakeholders should be conducted, studies relating to the topic should be commissioned by government not only at the academic level but at government level to cover a larger scope of the society, comparative study with other countries should be considered, etc.

5. What would be, do you think, the benefits or disadvantages of the decriminalisation of sex work versus the continued criminalisation of sex work in line with the current policy on sex work in SA? Would you, consequently, recommend partial decriminalisation / criminalisation as a possible policy option; why or why not?

I have a problem with the way you phrased your question which concludes that sex work is criminalised before gathering facts. I advocate for a policy that would regulate the act since it is based on a behavioural pattern.

Appendix I: Transcripts: Interviews with Organisations

Key:
I – Interviewer
P – Participant

Interview 1

Ms Clara Singende	Lifeline Johannesburg / Sisonke / Sex Worker	March 2019

I: My first question is to give an overview of how your organisation views sex work giving an indication of the extent of sex work in SA and the reasons why women enter the sex work industry. It's a two-pronged question.

P: So, uh, the organisation is Lifeline's sex worker project. We do support decriminalisation of sex work. And also, a board member is Sisonke. We are fighting for the decriminalisation of sex work.

I: The extent of sex work in SA?

P: can you come again?

I: What is the extent of sex work in SA? SO how many work in the industry?

P: For now, it is criminalised so it's hard to come out and say that they are sex workers.

I: How big is the industry in SA?

P: It is very big. Very big.

I: If you were to describe sex work in SA, how would you describe it?

P: I would say that people are sending their kids to schools, they are feeding their families…

I: Hmm… So….

P: they pay rents with the money.

I: Why would you say women in SA get into sex work.

P: When we talk about women going into sex work in SA we aren't only talking about South Africans. They are also foreign migrants who come here for greener pastures. They have different reasons why they enter sex work. Some it's poverty. Then others its peer pressure.

I: Are those the main reasons? What about if women enjoy it? Like voluntarily.

P: To me that is not a sex worker then. If they enjoy sex. To me it is when they need to feed their families. To pay to send kids to school. Unlike someone just sleeping around. Those are the ones we call prostitutes. Sleeping men for the sake of it.

P: So, you are distinguishing that someone who is a sex worker is a sex worker because they need the money, but a prostitute is someone who does It for the enjoyment?

I: It's an interesting distinction.

How does your organisation view the current view… Why are they pushing for decriminalisation? What will change?

P: There are a lot of things that will change especially in the clinics.

I: What will change in the clinics?

P: In the clinics if someone goes with a STI, they are asked to go with a partner. But you can't go to the clinic with a partner if you are a sex worker. Maybe the condom bursts or is broken but if you get the STI you don't want to spread it. But when you get to the clinic they ask where your partner is. Where will you get that partner? Because the clients they come and go. Yes.

I: Do they refuse service if you don't come with a partner?

P: Sometimes they do there are other clinics where they won't give you treatment. They want to treat both of you.

I: What will change if there is decriminalisation?

P: More sex workers will come and say they are saying this is our business. This will be better for everyone. Even the 90/90 strategy can be reached. Most sex workers will use condoms then. Working underground the sex workers don't use condoms.

I: So, you're saying with criminalisation they work underground?

P: Criminalisation makes them work underground because they are scared of getting arrested. Even at the police stations…. women are being killed every day. If you get raped as a sex worker. Most women won't even go if they got raped by their husbands. But a sex worker can go to a police station that can say they have been raped. If they are decriminalised, they can actually lay a charge. If there is decriminalisation, it won't only affect sex workers, but every woman at large.

I: What else do the women experience because sex work is criminalised?

If you were to list the negative things

P: A sex worker cannot go to the police station they can't press charges for rape, theft or violence.

I: What else affects them? You mentioned the service at clinics. Is there anything else?

P: Yes, the police stations where they can't report cases.

I: And on them personally?

P: And also, in banks, I think. Sex workers need to save their money in the bank.

I: Decriminalisation is a good option. And your option on partial decriminalisation?

As an organisation is it something you would support?

P: Partial decriminalisation is not ok. The clients then won't come to the sex workers because they have been criminalised. Again, it will go underground.

I: And what other effects? Partial decriminalisation, the argument goes, is that it will give the sex worker more freedom because they won't have a criminal record. They can leave sex work and get other jobs in other industries with no criminal record.

P: They are only arresting the men who are coming to buy.

They can't say that sex workers can go and get a job as they have no criminal record now. There are just no jobs full stop. Where are they going to work?

I: That's an important point. They keep saying that sex workers battle to leave the industry. Because they have criminal records.

P: there are no jobs. There is poverty.

I: Without the necessary skills they still won't be able to leave unless there are programmes to upskill them.

P: If they are equipped with skills. Like I mentioned the banking… If they can be borrowed money to start something, maybe they can start something. But not all of them.

I: If you look – I don't know how long you have worked with the organisations – but since 1994, how has sex work policy evolved. Sex workers as well on the ground.

P: In 2016, when Ramaphosa when he did the national sex worker plan. What changed is that sex workers could get condoms, ARV and PrEP. It's an ARV. PeP. It is difficult though to access the post PeP because if she is raped, she can't report that to the police so she can't get that medicine.
In Region F, there was a lady who reported being raped and only being assisted a week later. With PeP you need to take within 72 hours, so she was not helped.

I: Is there any other changes you can see within…

P: Yes, since the march by Sisonke. Maybe 2012 or thereabouts. At least the police are not arresting like they used to before. Like in Gauteng they used to arrest just for carrying condoms even if the department of health is even issuing them. But then the police come, and they burn those condoms.

But since the march and the discissions there is a bit of a change. There are still police stations though who still burn the condoms.

We do need to appreciate where there is a change.

I: Anything else since 1994?

P: Before you could not talk about sex work. Now we can talk about it even on TV. We are free to say we want decriminalisation of sex work.

I: There's only been one policy change…

P: I just want to add something. The other thing that has changed is that since 1994, we can go to the legislature to debate about the decriminalisation of sex work. But now they want partial decriminalisation.

I: Have you seen any changes even because of these debates?

P: That is another problem. Yes, we will debate in the legislature. But nothing is changing.

I: Have you seen that even in the follow ups do they give you responses on the resolutions taken? Do they actively respond to them?

P: They take time to respond. Recently like when they have funds to spend, and their budget is coming to an end. If they want to finish those funds. After they finish the funds, they go away. But then they call for the meetings again when they want to spend the money.

I: Hmmm. The first meeting was in 2014 around sex worker dialogues here at the Leg. Now it's 2019.

Is there a change because now I think they've had four discussions?

P: There was one in 2014. Were there any dialogues I am not sure even in 2017. In 2018 we had a meeting. It was a two-day meeting with the premier's office at the Parktonian hotel.

I: I hope that the legislature will read my report. I actually work there.

P: You work there?

I: I don't actively work with the sex worker dialogues. If you guys are coming to the legislature and debating what is happening to those resolutions?

P: Remember when we went to debating in 2015? They promised they'd call us the following March 2016 to give us the feedback.

I: Did it happen?

P: We don't know as we don't hear anything.

I: So, feedback sessions are a problem?

P: Yes. Because if we debate, they must call us again as the sector to tell us where we are standing. They just don't.

I: And also, the change in political leadership… this was started by Lindiwe Maseko who called for the sex worker parliament because sex workers are seen as a vulnerable group. I am not sure – she started in 2014 but then there has been elections happened.

P: Yes, the minister of police, what's his name? He supports decriminalisation of sex work. And even COSATU.

EFF, even ANC Women Caucus. The one I am not sure is the DA.

I: Yes, I will find out.

P: There has been one policy change. It was the sex worker who was criminalised and now it's the client that's criminalised as well. Did you feel the impact on the ground.
The client is now criminalised. Now how has the industry changed?

P: On that one, what they say in parliament it is not happening in the brothels. Once the sex worker takes money from the client, especially the police. The police actually ask the bribe. The client wants to be released. If he is arrested and sleeps in the cells, then what about their family? There are police who take bribes from sex workers.

I: If they take bribes from them, will they not arrest them?

P: They will release them. Even if sleeping sex workers for an early release.

I: the fact that the clients are criminalised hasn't changed the industry in any way?

P: It doesn't. The other thing they can say criminalise or partial decriminalisation both parties, what I know is that just go the streets they take the sex workers, they can't arrest them. But I was one part of those sex workers who were arrested that time and put in the cells. They just take you and drive around with you. You will be detained on a Friday and a Monday you go to be released. You don't even go into the magistrate (as a sex worker). They release you before you even see the magistrate. The police will say you were loitering and that you were drunk. They will just write that. They won't say prostitution. They will say another reason.

I: Just a quick one. You distinguished between prostitute and sex workers.

Why must it be classified as an actual profession?

P: It is classified as a sex work profession. You can work hard, and you can get more money.

Unless you are working in the shops. With the money they are getting in the shops you can't clothe them, you can't feed them, you can't send them to school with that small money. Now you see fees must fall it is because people can't afford to pay the fees.

I: So, classifying it as an actual profession, what would that change?

P: it will change the industry and a lot of people will come out and say they are now sex workers. The 90/90 (inaudible) strategy will be tested. 90 will be on ARVs, 90 will be on tested, 90 will be on treatment.

I: This is the HIV strategy?

P: If it is still criminalised, the government is not going to reach that 90 percent.

I: what is preventing sex work from seeing any significant change? What is the stumbling block. Is it on government level? Is it societal

P: I will answer partially. It is both parties. If it is decriminalised there will be more sex workers and more people will be able to send their kids to school. That is the main reason why they don't want to decriminalise, because people can then just be sex workers because everything will be so much easier for everyone.

As long as it is criminalised, and people are not free and to work.

When it is decriminalised, they can get more options especially to help their children.

I: The issue of sex work as gender-based violence. Because sex work is being viewed as gender-based violence as violence against women. Maybe they think that if they condone sex work, they are condoning violence against women?

P: Yes, it could be one of the reasons.

I: are there any other stumbling blocks that wouldn't make it a viable profession?

P: Sex workers work with thieves.

I: So, crime would go up?

P: No, it won't go up. Sex workers don't report. But if it is decriminalised, they'd report the rapist and other offenses. They will ask, if it is still criminalised the police will want to know why they were doing it. The sex workers if it is decriminalisation will give up the criminals. And sex workers, they see a lot of things happening. Those who are doing drugs, sex workers they know them. But because now they are scared with criminalisation to say anything.

I: They work with thieves. You mean pimps and brothel owners?

P: Brothel owners are here to offer accommodation. Then there are pimps. Brothel owners they just do business.

I: So, they don't have control over the sex workers?

P: They don't ask why you are booking out. But a pimp watches everything.

I: So, if the industry was decriminalised, what would happen to the pimps?

P: I think the drug issue will decrease.

I: Why?

P: A sex worker who knows a sex worker and knows this one is taking that drugs and that other one is being exploited and taken from another place to come here.

I: You mean people being taken and exploited. That's trafficking.

P: Most of those ones are into drugs. The sex workers have a lot of information about this.

I: What does trafficking impact on the industry? One of the fears is that when it is decriminalised, that trafficking is going to increase.

P: She can go and report if she is trafficked if it is decriminalised. But now, most of the girls who are trafficked are coming out at night.

I: But will trafficking increase?

P: It will decrease.

I: Why because the sex workers will be able to speak out?

P: They will speak out because they will see a lot of things which are happening.

I: Would it not mean that pimps will now exploit more women?

P: Lifeline, Sisonke and the Wits doing the ARVs and PrEP. They speak to these sex workers. So, if they see that there is an underage girl they will report. Now you can't report because it is criminalised.

I: Overall the views and the view of the organisation is that decriminalisation is the best option?

P: For me it is the best option.

I: And you were saying that partial decriminalisation would make them go underground?

P: Partial decriminalisation will push them to go underground. Which won't help for the 90/90/90 strategy as well as the crime rates.

I: You keep recommending 90/90/90 HIV strategy. But isn't this in contradiction to the criminalisation of sex work?

P: so maybe if the client has a broken condom and gets HIV from the sex worker. Now the government wants the 90/90/90 but how are they going to reach it without sex workers being on board?

I: Yes, I get that but isn't that in contradiction. On the one hand they are trying to reduce HIV but on the other hand, the reports are only calling for partial decriminalisation and criminalisation. It's a contradiction.

P: Partial will still make them go underground.

I: Why are they calling for, the LRC they are calling for partial or complete criminalisation. Why?

P: I am not sure why.

I: But why, why would they want that and not proposing decriminalisation?

P: I am not sure.

I: You have spoken about criminalisation is bad for sex workers and also SA. And that partial decriminalisation doesn't respond to the needs of the sex workers.

Why is the government not even calling for that? They are not calling for decriminalisation. Why are they not calling for decriminalisation?

P: I don't even know. Sex back will remain. It has always even been there. It is not going anywhere. Whatever they do sex workers will just continue working. They will go underground.

I: What do you mean?

P: Sex work is way back and will always be there. And we just need to face reality that they are there. Decriminalisation will help other NGOs to work with them. NGOs work with self-identified sex workers.

I: I want to try and understand the South African environment itself. What does it mean that in SA it will continue?

P: Things are hard. The number of unemployment is increased. Where will they go to feed their kids? Except going into the industry

I: Yes, and what about the gender dynamics in SA? How does that impact women entering sex work?

P: Lots of people will lose jobs then maybe you have to enter sex work. Where will you get the money if you are not working?

I: I mean with the gender dynamics. It's mainly women entering the sex industry. Why?

P: It's not only women. It is also Trans Gender and men sleeping with other men. (MSM). They are also there. With MSM, the men who are married will even sleep with men. You will be shocked to know! Yes, it is women, but you also have transgenders in the industry.

I: So, the large majority is women?

P: Yes. Women are vulnerable. They have children to look after. They are mothers.

I: So, it is mothers. …I was trying to get the dynamics. Like men don't always pick the option is sex work. But for women it is sex work as an option. There are other options so why sex work?

P: It pays better and also; they are mothers they are more caring than men.

I: Would you class sex work as gender-based violence.

P: I think I will.

I: Why?

P: Because you know in the community if they realise you are a sex worker. You will be at risk.

I: Why?

P: Because maybe women think you will take their man? And the truth is that yes, we want sex work to be decriminalised, but one can't be proud of saying they're a sex worker.

I: So even if there is decriminalisation it is not something that women would want to openly speak about? And how do you think what the community thinks affects the sex worker policy in SA?

P: they won't be happy to hear that it is decriminalised. But the only thing is that the NGOs can sensitise on the sex worker industry. They must understand why people are getting into this business. Maybe lobbying the community to understand what is sex work.

I: Will decriminalisation assist with decreasing stigma?

P: You must sensitise the nurses, policy, and the community. They will understand why people get into sex work and what is sex work.

I: Ok. So, decriminalisation on its own won't solve the problem? There must be further education?

P: Yes, it can't happen on its own just the decriminalisation. There must be sensitisation of all these people, ne. It will help sex workers work freely with the law, but the nurses, community, and police. And even at the courts, they must be sensitised. Sometimes they don't care, and they will laugh at you. Even the court. When they introduce at the court the case, and they say this one is a sex worker. The court starts laughing.

I: Is that necessary to note her profession?

P: That is what we want the courts to be sensitised. To deal with the case and not with the person.

I: If you go to the clinic what happens?

P: There is discrimination there. If you have an STI (Sexual Transmitted Infection) or are not feeling well. Sometimes you must tell them everything. You tell the truth. The nurse will leave you sitting and will call someone else – another nurse – and they will say – look I have a sex worker, or I have a transgender.

Even in home affairs it happens. They go and call the other staff and say look I have a TG or a sex worker here.

I: If you go and say you were raped. DO you need to say you're a sex worker? Can't you just say you were raped?

P: They will want to know all the information though. Some two weeks back, she stays in the brothel. She went with her friends to work. She realised she left something in her room. When she opened her door to get inside

the room. She heard someone pushing her, then started raping her. She told security after. Now you must go to the police and tell them the address you are staying; they know you are a sex worker. There are places you cannot be.

She reported the case to the manager and the security. When she actually saw the guy a few days later, the guy refused. The lady was so traumatised. She didn't eat the whole week. We were all traumatised.

The manager asked if she got tablets but that she needs to eat first. She got some food from spar. We went to get her food. She was crying hysterically, shame, as if it had just happened.

I want to tell you a story about me: there was a guy who asked me to come into his car and I said no I am not. He said yes but your friend is there. When I looked inside the car, I saw another lady I know.

This lady says, there is no problem come in. I got in. He said he wanted to do business with me. But said he'd drop the other lady first. Then, the guy said he'd take me to the police station. He was a police officer.

Then I went to the gym and slept with him there. He said he was going to give me my money. But he said he would bring it the next day only. He never came. Two weeks there was an operation taking place and that same police officer arrested me.

When I went to the police station and talk. I called the other police officer and said why do people not pay when they sleep with a sex worker, but then they are the same people who come and arrest me? I pointed to the guy who didn't pay me. So, on that day I had to sleep in the cells until Monday. When he came to arrest me another time I refused.

Very scary. In Witbank it is just too much.

I: Do you work in Joburg?

P: I work where there is money.

I: Yes, but it is scary. Does your family know you are a sex worker?

P: They don't. My kids are grown now.

I: If I use your name in my research must I hide the fact that you are a sex worker in case it gets recognised? But you are also working in the public eye?

P: I think they will be confused.

When I was writing The Voice – the newsletter for sex workers – I was using my real name. In interviews, I was using my real name. I am from Zim. I was even on SABC they didn't see the clips only the pictures.

I did explain to the family I work with sex workers. But my first born doesn't know I am a sex worker. This first born went to Dubai. My three others are in Zim.

I: You do this because you have children.

P: The father helps with fees. But the other one phoned me and needed more money especially if they are in university. Especially this girl of mine. If you don't help, then she will also go into sex work.

I: How would you feel if your daughter went into sex work?

P: I'd feel bad about it. It is why I want her to study and make the best of life.

I: So, it's not an industry you want your family to join?

P: We not fighting for decriminalisation because we want people to join the industry. We are fighting for decriminalisation for those already in the industry. You understand?

I: For those in the industry?

P: this is also where the government must look. We don't recruit sex workers. We want those already in there to be assisted.

I: That makes sense. I think that's the biggest fear is that more people will enter the industry. They think oh it's a viable career option…

P: Yes, but the number won't go up.

I: the other thing I read in the media was that the SALRC released in 2017 which called for continued and partial criminalisation, some of the media was saying that this was for gender-based violence.

P: By keeping it criminalised it won't help with GBV.

I: They think it's the only way this is going to help GBV. It's like these are the policy options they can use.

P: No, these policy makers want to hide from the truth. The truth is that it will always be there.

They must just decriminalise it. The number won't go up. It will increase people's health so they can use condoms. They don't want to come and now say they are sex workers.

I: Don't they buy their own condoms though?

P: A group of self-identified sex workers will take the whole box of condoms and take home. Those who don't identify as sex workers they won't even take the condoms. They don't collect them. So, if there is a client in, she won't sleep with the condom. People think that if you carry a condom, you are a sex worker. So, people don't want that.

Even if there is a bus that goes to work as a peer educator. You put condoms on the counter. They just leave them because they are scared. There was a time we did a bulk distribution. When we came back, they were still there! When I asked the guy at the bar, because I knew this was a busy place, why the girls didn't take the condoms, he said they just take men and go.

I asked him to take the condoms to put in male and female toilets. The next day I checked, and he said that the condoms were taken though. So, this is also good to take the condom in the toilet where you can hide it in your bra.

I: thank you for sharing the experience about the people who are on the ground working.

Interview 2:

Ms Melodie Van Brakel	Cradle of Hope	March 2019

I: The first question is what does your organisation's view on sex work, the extent of sex work, and the state of the industry in SA.

P: So, the Cradle of Hope does not judge sex workers. We have huge sympathy for them and the situations they are in. We help them regardless – a doctor, a dentist on board. We will never not help them. They definitely in Krugersdorp is very bad. The raid three years and 190 sex workers were arrested in the Sivelwright area.

A lot of ladies enter the sex work industry because it pays well, and they can't get other jobs. In their other jobs they earn R2000-R3000 a month. How does that help? Especially to sustain 2 or 3 kids.

Unfortunately, in the sex work industry, the stuff they face every day, they need to use substances. This results in them working as a sex worker to sustain drug addiction too, not only to support their families.

I: What would you say the extent of sex work is in SA?

P: Huge. I think it's a huge problem everywhere with certain areas worse. Jhb CBD and a huge industry in CT. it's getting worse, because of poverty increasing. The sex workers we help come through our programme. They

then find money earning R2000 a month as a packer or they become a car guard, but then they return to sex work because they can earn more money.

I: What is your view on sex work policy in SA?

P:it would be absolutely wonderful if they could decriminalise it. The human trafficking may increase as the pimps who host these ladies may want more. Everyone judges them though. Zero tolerance from the religious organisations. Sex workers seen as useless and dirty, bad, problematic, minor beings. I even talk about the religious organisations judging them. One day in Church, I was asked to speak in town at a church. I took a couple of ladies who are sex workers with me, and afterwards one of the girls showed a gentleman who was on the church committee. She said he was her top clients. But they get judged?

Guys in fortuners will have a cross dangling from the mirror… There is a lot of hypocrisy.

I: And your views on criminalisation?

P: I think it's bad – Jesus was the first to decriminalise prostitution and now that they are criminalised, they don't have access to healthcare. The police use them. I do not know one single sex worker that I have spoken to who has not been exploited by the police. Get used. They get arrested then they have to have sex with the police so they can be released. Also, I think it gives the general public the view that sex workers are criminals.

They are not criminals. It has been around for centuries. And why the ladies do it is to pay the rent and fee their children.

I: then how do you feel the policy has evolved since 1994?

P: Nothing has happened. All talk and no do. The government doesn't care. Talk talk talk and nothing. I have no faith left. They don't walk their talk. Every once in a while, something pops up in the newspapers then for years nothing happens.

I: Ever since the ANC took power; they spoke about the decriminalisation of sex work. The department of justice has been working on this for 20 years. What is your view about what their recommendations? They are recommending criminalisation and partial decriminalisation. Why are they still doing this 20 years down the line?

P: what are they thinking. It's so typical. They see what happens in first world countries then try and implement it here which is not possible. But of course, if your daughter is a sex worker then maybe something will happen.

The criminalisation is a human rights violation. These girls go through hell on a daily business. And the clients which I don't really care, but still.

I: What are the stumbling blocks to change the policy? And to put it on the backburner.

P: it's all on the backburner. It's like everything in SA; no one cares. What' sin it for me then I don't care. People are earning salaries and not walking their talk. They don't do their jobs and come late for meetings. It's pathetic.

I: The other big option is partial criminalisation. What do you think?

P: Look there needs to be decent control of the criminalisation and decriminalisation. It causes problems. Which bodies are going to control this? The police control criminalisation and they abuse it. So the criminalisation is not being controlled. If they decriminalisation it how will that be controlled? Who will be bribed to look the other way, either way.

I have seen the corrupt cops here in Krugersdorp.

It's all nice having these things on paper. But it's not being done.

I: So, if they partially decriminalisation there will be a need for control?

P: The pimps and the madams at the whore houses will even take on more ladies to work for them.

All of a sudden, it's ok to have this.

I: Under partial, the pimps and the madams will still be criminalised.

P: I would like that then the women could get access to healthcare which now they are judged for and can't work.

I: Who pays off who as you said. So, if it was partially decriminalisation, it means the clients are criminalised. They may pay off the police to look the other way. Would partial decriminalisation work in practice?

P: No, unless it's controlled by ethical people with commitment, dedication and integrity.

I: If you look at complete decriminalisation, then it's about labour laws only and no government control.

P: depends on who is controlling the whole thing. Is it going to be an ethical thing or just a nice thing on paper?

I: We have been talking about the experiences of sex workers themselves. What about gender-based violence. What is your view. People say that if we decriminalisation, then we condone GBV.

P: Most of the girls who are sex workers are very often abused financially (not paid), physically, and a lot of people think sex workers have sex with men. They hardly ever have penetrative sex with men. It's all about what the men don't get at home that they get from the sex worker. Like fantasies. Pee on them. Get the girl to smear her body with faeces. Get paid R30. A lot of girls have baby items, purity, dummies and they want the sex worker would treat them like a baby. No sex involved.

Emotionally therefore the sex workers are abused.

Violently raped. It's what the guy doesn't get to do at his home.

And the girls can't go to the clinic. They can but they don't. They are judged or laughed at or chased away. They can't go to the police and lay a charge. It's a complete lack of human rights.

Some of the men get women to cut off a dog's head while the man masturbates. No sex.

A white girl, 18. Her mother rented her out for drugs. They actually get pimped by their parents for money for drugs.

I: In an ideal world, what would you say the policy should be to protect these sex workers?

P: We would love our neighbour. The human race is bad, bad, bad.

I: There are four policy options – decriminalisation, partial decriminalisation, criminalisation, legalisation. These are global. Would any of these be able to assist them?

P: I don't know. What are they?

I: (explains the options).

P: The partial decriminalisation could work, and I like the legalisation. There could be a service hub where they could get toiletries and condoms.

I: That's the one option actually they don't really want that.

The decriminalisation is the main policy they want in SA.

P: your areas, your service hub, this would work though. Funny they are not looking into it.

I: If they are legalised who would manage these policies? Can they manage these on the ground. Police can still arrest sex workers outside of the designated area.

P: Maybe some countries do it very well.

I: I think that that's why they are calling for complete decriminalise it.

P: there's no perfect option. It's a difficult thing to choose. They can't make up their mind that's why nothing has been done. It's so typical of SA. This is not only in government (this expediency), but it is everywhere.

I: The argument with decriminalisation is that it increases trafficking and also GBV.

P: the human trafficking will go up and the GBV because anyone can do whatever they want. We need a government that can care. I don't have a problem with the ANC. I have a problem with Jacob Zuma enriching himself. I have a lot of faith in Cyril Ramaphosa, but he could be voted out. But my experience with the Krugersdorp municipality and local government is that things are falling apart. I don't have anyone who I can phone when there's a little girl who has been raped by her father. No follow through or come back.

I: Is a government change the only thing that will lead to change?

P: People must get off their assess and help others. Why must they always phone me to do it? If God brought that person in that life, you must help. Start getting involved! Everyone complains but they do nothing. Everyone goes on about the fucking "Ks" that have fucked up the country. It's not them. I hate the fact that white Afrikaans people hate the "Ks" I know lovely black people and I know horrible white people. I know stunningly black people, the DA counsellor for one.

We don't see colour at the Cradle of Help when they come for help. People should stop complaining and so something.

I: I agree.

P: I have actually with the DA stuffing up. Who do we actually vote for? People should now look past the party and vote for Cyril Ramaphosa. So that the EFF can't come into control. I like that.

I: Anyway, what do sex workers need in SA. If we can sum that up because then we can link to see which policy option is best.

P: People should see them as your neighbour as the bible says. I think people should look at them with softer eyes and not judge them. They must understand why they are doing what they are doing. Realising that maybe *my* husband is one. They service 10-15 men a day these 190 women here. They should have access to basic healthcare. I have a massive problem with the fact that they can't go to the clinics. They are judged or chased.

We do have a private doctor to help them, as well as a dentist.

The nurses tell them that they are busy, Why must they attend to a whore if they need to attend to 40 others with babies.

A big problem in Krugersdorp is that the whores live in crack houses. They don't have running water or flushing toilets. And the men just come. And 10-15 men who come and you can't bath?

That's why I want a service hub. To change that shelter on Sivelwright street where at least they can have a shower. I wouldn't bible bash them. In fact, I hate bible bashing, and tell them they will go to hell. Cannot handle this. This place is where they can eat and shower and NOT be told that Jesus loves them, and they will go to hell. The girls hate going to places where they are told they are going to hell. Jesus says that the prostitutes and tax collectors have a better chance of going to heaven rather than the rich and hypocrites.

I: Can you choose to be a sex worker. To what level do women choose sex work over other options?

P: Corey, no one who I have worked for in 12 years woke up and said they wanted to be a sex worker. It's something you get pulled into and you don't have a choice. Maybe you could leave and then get a worse paying job. Or you could earn 10 times that as a sex worker.

We have a girl who works at a strip club by Flora clinic. She is a stripper and is a high-class sex worker. She is earning R150 000 a month. Now tell her to choose!

I: You could live differently, and people say you have a choice. Do you?

P: Some of the poorer sex workers live in a crack house and earn R10. These are the ones who are human trafficked. These are mainly the ladies who get drugs from their pimps. These pimps have spotters and make sure that churches don't connect or bond with them. A lot of these girls are impregnated by their pimps. Then they land up with a physically or mentally handicapped children. There are two types of sex workers. This other one earns R150 000 and must leave that and pack bags and stay at the shelter? I don't think she would make that choice. The money talks.

Yes, we have those girls who come here but they all fall back – maybe even in the Russian guys. These guys give them cocaine, drive around in smart cars, go overseas.

I: there are different types of prostitution. We actually forget that those who earn the big money they choose to stay. Within the levels of prostitution there is agency. There are options. Another lady was distinguishing between a sex worker and a prostitute. The upper class are the prostitutes.

I used to think prostitutes was just derogatory but actually it isn't to some.

P: In 12 years I have never met a sex worker who has ever enjoyed her job.

I: Even the one earning R150k a month?

P: She just does it for the money. The sex is physical. No kissing or fondling. Because of the horrible things they have to do. It's not normal penetration. It's all these other warped weird things they have to do. I wouldn't enjoy being peed on. But if they pay R1000 she'd do it.

I: If you look at what you have listed, you focused on the community's response. Would any policy options achieve this?

P: the legalisation sounds ok to me. If we knew that in SIvelwright street that there is where they operate and that the shelter is close by. That would be ideal. We'd have a doctor on board. They don't need to go to the clinic and stand in long queues where they will lose money. IF we could get the women's shelter to be a hub where the girls could come without judgement and bible bashing.

I must say that I am constantly fighting with the churches. However, a lot of them have come on board. There are a couple of them that there is an outreach group. They take them food and toiletries. No bible bashing. The outreach teams from religious orgs, they only have one thing on their mind: people go to hell. The girls run away. It is therefore not an outreach it is an out PUSH.

I: The communities are trying but aren't doing it correctly?

P: I know what I say has influenced people and a lot also hate me. I love Facebook that we get to share and change perspectives. I see that there are a lot of people whose hearts have changed. There has definitely been a positive change in Krugersdorp. Not as much as we'd like. It's because of Cradle, and Tower and Facebook.

I don't say anything to please people.

I: this gives me a good perspective: what needs to change and what is happening on the ground. Thank you.

Interview 3

Ms Ishtar Lakhani	SWEAT	April 2019

P: I took a quick look at the questions. Decriminalisation policy and it stalled.

I: yes, why there has been no progress and SWEAT's views.

My first question is how does your organisation view sex work, in SA and why they enter the sex work industry.

P: We started our work in 1994 so it's as old as our democracy. We look at the rights of adult sex workers in SA. We do a range of work. My work lies around advocacy and law reform. Advocating for full decriminalisation of consensual sex work. We do service provision where we run a helpline. We have birthed Sisonke, and ASWAR. The latter is based in Kenya. We launched a sex worker clinic as a legal defence centre do. Our perspective is that sex work is work. It is a choice and that their rights should be protected. If it is as trafficking, or minors, we view that as exploitation. Not sex work.

Extent of sex work in SA – because it is criminalised it is hard to do research. We did a size estimation study. 153000-180000 but this may be conservative estimate. There is also online etc.

Why people the enter the industry. Yes, they are female, but we also work with men and trans people.

We live in a capitalist economy, and we need money to survive. People enter into sex work for the same reasons as teaching or domestic work. It's to make a living.

Our work is countering the narrative about why people enter sex work.

Hollywood has perpetuated this myth that sex workers are drug addicts. Narrative that people are supporting others and extended families. This is the better narrative. They support 8-10 people.

I: What would the best approach be for sex worker policy.

P: SWEAT advocates for full decriminalisation. This is the model that sex worker-led organisations want. This is also global. And this is in addition to evidence. We believe in public health research.

Buying, selling, living off proceeds, brothel keeping – they're all criminalisation owing to the 1957 immorality act. 2006 – the buying of sex criminalisation.

Generally, four regulatory models – partial, legalisation, criminalisation, decriminalisation.

Our preferred approach and that the call for full decriminalisation has been growing globally.

This would help access to justice, healthcare and HIV. Decriminalisation is one of the models that has been proven to work.

I: Some orgs are calling for partial decriminalisation?

P: For us are evidence based. In the Nordic countries with partial decriminalisation, they can see it's not the best model. The majority of people who support this are wanting to abolish the sex industry. This does not support evidence. For example, the Nordic governments said that with partial decriminalisation the number of sex workers went down. This was not true. They merely went underground.

One of the things that concerns me is that with partial decriminalisation. I am allowed to sell my tomatoes, but no one is allowed to buy them. At the end of the day sex workers will protect their clients and their incomes.

So, they will then do business in dark and secluded areas. Irish sex workers believe this model is going to make them unsafe. Partial decriminalisation means going underground and therefore being more unsafe.

People also say that partial decriminalisation will protect sex workers from clients. At the moment everyone is criminalised, but this hasn't had any impact on safety or violence.

So, for us the position is evidence based and not moralistically based as what women should and shouldn't do with their bodies.

We saw success in New Zealand which has been positive in terms of full decriminalisation. Better relationships with the police and access to healthcare has come with it.

Obviously, you can't copy and paste that context.

I: How has sex worker policy evolved in 1994. Why has there been no change?

P: The investigation into "adult prostitution" in 1997. SALRC then looked at sexual offences. Then there was a first discussion paper and a draft of the sexual offences bill. Then there was something around procedure. In 2002, I think, they realised an issue paper. In 2009 they produced an adult prostitution discussion paper. But after that they sat on it. The SALRC report was released in 2017. It's been one helluva journey. With regards to regulation, it has been little volution in the sense that since 1997 to now, nothing has changed.

This is why SWEAT exists…. Of course, we offered and collaborated to draft submissions. When I came on board in 2014 it was mainly around us trying to get them to release the report. Govt used the excuse that they were drafting the report as a scapegoat for not doing anything.

We said that we have been waiting for 20 years. We did advocacy in 2014 and 2015 to force them to release. Without the pressure from the sex work report and civil society, we would not have that report. SALRC and the Dept of Justice were blaming one another.

While they were sitting on this SALRC report for years. We worked with the SANAC to launch another report. There have been other policies which take account of sex workers. Like our collabs with DSD (Department of Social Development) and DOH (Department of Health), and multiple party women's caucus. They eventually released the report two years ago and yet have done nothing. We harass the deputy minister of justice to move on the engagement.

We think the report itself is bad – its recommendations and rigour. A lot of that report is grounded in moral views of sex and not bringing out the voice of sex workers. Even though SALOC worked with Sisonke. The rocking chair documentary done by a far-right US network. Now that the report is out, we need public consultation. I think there's actually a lot of political will or maybe not, but it seems as if they are holding back because the report is embarrassingly bad for them.

It is seen by politicians that it's seen as controversial. But the EFF and DA included sex work in their election manifesto.

At the ANC policy conference, there was also discussions which suggests that politicians are not seeing it as so controversial now.

I mean if you look at the Law Reform Commission there were years where there were no commissioners. In chapter 9 institutions, there is general incompetence. There has been a large moral pushback.

People conflate giving sex workers rights and condoning sex work. Our work is to try and help them separate human rights and their moral views.

Sex work is an intersectional profession. They are also oppressed because they are women. They are oppressed because they are poor. We live in a country that doesn't prioritise the poor. We look at how they are also foreign nationals, and we see the rampant xenophobia.

It is also a very complex issue. They hesitate to get involved in a complex policy. It means also looking into the poor, and patriarchy and xenophobia.

I: In the 54th conference in December 2017, they supported decriminalisation. When I went to the resolutions, they spoke about more about the discussions around adult prostitution. A lot of the policy documents that spoke to decriminalisation, they aren't there. It's like there's no support in black and white and on paper.

P: The press conference they did come out in support of decriminalisation. But later on, the resolution was watered down. They were just politicking and avoiding the issue.

There are also individuals who have their own moral views around sex work. Morally, and also, they are misogynists. They lobbied very hard against decriminalisation. That also shows the lack of consultation and willingness to take sex workers seriously. This is also about party politics and the egos and role plays particularly at the ANC policy conference. They may support decriminalisation to us but don't do so publicly.

If we look at parties and members of parliament, many are in support of decriminalisation but just can't because of internal party politics.

The call for decriminalisation came within the total shutdown movement was an expression of women in general in SA sick of GBV. It wasn't just the sex worker movement; it was the women's movement. It was their 5th demand which is powerful for SWEAT: decriminalisation is not an issue around sex; it is about GBV and HIV. Four or five years we launched Asijiki coalition mainly SA human rights-based orgs who want decriminalisation. This is a broad coalition advocating for decriminalisation.

With the recent comments from Cyril about reading the Total Shutdown who are wanting to end GBV know you can't do that without the decriminalisation of sex work.

Our impediments are because of that internal politicking.

I: the NCOP did a study tour to look at Sweden. They are leaning towards partial criminalisation like Embrace Dignity?

P: I mean I know internally there was an upset around the petitions committee. This was their first interest in sex work was a study tour to go to Sweden! The multiparty women's caucus has always been the committee doing the sex work engagement. If you look at the Swedish report, the one thing that stood out was that they spoke to no one who actually sold sex.

No sex worker orgs were interviewed. Can this be well informed?

We know that NSWP -and we know that definitely sex worker led organisations are not a fan of the Swedish model. Sex workers were not consulted.

Our concern is that we don't know what's going to happen with this latest report. It is a bad report.

This year the deputy police and Michael Masuta did vocally support decriminalisation. But who knows.

I: What needs to take place to change policy? What form will it take? What is most likely?

P: I mean…. I do want to say that we are closer to decriminalisation than we have ever been in the sense that we have a lot of research and support around decriminalisation. Like in New South Wales, they have decriminalisation. In the US there has expressed support for decriminalisation.

On a basic level we want to engage in the report. This report is the hold up and the reason we haven't done anything. Now that this report is out (we had to pressure them to release). That is to say that it is unlikely the government won't do anything out of the goodness of its heart.

This change will only come from the pressure we put on them.

Of course, we'd like the fill decriminalisation of sex work, but we know that law reform is slow and arduous.

We are also looking not only at parliament, but also at constitutional court level.

We need to be strategic and use as many legal avenues as we can.

I: Just in terms of the constitutional court, the Jordan case felt the changes need to happen in parliament. Can the concourt change this or defer to the parliament?

P: the state versus Jordan? To bear in mind that a new concourt challenge would happen in a different context. There was a lot of assumptions made with no evidence. Moral assumptions. We are however seeing changes – like with marijuana in the courts. There can't be moralistic underpinnings to guide our law. This has not worked out well.

This is not the first time that the courts and SA government has been challenged to do anything. There was a moral pushback against LGBTIQA+ leg, yet we now have that. Abortion and death penalties = all these moral pushbacks… But here we now have laws allowing abortions and banning the death penalty.

I: how does the sex worker policy affecting sex workers on the ground?

P: I have fact sheets which are on our website. There are so many well document, evidence-based is to support decriminalisation. We produced these to show why we support decriminalisation in the context of human trafficking, from a religious perspective etc. The fact sheets show legitimate reasons to support decriminalisation. We work with the largest org on the continent was Sisonke.

This is what sex workers themselves are calling for. Our duty is respecting the knowledge and agency of people in the industry. Sex workers are at the centre of this research. It is NB we are advocating for their rights and for them to have that central voice.

I: You speak about sex workers at the forefront. Partial decriminalisation is that no one wants to be in the industry according to Embrace Dignity.

P: For me it is problematic to make assumptions based on the minority. Embrace Dignity when it comes to the consequences we agree – there should not be abuse. But what we disagree with is the model that Embrace Dignity has which is abolitionist. This removed agency from individuals.

No one wakes up wants to be a mine worker as much as they want to be a sex worker.

We therefore don't have a moralistic view but are against exploitation. We work with an entire movement. When they do their interviews, it is based on one or two voices only. People who have left the industry will not want to be part of the industry. The same is if a teacher leaves, they also get abused.

We need to listen to voices and listen to choose. Where there is a global movement of sex workers saying that in the context of limited choices (beadwork, cashier etc), they choose sex work.

But then Embrace Dignity says, "You don't know what you are talking about, you must do beadwork."

Therefore, we must work with sex-worker led organisations. Including those across the region and in Africa.

Where we are finding that a lot of the sex workers are calling for decriminalisation. Let's respect that and also the ability to make choices.

We also want sex workers to be able to choose to NOT do sex work. There should be a choice. The exit programmes however make it difficult to leave.

We therefore are trying to figure out what an exit programme looks like should it be sex worker led. The current exit programmes (churches etc), think ok let's do beadwork. That will absolutely not be able to feed 8-10 people.

We are looking at socio-economic opportunities which will really help within the context of decriminalisation.

Criminalisation is just so problematic. We can't report on trafficking and also child exploitation when it's criminalised.

I: You spoke about some other reports that weren't accounted for?

P: The lancet study on HIV was that the quickest and easiest thing to reduce HIV was to decriminalise sex work. SANAC HIV sex worker plan has not been referenced. Public health research was not actually taken into account. What you'll see is that the SALRC report are like YouTube references. It is not ok. We have gone through the SALRC report with a fine-tooth comb and really, we showed how they have made misogynistic assumptions.

Interview 4:

Ms Marlise Richter	SONKE Gender Justice	April 2019

Interviewer: How does your organisation view sex work; what the extent of sex work is in SA, and why women enter the industry.

Participant: So, Sonke has a clear position on the decriminalisation on sex work and the safeguarding of human rights For the last six years. We deliberately use the word sex work because we believe it is a form of labour. Prostitution is derogatory and is discriminatory and old fashioned by UN guidelines on their terminology. Women, men and transgender people enter the sex industry as any other person: to make ends meet, to care for dependants and for financial stability for themselves and their extended families.

In terms of the extent of sex work I am not sure of this question but if you mean the numbers, then there was a report by UCSF, and it estimated there are 153 000 female sex workers in SA.

I: and men and transgender.

P: From work in 2010 in Hillbrow, Rustenburg, Sandton my sample there was about 5% of male, and 3% transgender. Which is not representative.

I: the views around the current sex work policy? What is preferred?

P: There is no policy on sex work?

I: Criminalisation.

P: that's the legal framework. There is no sex work policy. SANAC has a policy framework, which supports decriminalisation. It is robust and evidence based. It is fully criminalised in SA, and the laws that criminalise this are apartheid laws that were the same laws that outlawed same sex and mixed-race relationships. Those provisions have been struck down as unconstitutional, yet we still have this colonial relic regarding the sex work law. So as an organisation we view these laws as outdated: they are not based on public health evidence or human rights values. We believe that this needs to be urgently reformed.

I: What is your views on the legal framework's evolution?

P: The legal framework is still in the same wording as in the immorality act in the 1950s. There have been changes to the sexual offences act though. Following a 2002 Constitution vs Jordan – now it specifically criminalises clients too. But the law was very gendered before. That the sex worker must carry the burden. But the LRC now makes it explicit that the client is outlawed too.

I: How has your organisation been involved?

P: We have made submissions to parliament. We are part of the multi-party women's caucus and the Asijiki coalition in order to push for the decriminalisation of sex work. This calls for urgent action. We advocate on a number of levels for urgent change to the legislation.

I: What is the effect of criminalisation on sex workers on the ground?

P: the public health evidence is clear. Sex workers, clients and their family members are prone to violence. It makes sex workers more susceptible to HIV and illnesses. There is abuse by police officers. Their chances of being murdered are higher. It makes accessing services very hard.

I: How does decriminalisation change this?

P: it would change the law which would mean that sex workers are under the fold under labour laws. Occupational health and safety, labour safeguards would apply. There would be a police duty to protect rather than prosecute them. Contracts between clients and sex workers are legally enforceable.

I: What is your view on partial decriminalisation? This is an option for the government.

P: So, the LRC (Law Reform Commissions) discussed four options. The LRC report recommended ongoing criminalisation and later included their recommendations on partial decriminalisation even if they weren't even enthusiastic about it. Adult consensual sex – the banning of this – will have far reaching impacts on public health and human rights. AS an organisation we strongly disagree with this. And the Asijiki there is a refutation report to show the LRC report is outdated and doesn't account for recent developments in the public health field.

I: What would need to happen in SA for us to see any form of change? Which other option should happen for the change to take place.

P: President Ramaphosa signed the framework on the GBV summit. He committed the govt to see through the process of decriminalisation of sex work. This could be a hopeful thing that they will change the sexual offences act and implement the New Zealand decriminalisation policy, adapt it to SA, and then implement that urgently.

Politically there must be a strong commitment to evidence-based information and not let morality infuse the debate. And to make it clear that decriminalisation that makes women and the public safer. Regardless of people's opinions there can still be a very clear recognition of the far-reaching implications of the criminal law.

I: the government went to Sweden – the NCOP – would this impact on the decision. They seem to want partial decriminalisation.

P: They did not speak to one sex worker as far as I know. Why not go to more countries and speak to the people who are directly impacted by the laws. What about going to NZ and Australia to get a full rounded approach to the different legal approach.

I: Embrace Dignity petitioned before parliament for partial decriminalisation. They said they spoke to sex workers and most want to leave and that at the recent conference, they said that sex is neither sex, nor work. What do you think?

P: So, sex workers who want to leave should absolutely be supported to leave. I think you can be a sex worker who has worked in it and hated it, but you can still be clear that the criminal law makes the industry much worse to compound vulnerabilities. I think that sex workers are given options that is important. Sex workers who want to continue should also be supported. You make the industry safer by decriminalising it. Full stop. The partial decriminalisation that one party is criminalised have far reaching implications. The abuse by the police to extort sex workers and clients remains.

I: And sex work is exploitative. That no women would actually choose to be in the sex work industry. What are your views?

P: So, Corey, there are many industries which are exploitative. Mining is exploitative. The domestic work sector is overwhelmingly exploitative. We try and not decriminalise and put safeguards in place.

I: The president is moving toward decriminalisation. Do you think the govt could implement the different policy option.

P: Ok I don't like using the language of policy. Policies change. Law is complex and time intensive. Law has a stronger impact. If we are talking about law reform. The recent commitments and the total shutdown movement were about GBV and that decriminalisation was clearly included there, shows that together with the sex worker plan in 2017, revealed that Ramaphosa said that sex work is work. There may be commitment at the very top of the ANC. But of course, we have heard this many times before. The law reform was initiated 20 years ago and indeed we are still sitting on this. In some ways it is worse. I'd like to see a bill table and that promulgated through parliament quickly.

There are positive indications, but I want to see a draft bill and see that proves galvanised by political will.

They would need to remove the provisions in the sexual offences event. There would need to be a simple law that sex work is work and deals with the provisions as independent contracts and what the implications would be if there was a collective, health and safety precautions. So, this would need to be a separate legislation, I think.

I: What are the stumbling blocks to decriminalisation legislation? And how long would it take if they were to change it.

P: I have no idea the length. Law reform takes extremely long. If it is controversial it takes longer. The DOJ (Department of Justice) would need to be charged with developing a bill. Stumbling blocks are sexual moralism. Pushback by radical feminists and Christian groups. So, the normal consultations would happen.

I: overall, general concerns around sex work and things to take into account?

P: So, I think the rub of the matter is that adult consensual sex should not be criminalised. Legalisation is very strict. There are some places that makes them carry cards and subjects them to random health checks. And registrations… There are some who just won't be part of the regulations and be subjected to the system. With adult consensual sex there should be no control by the government.
For me, Corey, your research should be led and have an entry point with the evidence. The evidence is clear talking to a history, the AIDS epidemic, that the criminalisation makes it worse. With legalisation is makes them more vulnerable. There are opportunities for human rights violations. Sex work must be treated as work. There is a lot of evidence. There is a wealth of materials within the legal and human rights literature that looks at the crim of sex work and its implications. There are many sides to sex work. The evidence is key and also talking to sex workers and finding out what they want.

I: Is sex work GBV?

P: GBV is a lack of consent. People being beaten. It actually includes consenting adults. I don't understand GBV. This assumes that sex workers don't consent and infantilises them frankly. It draws on the perception that these women can't think for themselves which I find offensive.

I: that it is circumstances that push these women to be sex workers – poverty, unemployment etc. That is why it is problematic perhaps?

P: Very few people choose to be cashiers at a shoprite where wages are low and where job satisfaction is low. But it helps pay wages and feed their kids.

I: I am interested in what Embrace Dignity is going to say and their views.

P: Yes, people can have their views. It's really only about the evidence and what sex workers themselves say.

Interview 5:

Ms Mickey Meji	Embrace Dignity / KWANELE / Former Sex Worker	April 2019

Interviewer: Your voice is different from the others.

Participant: We do not see prostitution as work but as the worst forms of violence against women.

The factors are poverty is the main driver, but it is not the only thing. We found that most of the women we work with, they were also sexually abused. We see prostitution as oppression. I personally see it is as date rape.

I: Do you call it sex work, or do you call it prostitution?

P: it is the system of prostitution. We are not condemning or judging the women or that they are dirty. We are saying that the system is oppressive and it's not only them. It is caused by systematic failures of this country. We are referring to people who are being exploited and who buy and sell sex.

I: So, you do not see it is as work?

P: Our view is that prostitution is neither sex, nor work.

I: Are your views around the sex work policy and approach?

P: SA has totally criminalised since 2007. Prior to that they only criminalised the selling of sex. Which caused problems. It is clear that SA does not want prostitution. We also do not want prostitution. It's just a matter of how do we approach to see that we have eliminated the system of prostitution.

For starters though, criminalisation does not work. It re-victimises the women and lets men get away within the system. It doesn't look at pimps and it doesn't look at brothels or shutting them down. For example, there was

this Siam Lee girl in Durban. She was abducted as a brothel. No one has even shut down that brothel. Thousands have been arrested since 2007 for prostitution. We do not have any man coming forward. The man who was arrested for murdering Nokuphila Khumalo – he was not charged with buying sex. The man who is standing trial for Siam Lee. He was not charged for purchasing sex. They have not been prosecuted for that. We do not want this legal framework as it doesn't protect women. This legal framework doesn't break down the system.

We like the Equality Law which was pioneered in Sweden, and it has gained momentum with other countries – 7 of them. This is founded on promoting gender equality. It penalises those who buy sex and criminalises pimping. It also goes to address the failures of the system such as poverty and inequality. It furthers with an exit programme. At the same time is prevents entry into prostitution and educate them of the dangers.

I: there are others who are saying that decriminalisation drives it under ground.

P: That is lie. I would never even if it was decriminalised tomorrow, I would never openly sell sex even after my nine years on the road. It's not like people are going to have sex in the middle of the road, but they will still do it in isolation. The mother of Siam Lee – I spoke to her – she said she would never have allowed her to do it had she known it was unsafe. The mother thought that because Siam Lee was not on the street and actually in an upmarket brother that it was safer. But then the man murdered her.

Regardless of the law – the system of prostitution is about the man. It is about men's access to women's bodies. It is about power and control.

The women is bought and sold and exploited.

I: With partial decriminalisation, how would it keep them safe?

P: We don't want to make them safer; we want to abolish it entirely. But with the equality law it has reduced the system of prostitution, which means that it could lead to it being abolished. The system of prostitution will never be safe, regardless of a law.

How to make women safer – we promote the safety of women. We don't want them to sell sex as a means of survival. By getting them off the streets we will make them safer. We know they are not safe to begin with. In terms of policy change since 1994, like I mentioned before, the sexual offences act in 1957… there was an amendment with Jordan case, that showed that prostitution is not constitutional. So, they criminalised it in 2007. TO prohibit it. SA has sent a clear message! A law has been put in place. Has it served that purpose – if not, then we need to change our approach to end prostitution. Then we need a new approach. What I can see is that the 2007 has criminalised these related activities.

I: Since 1994 how has the policy or legal framework changed? On a societal level of prostitution?

P: These other organisations have now popularised this term sex work. That's one change I have seen. In society nothing has changed.

Even if I was termed a sex worker, that doesn't change anything. It didn't make me feel better. It is very insulting to be called a sex worker when it isn't work! Murder, rape etc.

There have been more programmes that have helped prostitutes yes since 1994.

I: What role has your organisation played?

P: It began in 2010. It was just trying to find the right position and approach. Probably four years ago.

I: the engagement with parliament how has that had an impact?

P: We haven't had a change on the legal framework. We need to elaborate more on the system of prostitution.

I: And the report that was published by the DoJ (Department of Health)– it's first option is to continue criminalising the industry. What do you think?

P: Even if they continue criminalisation, they at least will create a diversion programme. But we don't like crim because it actually revictimises women.

We are happy that the government went to Sweden.

I: From some of the other interviews is that the NCOP never spoke to any sex workers on the ground. Also, they only went to one country. These are the critiques.

P: they have provided their data around the NZ model. In NZ in 2011 it doesn't benefit those women. When I went and visited there. They spoke to the stats.

I: So, the fact that they didn't speak to anyone on the ground, it doesn't impact on their conclusions?

P: they went on fact finding, government to government. Not data collecting. They want to know what is working for a government. There is nothing wrong about that.

I: Just a quick one on the equality model. If prostitution was to end, what would happen as the alternative? Because a lot of people say that prostitution is not going anywhere.

P: we are trying to say that those alternatives must exist. Women are prostitutes because of patriarchy. I mean in terms our parents would rather invest in the boy child. We are promoting gender equality. So that there is no situation where it is women who will be bought sold and exploited.

I: What are the alternative jobs? They can't exit if there are no viable jobs.

P: It depends on the individual. I exited prostitution and I am now entering university. Those are the choices we had. We are saying that we need to broaden the choices of women.

I: For the women in prostitution who haven't had those – you are saying the alternatives are prevention.

P: Economic empowerment by the government. Even a driver's licence is empowering. You can get ordinary driving jobs like taxi industry. Much safer than prostitution. The government is investing money in condoms and pre-exposure prophylaxis. But if they take that money and invest it in economic empowerment it would be better. Even if you do a nail course you can do nails. You can sit in your house and sustain yourself.

I: Prostitution is high paid though?

P: Yes, it may be promoted as financially beneficial. But it is only for a while. No one came out rich and they were damaged and scarred. You enter earning high and then your earnings drop. It's the only profession I Know that does that.

The system is about power and control. The more street wise these men don't want you. They like young fresh and innocent and unaware. As new girls come, they don't want the older girls. So, what you need to earn before you won't in future. In Zim they implemented decriminalisation, most of the women are saying 12-year-olds are selling sex. There is more competition.

I: It also shows the buyers have over the industry.

What do you think needs to take place for the legal framework to shift? Dignity or decriminalisation?

P: The mindsets need to change and the view of the system of prostitutes. They preach about the prostitute in church, but they never preach about the buyer. What needs to change is that the burden must not be on the women. The women are seen as the root cause.

I: The change would move towards the equality model? This is government regulation to the max.

P: the men will be arrested and penalised. Those fines should be investment into the exit models. It will also change men's mindsets in how they view women. When a man buys sex. It is also all the women he violates. He has a view about women now. He goes back to work and thinks every women will sell sex. You see them as a way and a thing to purchase.

When people started paying penalties they are adhering – same as smoking and driving without seatbelts. This is why we must do this with the system of prostitution. There was a brothel that did this in Pietermaritzburg, and they were fined R250 000. These men don't want to be caught. They don't want to be known and want to be respectable.

We need to consider that women saying they are ok with decriminalisation, are they saying that they are ok with their husbands going to use the services of a prostitute? Again, this is decriminalisation is not looking at wellbeing. It is looking at the way men see women.

I: What are the stumbling blocks to see this change? It's been 20 years.

P: we are not going to wait 20 years because they knew they don't want to decriminalise. They know that criminalisation is not working. So now that we have offered the alternative they are interested. When we told them about the Equality law, they see potential in it. They know that the New Zealand model is not going to work for them.

I: What will prevent it from happening within the time frame?

P: Not sure if it's well communicated.

I: Recently the president gave support for decriminalisation. It was the courts in Booysen's.

P: the government wording – in 2017; they said they are supporting the decriminalisation of sex workers. They didn't say anything about sex work. They want to decriminalise persons in the role. They don't want to see sex work as decriminalised.

I: They speak about decriminalisation. They don't specifically say anything about decriminalisation.

P: The law to protect sex workers, we are advocating for. But the law to decriminalise sex work, we are not advocating for. We don't want pimps, pornographic producers, brothels to use other people. We want to protect rather those who have exploited.

I do not support decriminalisation. I don't see the benefits. My 9 years in the street, I am yet to come across woman who wanted to be a sex worker or the best paid sex worker. And then women constantly wanted to exit. We set time frames. I had a time frames. 1 month and out. What I did is that I listed what we wanted. The four legal options – the equality law ticks the main boxes. It is the one to promote gender equality.

I: Working as a domestic worker as a cashier – that is also not a choice though?

P: the very private nature increases women's vulnerabilities. Domestic workers lives are not shortened and by health hazards and violence. Things like cervical cancer… not all women will have to go through that. When I left home in the evening going to stand for my kids. I was not sure I would be alive. It is not the same for a cashier. You are not scared that someone is going to pull out a gun or knife. That's the difference. Yes, domestics didn't choose that. My mother wanted to be a nurse, but she has to be a domestic worker. Because there is a systemic failure.

So, this thing it comes with being poor, black and a woman. You cannot separate race and class yet.

There is a white woman who is prostituted because they are poor.

I: It is not better to define it as poor rather than on class lines?

P: the white women are safer. There must be a priority for black women.

I: The different levels of prostitutions – indoor and outdoor. How do you define the difference?

P: Until Siam Lee I thought the brothel was safer. It is not safe anyway. There is no amount of regulation to make it safer.

The slay queen and the blessing and blessers. The slay queen travel to their blessers in Dubai. Two women they were describing where she was almost raped the previous night where her blesser had opened her up to be raped by other men. For me this sparked interest.

These ladies were not aware that they could be trafficked. These men don't have care and regard. Even if he is spending money on you, they just want power or control.

Her boyfriend and blesser was just so controlling. You get Dubai but he decides you must stay indoors etc. Where's the freedom in that?

I: Just as a last thing, my report will look at sex work. Must I look at anything else?

P: I can send you something with the voices of the survivors of the sex work industry. And also, the recent letter we wrote to Ramaphosa.

Are you familiar with the abolitionist position?

I: … For you is there no agency at all in a woman going into prostitution?

P: No. No. There is no agency.

I: When I looked at GBV and rape. Even a woman in that position there is some agency. Do women in sex work have agency?

P: there is none at all. Prostitution you do not have the power. You are the man's mercy. Saying no means, you get to be exposed to violence.

My daughter saw me on TV, and she asked how is this promoting gender equality and independence because I depend on a man to have sex with me and how is that independent and promoting of equality? You still depend on a man. When men are not purchasing you. Cosatu is now supporting decriminalisation, but they are against labour brokering. How different is brothel keeping from labour brokering?

The COSATU position I am interrogating it.

Interview 6:

Ms Cherith Sanger	University of the Western Cape / SWEAT / Sex Worker rights Advocate / Consultant	May 2019

Interviewer:

Participant: Yes, I have done a lot of these, and I have had issues with these interviews before. The times things are taken out of context. Be careful of how you interview.

I have worked at SWEAT and Sisonke. I initially started consulting in 2014 as human rights and advocacy. I was there for 2 years and I then consulting. My practice has been around NGOs.

I: What are your views around sex work; it's pervasiveness in SA, and why women enter sex work.

P: First of all, I don't use the word prostitution as it's offensive and inherently problematic with adult consensual sex. I do think prostitution is fine when it involves forced work in the sector.

And when it relates to children.

I: I was using both terms as different NGOs you know use different terms. Embrace Dignity uses prostituted women.

P: (Laughs) It still relates to terminology, and this is loaded. It is the stigma related to prostitutes. It is then about "bad" women not women who are trying to feed their kids.

I: Looking at sex work.

P: So, I mean there is not that much research on sex work. There has been some on why women entering the industry. There are links to socio-economic conditions particularly with women. I can't say this is the same for men and transgender people. But specifically with women. Sex workers find this work as a means for income generation and you will find that these people prefer working as sex workers and not domestic workers. Sex work gives them more freedom.

So that they can work when they want to. It allows them more time to take care of their kids. It is simple things like assisting children with their homework and being there in terms of the child growing up.

Sex workers can also earn money.

I: You are using the word choose. Would you say that women in SA choose to be in the industry.

P: I believe sex work is an option within very limited options. But there is a choice. There is a broader context, looking at the country, it is hard to survive. Legally speaking there is also a choice to work as a sex worker. Like domestic work. And you will find that women have reported they prefer working as a sex workers. Even they don't like working on farms in the W Cape as there is more agency, and there is more time. They are also sex workers.

I: The agency is interesting.

P: My position is aligned with SWEAT, and they talk about agency within limited options. Of course, if you talk about the people who support criminalisation and law reform, then yes, they will say there's no choice. I don't agree, but I don't think it's an easy choice. If you look at feminism, it can be argued that it's inherently oppressive and is Mc Kinnon's Swedish model. It's about sex work because it involves their bodies as a means to survive. This is what criminalisation and Swedish model (Part criminalisation) Is based on and that there isn't agency. I am not technically against the argument, but it's the tension between sex work and gender work. I do not believe we can say that there is no choice. We even talk about choice when someone has a gun to your head. I am not opposed to the technical argument (Swedish, decriminalisation).

Sex workers are also not a homogenous group. We do know that the majority come from lower socio-economic circumstances, but there are also smaller groups that are doing sex work to earn their degrees. Some of them have stopped sex work as they obtained their qualifications.

We know also that the majority are black women. We need an intersectional lens here.

I do think that it's a lot more complicated than just saying ALL of them don't have a choice. I do however understand the feminist argument.

I: And the extent of sex work?

P: Have you looked at the 2013 SWEAT report.

We don't have much more formally, and we need a newer study. That's what I use technically.

I have been in touch with a lot of sex workers, but your community member… I can say that Lee and Ayanda have died. You see our sex workers are dying and we know why. But I see so many new faces and those who have become sex workers.

Not sure if that helps. It's an observation.

I: The last study, would you say that the numbers of increased.

P: It's difficult to say. I can't say that. We need an updated study. I think it's kind of constant, and because sex workers die and also the criminalisation. No one can know. People aren't always direct about being a sex worker because of the criminalisation, the stigma and some don't even identify as sex workers.

I: How many die?

P: we don't have that info. I can't talk about direct numbers. Lesego at SWEAT they started recording sex worker deaths. But a lot of it is qualitative.

But there are some numbers.

Sex workers – women who are sex workers – they are more likely to die than other women.18 x more likely to die than other women globally. In SA, because of the vulnerability of women due to criminalisation, sex workers are more likely to die. There are high levels of GBV in SA anyway.

I: Is IPV (Intimate Partner Violence) quite a big thing for sex workers?

P: Yes, it is a hard thing. They face domestic violence. 1 in 3 to 1 in 5 women face domestic violence in their lives.

Of course, this isn't only physical it can be emotional and financial.

For me it's marginalised groups like sex workers who are in experiencing intersectional discrimination. And they experience violent deaths or violence in the worst forms. Similar if you look at lesbians who are murdered. They're often not just murdered; they are also mutilated.

You know?

This is an observation of mine not research.

I: That's useful. How has sex work – the legal framework has it evolved. Have you seen any changes on a societal level?

P: What has the state done to protect sex workers? We know they are vulnerable because of criminalisation and because of the stigma.

Very little has been done to improve their lives or their human rights even though we live in a constitutional state.

Since 2007, the criminalisation and sexual offences act made some changes but actually drove sex workers further to the margins of society. Because it has criminalised the buyers of sex work. But now it's totally criminalised. It's just gone underground.

It's a dangerous business and the state hasn't done anything.

I: So, since 2007, not much has been done?

P: Yes, if you look at the South African Law Reform Commission's process, there was a study or investigation into sex work. What they now recommend doesn't change the legal status of sex work. They are saying they want criminalisation, or partial decriminalisation. In my opinion, if they adopt partial decriminalisation, sex workers will still be in the same position. Because if you are only criminalising one party, sex workers will still be indirectly criminalised.

They also want to protect their clients.

But even with total criminalisation, the clients are not treated as badly as the sex workers. So really sex workers are not likely to speak out.

No there has not been a lot of change. The recommendations are where we are presently.

I am talking from a position of human rights and protecting human rights.

Yes, there are has been a huge growth in the decriminalisation movement. Sweat and Sisonke. There has been a lot of advocacy. Even at the AIDS conference and being present at court where cases of sex workers are being tried. They want sex workers to be seen as human beings and also to highlight the effects of criminalisation. I think that it has developed the discourse. I think more people who understand the plight of sex workers and

support them. But then again who are these supporters? The non conservatives? There are even feminists opposed to decriminalisation.

I: what do you think needs to take place for significant change to happen?

P: I do think we need to start with law reform and the legal position on sex work. I don't support partial as it doesn't advance human rights. Decriminalisation seems to be the best legal model for human rights. They are in the same position as any other worker and any other South African.

If sex workers are given this, there may be less violence and sex workers having greater faith in the criminal justice system. At the moment, sex workers are not open to reporting violence.

Why would you do this to report human rights violations? Actually, the police often target and profile sex workers.

I: Yes, what would to happen for a change to happen?

P: Dismantling patriarchy will take centuries. Therefore, we need to look on a legal and social level. There have been huge developments already no doubt. The law has been able to shape people's opinions and practices and vice versa. That's why people say in SA we aren't ready for the Constitution.

We have no doubt that criminalisation harms sex workers and even beyond them, it affects society. If sex workers can't access healthcare, it affects the client and then the families of those clients and so on and so on.

I do believe that decriminalising will be the first effort. However, there will still be a lot of work done even if sex work is decriminalised. How society views it and as a stigma which makes it dangerous for sex workers.

I think decriminalisation is critical but a lot of work understanding patriarchy and sexuality. This is why sex work is considered bad because "bad" women use their bodies for sex.

I: You are linking this also to poverty and where there is addiction?

P: Sex workers often come from these places. And then they are further made vulnerable because of criminalisation.

I: You have touched on the benefits of the decriminalisation of sex work. Let me do an overview of sex work decriminalisation.

P: From a work perspective, sex workers will have rights as every other worker. The point is that they are in the same position. From an access to justice perspective, they will want to be engaged with the criminal justice system. They will then not be profiled or labelled by the police. From an access to healthcare while there is access in the constitution, they are reluctant to seek care especially reproductive health care. You know HIV is a big issue because of the nature of sex work. Most sex workers come from poverty then the burden for them is heavier.

We find that people providing sex work services, don't want to provide them with services because they are seen as "bad" women.

I don't know what Embrace Dignity, but I think they are providing condoms and lube. Lube is also very important for transgender people.

Also, women are more prone to getting HIV and aids.

I: Are there any negatives of decriminalisation in sex work?

P: I think it's going to be very difficult and a lot of work. You know I think it needs education. Criminalisation has taken away sex workers' ability to act and think for themselves. We need more work to also educate them about their health rights and what they are entitled.

I don't support legalisation – I thought the Law Reform Commission was actually going to come out with something similar – but why I don't support it is that I think broadly speaking is that there will still be human

rights violations. For example, under legalisation, women have to have compulsory tests. They will also be told to go to the outskirts. It's like apartheid movement control.

I: You have mentioned criminalisation. From your POV what should I take into account?

I think the system of patriarchy and I think it should come out. It is a big thing to take down. But you can see the positive developments around equality around the constitution. They are quite important. Women's rights.

SALRC recommendations.

Perhaps also look at policies globally and locally.

There have been some change – Ramaphosa did something but not sure what's happening. The Jordan case but I am not sure what has happened there ….

(endings and pleasantries).

Interview 7

Ms Constance Mathe	Asijiki Coalition / Sex Worker	May 2019

Interviewer:

Participant: We bring all the organisations together who support the decriminalisation of sex work. Within the coalition we have sex workers. I am also a sex worker.

We want to advocate for the law to change. We felt that having one voice. Most people think that there is only SWEAT and Sisonke but there are more. There are gender, women's and human rights organisations involved. Also, legal and public health.

Criminalisation affects women on many levels.

Asijiki is the umbrella.

You asked about the women. First of all, I will speak personally. The reason I entered it was a choice for me. I was not educated, and I tried to get into different jobs. I needed pay rent and feed the kids. For sex work it was a choice from limited choices. I have worked as a domestic, a cleaner and builder assistant. I was working long hours and I couldn't spend time with my family. And my pay was not good.

It allows me now (sex work) to spend time. I also have a choice to sleep with. There are some men I know are not right, so I won't sleep with them. I am in charge of my body.

Which makes most of the women they enter because of lack of opportunity and the lack of employment. Even me I got degree in business management, but I didn't get a job.

If you are a black woman, your salary is already underpaid. I have worked under these circumstances. But sex work is better paid. Even now that I am a coordinator, I still haven't resigned from being a sex worker. That is my occupation this is what I feel comfortable doing and this is what I love doing.

I: You said you love doing sex work?

P: Yes.

I: I will quote that… A lot of people say that women can't enjoy sex work.

P: I wasn't even forced by anyone. I worked as a domestic, I was carrying bricks and was a cleaner. But the job was hard and money little.

The person who introduced me to sex work, he was my client then he was my boss. I never thought it was good. I am from a Christian family, and we were told that it was bad. But now I have ten dependents on my income.

I manage to see this is the best job for me. I purchase my house from the sex work money. I advertise on the internet. They come across the world and book me for a week. They pay me in Euros and dollars.

So, I can spend two weeks with one client, and I make a lot of money. My first property I bought. The first car I bought was from sex work money. My client showed me how to drive a car.

I: If sex work becomes legal and you are taxed what happens then?

P: If it is decriminalisation, I want to highlight two things. They think trafficking. They contradict (sic) trafficking and sex work. I can identify the places where sex workers can be trafficked, I can see where they are. I am not a trafficked person. I know people who are trafficked and who are not sex workers.

Yes, I have seen children who go into the industry because of drugs. Now because I am a criminal, I can't report this. They'll say How do you know that it's happening. I can't say that I am a sex worker, and the police will arrest me first.

If I am decriminalisation then I can work with the police to help the trafficked kids.

Once when I had a client in my house. The police came, they stripped me and touched my private parts. But my client was standing there, and they didn't even search him. They took him to the kitchen and spoke to him. I just heard the sound of the money.

They found condoms in my house – two boxes and said that it's evidence that I am running sex work in my house. They take me there and I am arrested.

I can now stop corruption if sex work is decriminalisation. Police take bribes from the clients but arrest me. Or they extort money from me. Decriminalisation will stop the corruption.

We also know who are the traffickers. We can stop them. We can also monitor what is happening with the underage kids. The people who want underage children, they come to the sex worker like me who has been in the industry for a long time and ask me to help them find underage kids to do sex work.

I also want my profession to be registered.

I: How does tax impact on your income?

P: I am paying it right now anyway. I am paying each and everything I am being taxed when I buy something from Shoprite. Why are they not suing Shoprite? The current law says that anyone who benefits from sex work is criminalised.

Then MTN and taxi drivers are criminals because I used my money to buy these things.

I: If you declare to SARS. How does that impact on you?

P: I am already doing that, and I want to benefit from everyone else. I want pension for my retirement.

I: what is the extent of sex work? How many are involved in the sex industry/

P: This is what I laugh about. We have got over let me say 200 000 sex workers in this country. This is what I can tell you. Lot and plenty of there. We have black, white, Indian and all the colours and races. We have the transgender, we have the lesbian, gays, MSM and all the diversity genders of the sex workers. If you go to internet, you will find few black people. You can get black people on sex trade. The rest on the internet you will find white girls.

I: Why?

P: There are over 200 000 in this country.

I: You were saying you advertise on the internet. So, are you doing indoor sex or are you on the streets too?

P: No, I worked once on the street, but I saw a police raid. This was a week. Then I worked in a brothel. From there I opened my own brothel. That's when I was introduced to the internet. For the past 10 years I have been on the internet.

I: Why do girls then work on the streets if they have the option for the internet and brothels?

P: Each and every job there is a market. Each and every week on internet and on the US and UK internet. I have to pay to be on these sites. On the UK I am advertising; I am paying 150 pounds per week. So, a lot of girls can't afford this.

I: Do the clients come to you or do you go there?

P: They come directly to me. The people on the sites do the admin; they get someone to come and take quality pictures. They do it all for you. You are the ones engaging with the client. So, you can't have the street people so them to enter the internet it's huge money.

Even if you enter into this job, it's like other jobs. So, you are working at PEP, there is a manager, and a cleaner so the salary scales go up or down.

The other thing is that in the sex industry it is how you present yourself as a person. The way you carry yourself out there. If you are not liking yourself then awful men will approach you. So, if a woman is driving an expensive car, it is only men with money who will approach her. It's the same in the sex industry. You go where the size fits you. The guys who go to the internet are rich and want to keep themselves undercover.

I: So, there is money in the sex worker industry, but you have to be on the higher levels. Do women on the streets make lots of money.

P: On that one I don't think so. I have worked on the streets so that's why you need to be in the streets every day. I don't think they make money. Only if you are on the internet. And even then, which platforms you advertise on you make different money. The local platforms I didn't make money but the international ones I did.

I: How would decriminalisation affect international sex work?

P: Ok the decriminalisation of sex work will be like a tourism industry. It will boost the economy of the country. Some of the clients don't want to pay you cash they want to deposit in your account which will make it a lot easier. And then you automatically that the bank can change it there is no black market.

We have a lot of tourists. They like to visit Cape Town. They put 500 euros and the bank gets their money and commission.

I: What determines the rate?

P: It depends that the rate for sex work goes up and down.

I: Who determine the price I mean. So, some will pay 500 euro a week and others will pay 500 euros a day.

P: You need to negotiate.

I: what is your selling point?

P: They can pay me for two days. 250 a day. It is more than R2000 a day. According to how you do it you can work out how much they can afford. You read the person.

I: I have heard that some women have to do things that are beyond the levels of normal sex. Does it get violent?

P: Let me tell you this is because people say this because they haven't been in the industry. They are passing wrong messages to people. Some of the clients they don't even touch me. They want me to show them around Cape Town to see how it looks. I can go to Joburg and show them around. They need companions. They want to be a tour guide. It's totally different when you come to the sex industry. Sometimes they pay for your time.

Sometimes the people they want to see you dressed on the lingerie. That makes them happy. They don't want to touch you.

If I have a client who wants to make me a wife, I refuse. I don't want that. It's up to me. I know what I am selecting and what I want.

I: So, you can turn clients down?

P: You can't be controlled by clients. You need to be in charge of your business. I ask what their expectations are. You say you can't do a.b.c.d. I don't kiss men. If you allow them to do whatever they want, they can abuse them.

There are also some women who pay me. They need a friend.

I: Do the women want sex?

P: I transfer to other colleagues who can do lesbians. She pays me a commission for doing that. It happens like that. People have the wrong impression and how the world looks like. People mustn't think we are just drug addicts. A sex worker is a woman who knows what she wants. She expects you to know what you want too. If you don't have money, then you mustn't play with me.

If you see my pictures on the internet, you will never see me naked.

So, these are the women we are advocating for. All the girls who introduced me to internet, they are all driving with cars. Let me tell you we are only two black chicks in our group. Most of them are white. People think it's poverty this kind of crap. No, it's not about that.

If you know how to market yourself there is money.

I: What would your preferred policy approach be? I know its decriminalisation, but what are your views about the others?

P: Ok the current existing laws it has affected the street workers. Even me as a person. These laws were implemented in 1957. This law hasn't been changed. We want to see it as a human rights and not a moral approach. The criminalisation law has caused the death of my sisters. If they don't want to give police, their services the police make them jump off the high bridge.

The police also chased another sex worker into a river. No one helped her and so she was drowned. The police need to reach targets and if they don't reach targets they just go and arrest sex workers.

Another thing is HIV and AIDS, the DoH (Department of Health) gives condoms out, but then if you are caught the police use the fact that you have a lot of condoms against you and arrest you.

What happens if you are a sex worker who is desperate for money? You'd rather sleep without a condom than with a condom so you can feed your children. So, these criminal laws in terms of health are a problem.

Each and every one is criminalised. According to the law anyone who benefits from the sex working industry is a criminal. So, my children are affected. These things stigmatise them.

Since 2007, there have been few clients who have actually been arrested. Maybe 16. These clients are actually the law makers. Let me tell you the clients – each and every one sex worker has a client who works in the government. Somewhere, somehow there is an MP in parliament.

These people are also the law makers.

I: Do you think they are purposefully keeping it criminalised?

P: Yes, they don't want their wives to know. That person you never thought of will be a client.

In this thing, we are not saying that decriminalisation will help everything, but it will help with discrimination and human rights abuses. It will reduce the stigma and police brutality. At least we can come forward.

I: Your views around the partial decriminalisation of sex work?

P: Many people don't understand partial decriminalisation. It is in France and Sweden. The thing is that Sweden is a third of that of SA in terms of unemployment. It doesn't work for me as a sex worker.

You can't say that I can offer my services but that the clients are criminalised. If there are no clients who is going to pay me money? And if clients are criminalised, then it puts sex workers at risk because they have to go undercover.

Decriminalisation I can go to the bank and go do things.

At the moment if I earn a lot of money from a client, I will take down my advert on the internet so that I don't get into trouble with people asking me where I am getting this money from.

I want to go to the bank freely and go and identify my profession.

In the brothels you have to be forced to sleep with everyone. You can't chase the client and you mustn't complain because the owner needs to pay rent. We can then report these bad pimps. They must pay for the people who are working long hours and they can have labour laws. There are good and bad pimps.

With partial decriminalisation it just says that you who buy sex are criminalised. How are you going to work and generate your income?

Let's just look at the rate of unemployment compared to the Swedish and in France. They have lower unemployment. And that partial doesn't even work for them! So now the clients can do whatever they want. They say, you must come under the bridge because you know I am not allowed to buy anything. Then the client can be violent and etc. The sex worker will go underground because you really need the money. Now the sex worker goes alone because something bad will happen to her. Partial decriminalisation puts the sex worker in a high-risk situation.

This law doesn't work for us at all. I need to be free. I need to be proud of being a sex worker and I am safe with my family.

I: Looking at the sex worker policy since 1994. Has there been any changes?

P: in 2007 they criminalise the buyer and client. But I don't see where they prosecute the buyer. Has this buyer been taken to court?

I have seen such a high rate of killings of sex workers. In Asijiki we have high rates of murder. We have a high rate since 1994 under criminalisation. That's why we had that campaign that says Say her Name. The police they take more advantage of the sex workers. They even deny their medication when they are in the cells.

Because now the other thing if you are advertising locally, they come and target you if you advertise on the website. The websites now are no longer safe. They pretend to be clients. They follow us on the internet. They arrest them.

We could help though if it's decriminalised. We could identify the traffickers and the drug lords. We can help police identify them. To make sure children are protected.

I: Why hasn't there been any significant change?

P: The policy hasn't changed because people view it as a moral issue. They don't see it as a human rights issues. We just need to defend the human beings. I just want to be protected.

People need to change and to understand by engaging with the sex workers themselves. We also don't want people to make decisions without consulting us, or even to make assumptions without talking to us. "Nothing about us without us".

If we take it to the religions, they bring their women down.

Sex work is simply an exchange between consenting adults. It is a transaction and that is what we call sex work. Simple. Then people can actually understand what sex work is.

I: The organisation, how have they been involved to process policy change?

P: Ok we have been mobilising MPs to support the decriminalisation of sex work. We have been lobbying them in parliament. We are approaching the different committees. I sit in the meetings of different committees that I know can change these laws. Every MP who agrees with decriminalisation we want them to influence the other MPs to help them realise the importance of MPs. The other thing that we have been planning and we want to take it to the Concourt to lodge a constitutional case. We are trying to raise the funds. We have testimony and truth. We want to change these laws. We have been advocating to lobby all the parliamentarians. We are inviting all the political parties. They highlight the importance of the criminalisation. We just want to improve the health of the sex workers.

I: What do you think needs to still happen for there to be change?

P: We need to sensitise people. Most of the times when I run a workshop and I tell them I am a sex worker, people say I am a liar. Then I ask them why they think I lie. They say but I am one! They have this picture in their mind. I choose. I told my kids the truth about who I am. They do pay a price but at least they'll never see me sleeping outside of the house and they know I am always there. They also know that my job is about travelling. They know mom she travels. Shame these kids hear all these drama things. They never see me walking naked and they don't see my picture on the internet. People need to know what types of sex workers there are. Who are we advocating for? We also need to talk about decriminalisation.

It's not only me who will benefit. It's the children who will also benefit. If I die tomorrow with my UIF then they can go and buy food.

If I have a provident fund, then they can use it. I keep the money in the house because I am too scared to take it to the bank because they will ask me questions. Last week we bought R30 000 then they ask where do you get the money? But it's not safe for me to keep it in the house.

So, when people are discriminating against me and then they are also discriminating my children. They need to know what a sex worker is and even a father or mother can be sex workers. Then we need to explain why from the four legal models do we choose decriminalisation. What is important about that. How does that benefit South Africans.

We have a low rate of employment. After I left my degree where I did business management. I thought I was going to be the manager at Pick N Pay. I had a dream about being in a big job. Only jobs I got was a sales consultant. If I wanted to make more money, I had to work 9-9. After going to school after those years, I only come out going to a long job where I have 30 mins lunch. I have to work overtime. I was earning like R5000, and my rent was R4800. If I pay where, is the transport. How do I eat. What about the kids?

The other thing I always tell. There is a movement called Kwanele. They say they are sex worker survivors. They exited. They are actually some of my colleagues they used to come here at SWEAT. So, I know them very well. They say they are survivors but let me tell you I know them. They are still doing sex work. Even if they say they are survivors. Yes, you can get other jobs, but you earn more with what I am doing.

You understand?

I: You mentioned Kwanele. Do you agree with their argument that sex work is exploitation? And that you can't see sex work as work.

P: That takes us back. It depends about the person. I am 15 years in the industry. I want to tell you I am 34 years old. If you say, Constance you must quit, I will never quit. You as a person let me tell you that the drug dealers, they know me. They approach you to work for them. So, if you allow yourself to go work for them then you feel you are being exploited.

If you want to work for a pimp, then you feel the men are exploiting you. If you allow a man to tell you what to do, then you yourself are allowing yourself to be exploited. There is a white woman called Margaret. She teaches me about this. We need to have a sex worker union and educate each other. No matter the circumstances you mustn't go and stay with a drug dealer.

This is the problem. I had an argument with one woman who says she sold her body for R10, and I said yes but you allow that. If you go to a job interview and you dress so reckless, then they will hire you as a kitchen lady. But if you smell good and dress good and you make yourself presentable. Then your standard has changed.

A man must come and see that you are someone who charges a lot of money.

I don't believe that people exploit sex workers. I think sex workers exploit themselves.

Even my one boyfriend wanted sex and I said no. Then he starts threatening me. I refuse. Learn to say no. Even if your stomach is hungry, you must say no. You are in charge of your body. This is what they are saying. That's why these ladies don't enjoy the sex industry like I do.

My last client I had was last week. He came for one day. He gave me 1200 euros. You get me a point?

I now have a long holiday to rest to do my own thing now. You cannot compare me to someone who is getting R60-R100. Then you won't enjoy. Then tomorrow you go out and say you are exploited.

This is what people need to understand.

I: My last question is that although you have actually spoken about this. Is there anything in particular you think I must take into account.
P: People need to ask things directly to sex workers and not just hear things from us. People must come and visit us or our website to find more information.

I: (endings and pleasantries).

Interview 8

Mr. Matthew Clayton	Triangle Project	May 2019

Interviewer: An overview of how your organisation sees sex work/prostitution and the LGBTIQA+ industry.

Participant: We want the decriminalisation of sex work and we are part of the Asijiki coalition, and we are working to ensure that sex work is seen as work. We also see the disproportionate number of LGBTIQA+ (Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, and Asexual l) sex workers being discriminated against.

From an intersectional feminist perspective, Triangle supports the decriminalisation of sex work.

I: What do you say is the extent of sex work in SA.

P: Please clarify?

I: LGBTIQA+?

P: We don't know much about the research. From an anecdotal perspective, the people who use our services in the Cape Town office are sex workers. We are a service provider to many LGBTIQA+ sex workers.

I: It's to get an idea as there's no real updated study. ... What are the reasons into sex work.

P: They're diverse and individual even if there are similar drivers behind them. Anecdotal evidence from the LGBTIQA+ population reveals that the disproportionately high levels of family dislocation and lower access to working gin the legal economy, sex work is a useful way to make income for people who are on the outsides of the definitions of acceptable society. So, I think you're looking at the similar drivers as the general sex worker population, but the drivers are very individualistic.

I: Ok but you say it's largely a financial need?

P: I can't really speak to that.

I: Although from your perspective are their other reasons beyond that?

P: Um, sure. Financial reasons everyone does every job for financial reasons. Part of the other reasons are a lack of opportunities in the other sectors of the economy.

I: would you say there is agency in becoming sex worker?

P: Yes of course. I think sex work is an occupation but if you are not choosing it then it's not sex work. It becomes sticky territory when you are talking about coercion versus choice. What is choice? And to what extent anyone has choice especially in a system that is structurally constrained.

I: So, it's limited choice? There are arguments that say sex work is in a limited choice range.

P: Again, it's very individualistic. I think the question is if this is a first choice. I don't think we know the answer to.

I: What are your views on the current policy and what the preferred approach in light of the different approaches. What do you say about the criminalisation of sex work?

P: So, criminalisation of sex work is a bizarre and punitive and moralistic response to sex work which is extremely outdated. Our approach is that the legislation hasn't had a significant change for many years and hasn't kept up with what actually happens. The SA government when it comes to substance abuse for example, despite all the evidence, the government continues to police and militarise its response to substance abuse. And I think that same response is seen in sex work.

There are two competing arguments here. One is militarised approach and then there's a misguided moralistic approach where government and some NGOs are trying to move sex workers out of sex work. So, neither of these understand sex work as work or as choice. They say its de facto wrong etc. and its ineffective. This doesn't decrease sex work; it puts them at risk from clients and the authorities. Most bizarrely, like most SA policies that works against each other, you have reps from sex worker organisations sitting with the police, sitting with the DoH (Department of Health) and the NPA (National Prosecuting Authority). All the organisations, save from the police, know that sex work is real and it's not going anywhere and that its decriminalisation will guide efforts in reducing HIV.

I: You were saying your approach is decriminalisation. Why would you choose that as the best policy option?

P: as an organisation, our policy stance has been guided from Asijiki. This is what most sex workers are interested in in terms of a legislative framework. I must be honest I am not well versed with the other forms. I know about other models. Legalisation for example is regulation of where and how they can run their own businesses. Decriminalisation makes the most sense. Sex work is something that we are not going to regulate to the extent that it may become palatable and acceptable to the people to those who feel it is unacceptable. They want it regulated and pushed into a corner so that no one can think of it again, but this is obviously not going to happen. I think if you create a framework where sex work cannot exist then you create more vulnerable people operating in an illegal framework and subject to discrimination.

I: In your view, but has there been anything evolved since 1994? How is your organisation part of the process to implement change?

P: So, in terms of longer-term change in policy, you have seen change in practice. I think the reason we haven't seen much motion to change is that there are many people within government, parliament and the ANC who view sex work very moralistically and um, are not interested in decriminalisation. Part of that is also that sex work is deemed wrong. I think maybe there is also a paternalistic idea that everyone involved in sex work is exploited and has no agency. Therefore, they want to free people who are trapped. Government has also interwoven sex work and trafficking. This comes from human trafficking work which may be counterproductive.

Government is very slow in policy in many different ways. As a huge longstanding issue, they sit on something for 20 years. For example, the assisted dying framework has been sitting in the draw since 1998. The change of the Chapter 9 institutions written years ago by Kader Asmal. It's not a political priority. It's not something that politicians see as important.

In terms of the constituency, we are talking about sex workers and people interested in human rights. Unfortunately, those are not the people who are going to decide the vote. So, I just don't think there is any [political will.

We have written submissions relating to the Law Reform findings and also in response to that. I think in general that policing healthcare is not ok. Whenever we get this opportunity, we are vocal about it.

I: What needs to take place for the policy to change and what form will this take?

P: So, this is something that the ANC has committed itself to but where it comes out in the priorities of parliament is another question. I am not very optimistic about that. It will require an important push from somewhere high up in the ANC. Whether this is at presidency level or coming from the minister of justice. I think that there is significant opposition to any relaxation around sex work.

If I am to guess, we'll land up with a compromise. I don't see us getting full decriminalisation. This is more my own opinion. It's just strikes me that there is a level of proper decriminalisation is a government hands off approach which it is not interested in. We know that the government doesn't like having a hands-off approach for anything. The government is not interested in losing control. When they step back, they worry someone else will step in. Ideologically the government doesn't want to give up any form of power.

We may get regulation. But what form that can take I am not sure. My cynical is that we will get the worst of all world's combination. It will be something that no-one wants even those against it.

I: What are your views on partial decriminalisation?

P: I am not versed in this, but I think that the more you step away and you stop trying to control something, the better. I don't want to conflate substance abuse and sex work here, but the government's response – prohibition and punitive response – but this overregulation doesn't work.

I: what are the advantages of decriminalisation?

P: We move sex workers into a legal position. And this can help tackle discrimination and corruption. It also allows sex workers to have legal redress when they are subject to such treatment. Currently because sex work criminalisation extends to those who benefit from the proceeds of sex work, the family is also affected.

So, the more you bring this out of a shadow economy and where people can assert their rights, we will see a better outcome for sex workers themselves and what the subsequent public health consequences will be.

I: Regardless of change we want, why don't we want criminalisation?

P: If we think that criminalisation reduces the number of people working in sex work, it does not. It doesn't make sex workers afraid to be sex workers; it just puts them more at risk. It takes them to places where sex workers are vulnerable to assault, corruption etc. It means they don't have access to healthcare, and this does not help the larger response to reducing HIV and AIDS.

I think that the worst part is that it makes people's lives horrible and miserable and doesn't achieve anything at all.

I: As a final look, what do you feel I should add?

I: Pleasantries and goodbyes.

Interview 9:

Anti-Trafficking Organisation – anonymous	Anti-Trafficking Organisation	May 2019

Participant:

Interviewer:

I have spoken to 8 people and only one of them has been anti-decriminalisation. This was Embrace Dignity.

I am open to those who are against decriminalisation. Even though I largely speak to decriminalisation, I want other views.

P: Did you read the SA Law Reform Commission's report?

I: Yes, many people believe though that it's actually not scientifically sound.

P: That's assuming that all scientific evidence is important. We also hold beliefs that can't be empirically measured.

I: I think they were saying the health arguments weren't robust.

P: Most of the people that were making a song and dance about that just attacked the commission – there was a lot of straw man arguments made. Which was ad hominem. Then the research people faced off. Someone's PhD work even showed SWEAT's work was flawed given with its assumptions. Things will go back and forth. But those other organisations didn't engage with the report. There were not only health arguments, there was constitutional law arguments, there were pragmatic arguments. To lump it that their research and other outcomes was supreme is just deluded. Hyper arrogant

I: I want to capture what others are saying.

P: Firstly, I object to the term sex work being used. But I also object to the term prostitute being used. I prefer to use the word commercial sex industry. To what that size is I don't know.

Someone buying sex from a minor is illegal. SWEAT would probably agree with that.

I think there are 150 000 sex workers. But from our work on the street, I would say that's a conservative estimate.

I: So, you would say it's quite a lot higher?

P: Well yes if you include things like Facebook and the sugar daddy stuff. We could also include the recruiting at universities in Durban. With the HIV studies, it looks to me, that I can't even give you an accurate answer.

I: ok great. Why do people enter into the sex work industry?

P: The social and economic drivers are there but I would add that there's an ideological war in terms of the sexualisation of children. And that has a long history. This is easy to track in the West in terms of the objectification and commodification of people. And specifically, women. That seems to be shown through pornography and violence towards women. This is sold as empowerment but in our judgement is abuse. The payment resulting in a power imbalance.

SA is diverse and in terms of trafficking.

We are speaking about Ben 10s with women wanting younger men. There is a cultural thing we barely understand. The young men and the Gogo's about women being forced into relationships.

If people have been abused, then they will also abuse.

Then people just accept abuse as a culture.

When people say they're an empowered sex worker, if you scratch the surface, you'll see there is a lot more to it. I was listening to a survivor of pornography. She said she grew up in a good household but then was raped and lost the plot. Only much later after abuse did she leave the pornography industry. There is an abuse of vulnerability. It comes in the definition of trafficking. When we were in parliament and the Sisonke women were there, I was thinking that is sex work the only option available for these women?

In the Jordan case the judgement that was made by Sachs was a minority judgement because dignity and integrity was through …. (incoherent). Decriminalisation might possibly not help to end GB.

I: what are your views and the organisation – what is your preferred approach.

P: The argument is that people have tried policies and there is a lot of money involved. And people are driving the agenda because money needs to be made. I think that if I look at it myself. You are either an abolitionist or pragmatic.

The size of the state to get rid of people being prostituted will be too much. So, we need a controlled version. Like in France or Norway.

The opening premise is do you agree or disagree in terms of dignity.

I don't think you'd find many people who would agree that prostitutes have dignity especially in terms of the commodification of sexual parts. You are not seen as a person, its the sale of a vagina. Emmanuel Kant argued this. Which really point to ethical reasons why it isn't ok.

That's why we are along the lines of Embrace Dignity. I spoke to Donna Hughes, and she said that if we take prostitution out of the criminal justice system, then the commercial law must take effect. But the contradiction is that the law is corrupt. Step 2 let's make the most vulnerable person take responsibility and how is this going to get better.

We have seen that complete decriminalisation in France and New Zealand (NZ) that it hasn't worked. That it still leads to a lot of abuse and particularly to foreigners and not local people. There has been a big breakout in the grooming of young girls through WhatsApp and social media.

I believe that if we can keep sex work within the criminal justice system, then there will be a chance for diversion programmes and clearing criminal records. You can get social help to get on your feet.

Yes, it will be hard but it's like what battered women advocates say. Just because it's hard should we not keep fighting? Do you say to a woman battered by her husband let's just give you boxing gloves, and this will empower you. And you must negotiate. This is cruel and bizarre. The amount of IPV is that most of the trafficking is actually happening within the intimate sphere. Like the young girls being groomed on social media.

Parents actually sell their children into trafficking situations. This is the cultural milieu. This is in Nigeria. If it's legalised in SA, then it will be legalised in Africa.

For the most part in prostitution there is just an immeasurable amount of suffering. What would happen if this demand was normalised.

We are therefore abolitionists. What is the best way to support the largest number of people.

I then also disagree with Embrace Dignity.

The amount of young boys prostituting themselves is crazy. Anyway.

My point is that we have an enormous problem. Nothing is helping us wipe out GBV and bad world view paradigms, but I don't want to use the word patriarchy but it's like we need to do something about sexual

entitlement. The majority of those buying sex were biologically male, the things they wanted are of a particular type, like ass to mouth.

All the evidence after the 60s sexual revolution and the #metoo. Just think if this was totally decriminalisation, then what recourse do these ladies have?

I: You are not really settling on any of the four models I am putting to you.

P: I agree with the law reform as to change the laws would devastate things. The people in SA are not ready for this. They crashed the website when it was suggested that sex work should be legal in 2010 for the world cup.

We agree that the legal system that there is a lot of brokenness, broken people but the exec of the police force has said that they don't even care. So how are they going to care more if sex work becomes legal?

How on earth do you opt for a pro-prostitution activist's opinions instead of the authority of the South African Law Reform Commission's Report on Adult Prostitution (SALRC Report) [2]? This is particularly relevant because the Commission for Gender Equality's work should be in harmony with the SALRC Report if the ANC policy has been informed by the facts. Whatever the case, it seems as though the Sex Workers Education and Advocacy Taskforce (Sweat) is the only go to authority on this matter, even if they are being funded to promote and frame the agenda. It is in this lopsided frame that Javu Baloyi's 'comments' become part of an ad hoc 'justification' for Sweat's view.

To be fair the ladies that work on the streets are also not very cooperative and become enraged with the police. In Durban they antagonise police.

I think that if there were specialised units, not the SAPS, to deal with prostitution then that would be better. Perhaps the Hawks. But again, they need to be trained.

When you refer something to SAPS that just should not be done. Perhaps a unit would be good. I think we have done on this front in the trafficking. But this also has its issues around trafficking. Sometimes their testimony is not strong.

Anyway, what I am trying to say is that to change any sex work law now would be catastrophic. You have a lot of vulnerable women. Its swopping the freedom of one group over others, and in turn privilege a few so the majority could suffer.

The central claims of the abolitionist movement in my view are: Persons should not be prostituted. The majority of persons being prostituted are de facto being abused/harmed irrespective of legal regime.

If we are correct about prostitution, in that is a diminution of human dignity akin to slavery then our efforts to remedy such an evil in law is warranted.

I just find talking to prostitutes is heartbreaking. Many of them are mothers. I mean we have two kids, and it is just horrible.

I: Yes, I must admit this is opening my eyes to a lot of different views. My third question is around policy that has changed since 1994. What changes have been within a policy level and the roles you have played. I know you attended parliament.

P: The change came in 1994 was amazing. Then you get 2010. There was a large part of the ANC executive that were involved in the illegal sex trade. Then Jordan happened. The huge public outcry against the temporary legalisation of sex work in 2010 was a significant event. Then Jordan turned the tide.

I: what do you think about the different policy options. Like in Sweden, New Zealand.

P: Global policies are dangerous. Like the human trafficking bill. It is too general as to be quite weak. In SA we are an interesting group of people. We don't have the same people.

We have got problems and attitudes unique to us. We are recovering from the trauma of a horrific political system that robbed people of their dignity. Like Julius Malema's speeches – the substance is to help people

recover their dignity. I mean even the black consciousness stuff, although there is not too much of that because the ANC won't allow it.

Part of the struggle is that when the dignity of the person. That skin colour doesn't make you less of a human being. That your socio-economic circumstances don't make you less of a person. We don't want the majority to suffer. It's like women being paid for their sex organ. The men who pay them know that the women are repulsed by them.

These women need to put food on the table, but this is just so undignified. I sometimes think we have become so entrenched that if you change your view, you will lose your support. The sex work survivors try and write into the pro decriminalisation organisations, and these organisations won't support them. NGOs are bought out to have a position because they need to make money.

If your report in your heart that there should be full decriminalisation then I can't help. We can't just decriminalise because of a tiny minority of ladies that believe they have agency. There has to be buy-in from the entire society. I hope your report will show this. Sadly, this will show little girls that they can go into prostitution (if it's decriminalisation). I mean these girls grow up without fathers – I think it's like 34 percent of them don't have fathers. How is a women going to relate to a man. It's about the young girls as the future of this country. These are the things I would hope will be included in your report.

I: These are similar debates we were having in the rape support group that I run. In that women must be a certain way and they can't say certain things. Or if you smoke you are considered a type of women. Like they need to hide.

P: Ja like this emancipation in the 60s. Women tried to be like men. What a horrible project. They became what they hate. They found the men without spine and backbone. The conversation on shame has gotten into a rut. Penny Sparrow said something terribly racist. She showed no remorse. And the judge judged her that she showed no remorse. I know that she should have had shame. There are inappropriate and appropriate ways to have shame. Do you want to live a free for all. They are broken people found in the gutters of the industry.

The worry is that dignity for ladies is that they mustn't be around gigolos.

When I think about the Gogo's that carried us to our freedom (becomes emotional), it's to them we owe a great debt. Even in the indignity of being domestic servants we owe them a great debt.

I: When was your organisation formed?

P: It is a year and a half now. I will send you that audio. We have a theological audience, and we are in the religious camp and to get them not just to condemn people from having a drink or something, but to get into the thick of things.

I: thank you this has been my longest interview. I get different aspects. I want to show the aspects bringing forward.

P: I think there is an agreement that there is abuse happening. What is significant to note is that people like Christopher McCrudden interpret the Jordan judgment as representing something like a collectivist approach as over against the New Zealand individualistic decriminalisation judgment. Pierre de Vos on the other hand framed the Jordan judgment as the court capitulating to public opinion [on his blog Constitutionally Speaking]. I would tend to agree with Christopher McCrudden (not his choice of words) over against Pierre de Vos who in this case I believe is arguably less cogent.

I think a deeply troubling part of the radical ideology of prostitution. Mistaken views are just that, mistaken. The most important investment all South Africans can make is to protect the dignity and safety of all its people by affirming individual dignity and corporate responsibility. This can be achieved by providing people at risk with dignity affirming options.

Interview 10

The Commission for Gender Equality	The Commission for Gender Equality	June 2019

Interviewer: I see the case you sent me was from 2010.

Participant: our investigation? Yes, the CG acknowledges that due to internal challenges there was a delay.

I: a capacity challenge?

P: yes, we noted that limitation.

I: how many cases do you investigate.

P: Each provincial legal office deals with complaints so I don't know. In order to put the investigative report to SAPS as a right to reply, we only received …. We work closely with SWEAT.

I: It would be so interesting to see how many cases are investigated around sex work.

P: I am not on a national level, but I can find out for you.

I: It will be interesting to see how many sex workers come forward and don't mind being part of the investigation. I know your org is pro-decriminalisation. Can you give me an overview. From your work you have done what is the extent of sex work and why women enter sex work?

P: The commission for gender equality has made its position clear to the national assembly. It's widely known that the CGE is positively for decriminalisation of sex work. We had something since 2013. This was in response to the SALRC. There was a delay in giving this report of theirs to the minister of justice. I think 9 or 10 years. This report set out the comparative legal basis as to why we promote decriminalisation. We see sex work as a profession and as a choice and prostitution is coerced.

We look at comparative jurisdictions where there is criminalisation which is what we have. We looked at partial decriminalisation. Decriminalisation is also known as non-criminalisation.

The topic of sex work is highly stigmatised. You have religious and moral outcries. In our position paper we note that by fact there is a demand for sex work. We also note the social exclusion and that they're vulnerable to exploitation.

We launched the investigative report and as you can see from the recommendations, we are hampered by the SALRC report. They suggested partial decriminalisation. We are saying that only full criminalisation allows the right and freedom to health, work and dignity. And to psychological integrity.

We can obviously only give recommendations in the confines of the current legal system. We have subpoenaed the national commissioner of police because there was not a proper response to the report. We requested whether the recommendations had been implemented. He sat before the commission on the 25th of September last year. Section 11 and 12, it was then agreed that he would finalise the SOP on how police officers treat sex workers.

SAPS is in a rock and a hard place because they are merely the enforcers of law and sex work is criminalised. Needless to say, this was a big step. We as the CGE have visited each province in the SAPS and have educated 1000 members on this SOP. We presented at a sensitisation workshop.

We educated SAPS members about why we want decriminalisation. We spoke about the cases of police brutality and also about profiling. Sex workers are targeted because they break by laws. So, this led us to request stats from the national commissioner to show us how many sex workers have been arrested; if they were prosecuted and how many there was in the last three financial years. And that info was long outstanding. We then once again subpoenaed him. We were then provided with those stats.

I: Can you share the stats.

P: I will after other processes. This actually shows the arrests per province. And the charges and convictions. The conviction was very low. We just need to understand that laws and beliefs change. Like adultery was once outlawed.

Then with the Jordan case and the constitutionality of it being criminalised.

I: And the clients – any stats there?

P: we didn't disaggregate that. We went to parliament to say we don't believe in partial decriminalisation though. We took our findings to parliament to show that decriminalisation was the only constitutional option.

I: In your findings report, you said you supported a petition to parliament which was submitted to Embrace Dignity.

P: It was a bit before my time, but we did not fully agree with what Embrace Dignity wanted. What were in support of was that there needs to be a law reform owing to the violations of sex workers. We don't agree with them we still have a common objective to say that law reform needs to take place.

I: In the work you do what is the extent of sex work? The studies are outdated.

P: I work closely with SWEAT, but I do not believe you will get proper stats considering it is criminalised. It is an estimate. What we know is that there is a large demand for sex work. Sex work in 2010 was briefly decriminalisation. This shows you that there is a massive demand.

I: Why do people enter the industry?

P: there are various reasons. Some cite that this is their profession. Others say poverty. Transgendered sex workers sometimes say this is the only work they can get because they are so stigmatised by society.

I: I want to ask you about agency.

P: We see sex work as a choice regardless of the reasoning. This is a profession that means enjoying the rights and freedoms to other workers in SA.

I: why are you against criminalisation and have you considered the other policies across the world.

P: ok we always look at something through the constitutional mandate. Which is a human rights lens. If we decriminalisation sex workers, we deliver human rights. They have the free choice of work decriminalised. We also took about unionisation. There are no abilities to bargain and then undermines their constitutional right. What we are worried about with criminalisation, is that health policy decisions are done without them. We also asked SAPS not to confiscate condoms and harass outreach organisations who provide these health services. Also, SAPS uses condoms as evidence to charge sex workers.

The participation in health care, sex workers do not have a voice. Health policy measures.

We also talk about criminalisation in that sex workers are arrested for transgressing by laws like loitering. This is therefore profiling vs kids playing soccer on the side of the road, which would also be "loitering." Profiling is against the constitution. Also, criminalisation means that sex workers are abused often sexually. But this kind of violence cannot be reported so they are denied their rights in a criminal justice system. We have this on our position paper.

I: With the bylaws, with decriminalisation, can they be arrested for loitering?

P: The police will be under harsher scrutiny because of this and will be noted for unjust profiling.

I: Why do you support decriminalisation in among the other policy options?

P: Should it be heavily regulated, they allow the sale of sex, but it is still very difficult. You are still controlling them and undermining their right to career and choice. This practice is used in England and Canada. Sweden was the first to criminalisation the buying of sex.

We base our position on the constitution. So therefore, decriminalisation is aligned. This is explained in the position paper.

I: Have there been changes since 1994? Have you been involved?

P: The Jordan case was important. The SALRC report also took so many years to be read. Why? The SALRC also does not give a time frame for them to implement. During this process, the CGE, SWEAT and other places submissions before the SALRC to advocate for decriminalisation. Entities like SWEAT on the ground level. The SALRC recommended partial decriminalisation.

Following this, our contribution was subpoenaing the commissioner of police. A lot of the allegations are against SAPS. Which culminated with the SOP.

The honourable president has alluded to the fact that sex work may be decriminalisation. This is a huge achievement. Our position paper to SA and to parliament was amazing too. We have requested to be part of the positive policing movement to safeguard sex work.

I: is there a TOR for this group? Another thing is that in an anonymous interview I had with an Anti-Trafficking Organisation , they said that CGE just copied and pasted what SWEAT said to use as your own position.

P: We'll have similar arguments. We're on the constitution and this is our position. The sex work position paper was led by a commissioner, and I do not see her doing this. Yes, there is comparative analysis and there are similarities. There of course won't be disjuncture.

I: Yes, an interesting view.

P: the problem is that there is a trend to say that human trafficking and sex work are linked. We are saying yes that prostitution is trafficking, but sex works is entirely different.

I: What is your view on sex work and GBV?

P: Sex workers are not likely to report this. Because of stigma and because you feel the justice system does not support you. From a logical perspective is that GBV is higher.

I: This I mean in that sex work in itself GBV.

P: Not in itself. It's what happens around it.

I: Well, GBV and sex work. The actual profession and GBV are indistinguishable? They mean the same thing?

P: Well, it goes against our position.

I: My next question. What needs to take place to changes sex work policy? What form would it take?

P: The gender commission looked at the political manifestos of parties in terms of gender views. One of those aspects is sex work. The ANC – there are undercurrents of the decriminalisation of sex work. This is not the CGE's viewpoint, but I think there will only be a political change that decriminalisation reduces GBV. In my view it's political will. Even parliament itself… The ANC national conference in 2017.

I: If you look at the document from the conference. It doesn't speak to decriminalisation. But they want further engagement.

P: The resolution document is vague yes; the media statements are not. Ramaphosa himself being behind it is key. He has said they are working towards decriminalisation. But the manifesto is silent on that.

I: Embrace Dignity says that government is open to a form of decriminalisation, and it may be partial decriminalisation. A lot of people are saying this including those in the Gauteng legislature. Or decriminalisation but regulations to keep sex workers safe.

P: Embrace Dignity went to various countries. Their report… We have asked them for this.

I: The NCOP went to Sweden only and they spoke to the parliamentarians about partial decriminalisation.

P: There has been a lot of work on this yes. We wrote a letter on our position.

I: Please forward me this letter. Many don't understand decriminalisation and legalisation and conflate them.

P: Regardless – criminalisation doesn't work. Most agree on that aspect.

I: Yes, they do. My last question is the advantages of decriminalisation. Would you consider partial decriminalisation?

P: our aim is for decriminalisation. But our absolute stance is against criminalisation because of the abuse of rights.

I: Sorry you were saying about agency?

P: Well, the further regulations on partial decriminalisation takes that away. It segments the sex workers into a different sector.

I: The SALRC – originally their report was actually about pro-decriminalisation but then changed to partial.

P: not sure. But I do know it gets into a moral and religious debate. So, I know this is a bit off topic, but if you think about the Civil Unions Act for gay marriage, instead of just amending the marriage act, they created a whole new category and a law for a sector of the population. A person said this was an apartheid way of thinking. It would have been a lot cheaper to change the marriage act rather than create a whole new statute.

Remember the SA state is non secular. It still behaves like a secular state!

I: When I write up my report what are the specific aspects I must account for?

P: There's a dire need for reform esp. regarding the violation of sex workers. The huge impact religion has on laws, but we are secular? This is against the constitution. Everyone should be treated equal, but this is not happening. Sex workers are the voiceless and speaking through NGOs. When is this plea for assistance be met?

I: are there other ways sex workers can have a voice?

P: Sex workers are fearful of stigma and victimisation so even obtaining their statements and names and affidavits, took a lot of convincing from the NGOs. Even though it's one example you can't just step on a soap box. Your work is a crime.

When I think of things, I can send to you.

There's also the Asijiki coalition.

I: Pleasantries and goodbye.

Interview 11

Ms. Ntokozo Yingwana	SWEAT / Sisonke / ACMS / Sex Worker rights activist.	June 2019

I: I know you work with the migrant sex workers so if you can just answer to that. How does your org view sex work and from your work, what is the extent? And what are the reasons for entering sex work.

P: My background is sex worker rights activism and I worked for SWEAT from 2008 to 2014 when I left to continue with studies. I feel as if I am better positioned to speak from my activism because I am doing scholar activism, but I do work with SWEAT and Sisonke and Aswa and I will do my PhD on that. I am a sex worker rights activist.

I can speak to the sex work field as a scholar or as a board member.

So, sex work is work and that it should be decriminalisation. There is also the understanding that the work around sex work is in collab with Sisonke – a sex work movement. We hold that argument. We provide evidence for the argument. It becomes tricky.

There is a study done in 2013 – an estimate study.

I: Yes, this was a while ago. Has the sex worker extent therefore been updated.

P: There has not been a follow up study. With that said, that initial guestimate was 150 000 which is actually a gross underestimate. How does one count a hidden, criminalised population. There wouldn't have been, I think, any significant changes to that estimate though.

I: Why do women enter sex work?

P: I would broaden that to include MSM, transgender, non-binary etc. The majority of them enter this because of socio-economic circumstances but this it does not mean that they should be deprived of agency. And poverty should not be used against them to make that choice on those limited options. You have sex workers would or could say that yes if they had other artisanal skills or qualifications and as SWEAT, we advocate for these extra skills. There will be a point anyway when you need to retire even if you choose to be a sex worker. We don't want to discount people because of poverty but we believe in expanding options for them. I am against organisation and say to SWEAT and if I give you a computer or a sewing machine. Maybe they don't want to do that. They should be able to choose.

I: Just to expand on agency please.

P: I am only referring to ADULT, consensual sex work. They conflate trafficking and child abuse with sex work. Even if there was decriminalisation, there would need to be a legal age. Like with any form of labour, there are labour rules.

I: What is the difference between trafficking and sex work.

P: Sex work is a form of labour. Using your body to provide a service in exchange for money. But this makes it very uncomfortable for many people because of the fact that a certain body part is used for this purpose. We don't seem to mind that a surgeon uses their hands in exchange for money.

As soon as we talk about vaginas and penises, and it becomes uncomfortable for people.

So human trafficking – we only seem to think of sexual exploitation. There are many forms of human trafficking. Like seasonal agricultural workers are promised a certain rate and then while they know that they are getting into that kind of work, they do not know how exploited they'd be. There was no force, but there was deceit.

There was a report that lamented that the anti-trafficking NGOS and stakeholders for focusing on only on sexual exploitation. I did something with the global alliance of anti-trafficking (sic), and it was raised that sex workers can't report human trafficking because then the police will ask the sex worker how they know that. There are so many people that think that if you allow sex work then you allow the floodgates to open for human trafficking. Actually, the people who want to be in the industry and those who don't, can be removed from that. Then the pimps etc must raise their standards for the health of employees. Smuggling someone in will not be allowed.

Sex work is very specifically designated.

I: We have spoken about decriminalisation, but why is decriminalisation the best approach.

P: the buyer and seller and anyone living off the proceeds of sex work (including family members) are criminalised. This is not working because of the human rights violations that occur on this level. Sex workers can't approach police when they witness crimes such as trafficking.

In itself sex work is not criminal.

With partial decriminalisation, this just does not make sense. How do sex workers make a living. It's like saying to a fruit and veg vendor that any buyers will be arrested. It sounds like its pro sex workers but it's not.

Legalisation is like the red-light district in Holland. But if you work outside you get a fine. But this is very limiting because sex workers want to work by themselves in their home. These zonings somehow reek of people thinking that sex workers are dirty and must be contained. A surgeon coming into contact with someone's blood is quite high. We make them wear gloves. The same logic applies to sex work.

In terms of mining, we try to make them safer. We do not other them.

The decriminalisation does not mean that sex work is going to go rampant and that sex workers will stand in children's parks or whatnot. Indecent exposure and loitering – those will still stand. What we are saying is to remove the laws that sees the selling of sex between two consenting adults as illegal. That's it. Let's work together to then see what can help govern the industry. What would it mean in terms of health rights. What are their responsibilities? How will they be paying their taxes.

I: A lot of sex workers are currently arrested for loitering.

P: Yes, you are soliciting. But the margins the sex workers have been pushed to operate in, then yes loitering happens. These bylaws are actually targeting them.

I don't have an issue with loitering. It can be better policed.

My battle though is to ensure that sex work must be recognised as work.

They catch the sex workers through loitering because they can't actually catch them doing sex work. It's an easier arrest.

I: Have sex workers been prosecuted?

P: No, I don't think I have come across a case where a sex worker has been sentenced for selling sex.

I: Yes, those arrested and those charged are very different.

P: I would like to know but I also can't speculate. Maybe Sonke Gender Justice can help.

I: How has the sex worker evolved since 1994. Why hasn't there been change? How have you included in the process of initiating change.

P: I think in 1997 or 2007 but I know there was a point where it was partial criminalisation where only the sex worker was criminalised. The Jordan case then changed the landscape. The backlash was that everything was criminalised.

But there has not been significant change.

I: Have there been changes on a societal level though?

P: I would like to think there has been some kind of shift in terms of the ways in which sex work is seen. Like even the word sex work can hopefully allow people to see it as work.

We are trying to counter the narrative. Women don't want to be paternalised and sex workers want to be involved in decisions that affect their lives. At some point we were involved in the multi-party women's caucus. At some point, the formation of the Embrace Dignity org, but they have a different ideological view. They advocate for partial decriminalisation. Until the formation of that organisation, I felt we were making a lot of progress. This threw us. The person who started Embrace Dignity is a former MP, which gives her sway power with her friends in parliament.

One space where we have made progress – with COSATU. It was powerful to have them release a position paper to decriminalisation sex work and to see sex work as work.

In terms of the general public, it's hard to say. There are people who may be immediately affected but the general public there is some acceptance that sex work exists and no matter how moralistic there is a recognition that the unemployment rate is high. But if it isn't affecting anyone directly then they don't mind.

There's little wins here and there, but it remains complex.

I suppose it's all about who is in power. We have conversations – like when Cyril Ramaphosa who was the head of SANAC had endorsed the decriminalisation. Then he said he wanted to look at the policies around it.

DO we have the right MPs in place? These are the questions we have to ask. It is about strategising.

It's so difficult.

I: He didn't speak to sex work in his speech last night. There isn't an upfront priority.

P: there are these tokenistic declarations in the media. But when it comes down to it, to pen and paper, there is nothing. We need to hold the president accountable.

I: What do you feel needs to take place to change the policy? The NCOP did a study trip to Sweden. When I spoke to Embrace Dignity, they said they feel that the president wants decriminalisation, but it is just the form the decriminalisation takes. They feel that the president can still shift to partial decriminalisation.

P: Ok I think that the political climate allows for us to be more aggressive in our advocacy. There was a draft bill at SWEAT about what it would look like (decriminalisation). We are not however pushing this bill enough. We need to be quite explicit to say that when we say decriminalisation, this is what we mean etc.

I have expressed this – like with the Jordan case – we have been tentative to put our neck on the line. But because there has been a murmur from the president then we can now do it. We can put the draft bill forward. But if you put forward a constitutional case, you have to be fairly sure that you'll win it.

I: That draft bill at SWEAT, do you, have it?

P: I need to make notes of these. I will have to find it. I have to also check with SWEAT and Sisonke to see if they are comfortable with me sharing.

I: I believe that there is something that may be presented to the Constitution.

P: yes, but we don't know if that's been finalised. So, for me with decriminalisation I see it that we need to have a draft bill that is consulted with many stakeholders, including the madams etc. There shouldn't be confusion where people are claiming to work legitimately when they are doing nefarious things. We don't want traffickers to be conflated with sex workers.

To get brothel managers to pay taxes etc may also be hard.

I: If there is a stakeholder consultation process, then that's going to take 10 years!

P: IT does say that a stakeholder group must transition this more smoothly. But consulting – we actually do have enough research. Now how are we going to do this. That's what the consulting is about.

We need to push for decriminalisation.

I: President R says that he is pro decriminalisation but still says we need to debate it. Then nothing actually comes back, there is no feedback. There was something that went to parliament.

P: We want to take the stakeholders not so much in the bill but in the implementation.

I: Shoo the anti-trafficking people are so against decriminalisation.

P: We are saying that trafficking is terrible. Keeping sex work criminalisation has not actually helped trafficking in the industry. With decriminalisation, then sex workers can actually help. You need to work with sex workers if you are truly behind anti-trafficking.

What are their arguments actually?

I: Well, I spoke to only one Anti-Trafficking Organisation .

P: If someone remains anon, then they don't have to self-censor.

So, for them their concern is that women are being exploited and killed?

Here's the thing you have these opposing camps but that they are driven by the same cause to protect women. It's the approaches we take we are disagreeing on.

If you are dealing with human trafficking. You should combat that. So then if you are also about women's liberation or whatever, that's a conversation we can have. We don't have to have that conversation premised on human trafficking. We mustn't paint everything as human trafficking.

I: By decriminalisation he says they are removing government but actually we need exit programmes and diversion programmes.

P: I don't even know how to respond to that. So, you must arrest me to empower me?

I: they're just so abolitionist.

P: Why don't they just put trafficking aside and say let's just talk about sex work. Why do they do this instead of discerning? Rather just come out and say you can't have sex work.

I: There was someone who left SWEAT who spoke about sex work's exploitation and abuse.

P: Oh, Ayanda? We should all respect people's need to move on. Embrace Dignity never says what they are about though. It's always in relation to SWEAT and what SWEAT is not done and who supposedly funds them. Embrace Dignity doesn't stand for anything and it's quite lazy.

Surely you should have your own vision and mission and then discredit SWEAT? It's underhanded and disingenuous.

We're all trying to fight for women's rights but we're doing it differently.

So, someone who worked at SWEAT, how could our donors influence advocacy? It is so difficult to find donors. The kind of funding we get is around HIV and AIDS. In terms of setting the agenda, unless I am too involved but also, I am in academia, and I can be more reflective.

I: I read Griselda Grootboom's book about sex work. She doesn't have time for an interview. Since 2011 I have so much data and info! Before I go onto my last question. How are migrant sex workers affected within the industry?

P: Well because of their status we find that they are further discriminated. They experience more human rights violations than your South African sex workers. Actually, I mean. So, if you have two sex workers – one SA and non-SA, and they are picked up by the police, the SA one will be able to find some way around this through bribery. We have a higher pop of migrant sex workers in Johannesburg.

I: Would decriminalisation extend to migrant sex workers?

P: That's a contentious point. The version I have is that we drew inspiration from the NZ model. Our draft bill though doesn't make provision for migrant workers I must say. There's no overt discrimination though. But I think you need to have papers and status. We can't push for this right now though. It's something we should make quite explicit in the bill. We know that in terms of migratory laws that people should have documents.

I: My last question is the benefits of decriminalisation versus full criminalisation.

P: Advantages of decriminalisation: Sex workers can fend for their families and not be abused, harassed and killed for it. I imagine that with the HIV prevalence. This argument has been made in the Lancet publication. An advantage is that I think it shifts how society thinks about sex workers. As soon as you label someone a criminal, there is already an impression and an invitation to treat someone like that. The public can hopefully relate to sex workers in a humane way, such as healthcare workers and home affairs.

I: Are you aware that there's an SOP?

P: We did sensitisation training. SAPS said they'd rather be chasing real criminals. We find it hard to ask them to have an SOP in the context of criminalisation. Yes, it was a low hanging fruit, but we need something more. There's also an SOP in dealing with transgender people.

Maybe the disadvantages of decriminalisation. Hmm… Maybe people think they can just become sex workers easily. Although I still don't think it's very attractive profession. There is transactional sex yet, but that's a way for people to finish their studies and is temporary.

I: So, a blesser relationship is not sex work?

P: So, with sex work it's very clear cut. It's a menu and there's a cost. With the blessee/blesser it is not as contractual. There is an expectation that the services will lead to having rent paid etc. I don't want to conflate sex work. With transactional sex there is also a kind of relationship.

I: Have you ever been a sex worker?

P: I won't answer that.

I: The last part of the disadvantages and advantages of decriminalisation sex work?

P: Killing of sex workers is directly linked to criminalisation.

Look sex workers have got different experiences. It's very difficult when these accounts clash, but I think you should try and show the nuances. We need something richer in terms of understanding sex work and the nuances. I don't want to discredit those who have had terrible experiences. Their reasons for entering the industry should though be an argument against decriminalisation. So, a lot of the arguments say that we must have different options for women. Yes. But it's also irrelevant in the sense that we have, and always will have, sex workers. Right now, sex workers need rights. Their realities right now should be guiding us.

I: The majority of organisations are calling for decriminalisation I must say.

P: This has allowed us – Asijiki – to mobilise many NGOS to push for decriminalisation.

I: (Pleasantries and goodbyes).

Interview 12

Research Organisation – Anonymous	Research Organisation	June 2019

I: I know you work for Wits and not an NGO. How does your organisation view sex work (prostitution). What the extent is. And the reasons why women enter into the sex industry.

P: The official view is that sex is an occupation. It must be dealt with as such as needs to be known as sex work. The extent is anyone's guess. There was a preliminary report done by SWEAT. The term itself is ambiguous and broad. But the stuff we do is those who sell sex. Within that as well we are working with transgender women and men who have sex for money.

I: The estimates – what can you say?

P: As to women doing this exclusively. I don't know. It's a very difficult question. It's like asking if you are employed. Sometimes you may do something online or work at the corner café. To my mind it's common and fluid. What constitutes sex work could be more creative and diversity. I don't think I know a number but there it is common. The women we work with self-identify as sex workers. That's not many.

I: why do women enter the industry?

P: Well, why does anyone enter an industry? To make money. We have dealt with the trafficking people in the past and we have yet to see a trafficking case. There are plenty of women desperate for money. It's the means available to them, sex work is, and they may enjoy sex work.

I: So, you are saying that women can enjoy sex work?

P: I can't see why not. I enjoy being a doctor. I know sex workers who say they enjoy their jobs. It's a very traditional view to think that women can't enjoy sex work.

I: From your perspective, women may enjoy that work.

P: Well, we have never had long conversations about this with them. We provide health care to truckers and taxi drivers, and we don't have long discussions with them if they enjoy their jobs. I think I do have longer discussions with the sex workers and yes, they may enjoy their jobs.

I: what then would you say that their level of agency?

P: I think it varies dramatically. There's a variety we deal with. The ones we provide healthcare to, I think they have as much agency as anyone unemployed. They do what they can to make money in ways that are available to them. Some of them have no agency and some have them have a lot of agency. I have a friend who is a high-flying lawyer but also does sex work because it earns a lot of money, and she also gets to spend time with her kids. I think the agency varies dramatically. Some we provide healthcare to have almost no agency as they have very little choice.

I: So, some have no agency?

P: Look there is some agency. They have to do something to do money. There is a spectrum.

I: How does your organisation feel about the current sex work policy.

P: Our view is that the criminal approach makes it very difficult to access healthcare. We were part of a legal case almost 20 years ago that decriminalisation is a public health intervention.

I: You mentioned something about a radical view?

P: My personal view is that there's a weird morality around sex that makes no sense to me. If you look at the Swedish model, it's totally incoherent and hypocritical view around sex. If it's true, that you have an issue around this being demoral or that it's anti-feminist doesn't make sense.

We send miners underground. We send cops in the field every day. And we make provisions for their safety. Why shouldn't we do this for sex workers. Why should there be anything wrong with sex between two consenting adults? We do all kinds of things but somehow sex work is the problem. It doesn't make sense to me. I mean there are packers at Checkers who earn badly and so what's the problem with wanting to earn more through another profession like sex work? There is so much hypocrisy.

I: Um what is the preferred policy?

P: I think sex work should be treated like any other occupation. You can apply normal occupational health. You must apply a framework around that.

The biggest concern that sexes workers face is that they get harassed, locked up by the police, their children taken away from them, and they get blackmailed. The war with the authorities. They live in fear. To my mind decriminalisation makes sex. Legalisation is more complicated. It depends what you mean by that. The way it has been applied is also weird. In a country like SA, it makes no sense to have legalisation. It's important to just provide occupational health. So, if you're a brothel owner, you should provide a safe environment.

I: I wanted to look at how the sex worker policy has evolved. How? How has your organisation been involved.

P: we gave submissions 20 years ago. The organisation has given evidence to ensure evidence-based policy is important and that police must be sensitised. We want to then put data into the public sector. So, we want to

identify who these women are, what health challenges they face. Yes, they are predominately women. So, we provide science to design policies.

We are not directly an activist organisation. Like SWEAT. I would support SWEAT as they are on the frontline as opposed to listening to those nutters who are really on the outside of what goes on.

I: who are those nutters.

P: I think the Swedish model people. Then the ones – Embrace Dignity. There arguments are peculiar. We come from a world where HIV positive people are important in designing programmes. But those nutters don't listen to sex workers. They don't speak to many sex workers. Maybe one or two. SA is a very conservative country and hasn't had a rational and coherent discussion about this.

I: I see that NCOP went to Sweden and did a case study. Embrace Dignity made a petition and from that, the NCOP went to Sweden.

P: It's a red herring. What's it about. Again, sex work is work. If I was selling drugs, but you criminalise the person buying drugs, how are you helping the person selling drugs? Then it just gets pushed underground. I mean the men who are buying sex - you want to also serve them in terms of providing healthcare. You want to work with them too. In so many ways the Swedish model is incoherent. But in sex yes, they think they know best?

I: Would you say there has been policy change?

P: No. In terms of sector? Yes, there is the national decriminalisation plan, and there has been some acknowledgement that the supposed war on sex work didn't work.

I think there is much more openness.

We have worked a lot with the cops, we can see more sensitivity especially when we point out that they are doing something illegal. The sex workers say it's a bit better. It's still not great but there is something.

I: My next question looks at what needs to take place to make the change happen. What would be the proposed policy do you think that will probably be implemented?

P: One thing I found hopeful was the constitutional court bid around sex work. Essentially arguing that there is an infringement of policy. They were working on a concourt challenge around that. But I am no lawyer although I think it would work. Look, decriminalisation sex work would never be the popular vote in SA. It's the same thing if we were to ask everyone if they'd like to put the death penalty up, then most people will actually vote yes for that. So, I think it needs to go through a constitutional framework or public health. Cyril Ramaphosa is behind decriminalisation.

I: there are still divisions in parliament.

P: Yes, most of them would certainly be against decriminalisation. A lot of them are conservative. Luckily we have a constitution that can override the general nutters. If we were debating that now the vast majority of people would call for criminalisation.

I: What do you think the change would take?

P: The most rational would be decriminalisation. The concourt challenge was along the lines of telling people that they can't actually tell you what to do with your bodies. Sex work is correlated with HIV and trafficking. It does not mean it cause them. So, to my mind that this is going to change only through the concourt.

I: Which concourt challenge is this? Any chance you have access to the documentation.

P: The women's legal centre at UCT has access to these. Not sure how confidential these are. But the arguments were powerful.

I: Cos I know SWEAT want to go the concourt route.

P: They are part of this new challenge. The SWEAT people have the most coherent and least emotional approach to sex work. It's like a cultural war out there deeply imbedded in morality. It's bizarre to me. The trafficking people are the most bizarre. You have these Marxist feminists coming together with republicans proposing for women's rights. On the other hand, you get people who say they don't like sex work, but they must help people.

I: The trafficking people are very strong about this.

P: Well, those people are utterly insane. I mean there was an entire PhD, they didn't find an entire case of trafficking during the world cup. People don't need to be trafficked to do this work especially in the context of high unemployment. That there is a huge trafficking cartel is just ridiculous.

I: I read Griselda Grootboom's book. She was tied and raped up.

P: How is that sex work? That's rape and abduction. The correlation between sex work and her gruesome account is not sex work.

I: She ended up in sex work and trafficked into sex work.

P: to my mind that sounds like a brutal kidnapping.

I: She is one of the key people in Embrace Dignity. There was another woman who was raped by 17 men outside a brothel.

P: Again, how is that sex work?

How is it linked to sex work and trafficking? I have 10 stories of people who have had violent sexual assaults. And now they are manifesting in sex work. Sex workers get raped all the time by police. This is a consequence of criminalisation and also gender-based violence in patriarchy. It is not about sex work. The debates are separate. I just again think they must focus on gender-based violence.

I: I am a rape survivor.

P: There is a level of GBV that is so high. Why is this not the discussion. The rape centres – the government rape centres – have no funding. Why are we not outraged by this? But yes, we care about sex work.

I: Why would the government do this?

P: Because they're useless. They have other priorities. GBV is uncomfortable. Men in politics have assaulted women and remain in positions of power. I am disappointed by the reaction to women's reproductive health. They refuse to provide services for basic things – the clinics. Because they think women are having sex for fun. But try that with diabetics. You wouldn't even dream about it.

The society is so hypocritical. And often rooted in Christianity.

But I tell you that my views have changed since I have actually in real life worked with sex workers. Before this I would say that yes, it's a necessary evil and in an ideal world there wouldn't be sex work. But that has changed. We are working with sex workers who are top women who may have elected to be a nurse or a doctor and who are often asked – what alternative work do you want to do: would it be domestic work or beadwork. They don't want to. They want to do sex work. There is a sense of coherence in the sex work industry in Johannesburg. They have stokvels and help look after one another's children. They are not these poor trafficked victims who are vectors of disease as some would believe. People are making life decisions that are spot on and actually they earn pretty well.

Polarising sex work takes away from the real arguments around GBV. If I was a woman in this country, I'd be pissed off right now. The stuff around contraception and the termination of pregnancy, it's ridiculous. There's a war on women here. Women are screwed over by the entire system. I mean defunding the rape centres boggles the mind.

I: My friend has a slut walk each year. In our conservative society people want to change the name.

P: 14 days of activism is just a stupid thing by politicians which don't give a damn.

Oh no women being exploited in the sex industry – this is what they say. Have they even looked at how women are exploited in other industries, like fashion? The hypocrisy is bizarre. We have Miss SA etc which objectify women. These so-called radical women organisations should fight real battles.

I: On my last question. What are the benefits of decriminalisation and criminalisation etc. You have spoken about partial decriminalisation. Why wouldn't you recommend that?

P: I can't think of a single benefit of criminalisation. It's a war on women.

I can't think really of partial decriminalisation as beneficial. It drives men underground in that most sex workers are women and users are men. It will then make men less likely to get access to healthcare and become anonymous which may make them hurt women.

I mean how are you helping sex workers? Yes, they hopefully won't be raped by men.

Legalisation is really complicated and have difficulty seeing how it can protect sex workers.

If you want taxation, then there are banking programmes etc.

This lawyer friend of mine who is a sex worker. She has four or five regular clients. She goes for dinner with them and has sex with them and loves it. She doesn't need to work after 5pm.

Now what harm is being done to anyone in that scenario.

With the women we usually work with and provide healthcare services to, they are 25 years old usually and could I guess find domestic work but that's hard. And will earn two thirds of sex work. She will also have sex work community. Yes, they are exposed to rape and brutality. Therefore, sex workers need protection. Even domestics have occupational hazards.

The women will have less harassment and people like me can give them services.

There's also a huge stigma attached to pay for sex. They pay for sex anyway in some ways. Perhaps yes in some relationships.

For decriminalisation it just helps with occupational hazards.

For healthcare providers it makes our lives much easier.

For society, it also helps us have more frank and open discussions about sex work and sex in general.

I: What other things could I take into account.

P: People love to have an opinion about sex workers but don't ask sex workers what they want. Ask sex workers what they'd do. The sex workers I work with don't necessarily articulate they want decriminalisation. They will say, I want the police to stop hurting me.

(Inaudible….)

Embrace Dignity doesn't even talk to real sex workers.

Yes, I am a HCW working with sex workers, but I hope that (inaudible).

I: I won't be able to talk to sex workers to such an extent, and also the ethical considerations. But I will put it into a future study.

P: We work with truckers and taxi drivers as part of the sex work industry. We have a situation, around HIV, the trucking routes in KZN particularly, the incidence of HIV are very high. The conventional wisdom was that truckers pass the HIV on. Until we did a study and found that the prevalence of HIV incidence in truckers is the same as the general male population in SA.

Their sexual behaviours are seriously conservative. But there was this nonsense about them using sex workers. We think that there are all these sex workers along the trucking route. It's way more nuanced actually.

Now the HIV prevalence is actually very low.

Another example is that there are male sex workers. These are male sex workers who are servicing men, I thought. In fact, most of their clients are female. So, I believe people should have an open mind. Yes, I also have my naïve views on sex work. Most of the conventional views are actually wrong. People have all these opinions.

What is the detail of your thesis?

I: It's about what happened to the change in sex work.

P: Gay marriage and things (inaudible). (He was driving therefore this could be the reason).

What I have given is my personal opinion. The more you can couch it away from the organisation the less you have security over the funding…

I: Pleasantries and goodbyes.

Interview 13

Dr Marcel van der Watt	GREAT / UNISA / NFN/ SAPS	June 2019

I:

P: my background was with the police. And Organised crime. I was mainly into the trafficking of women and children. I am currently at UNISA, and I work in courts and assist in investigations and testify. I am involved in two organisations- the one is a local one – The National Freedom Network, in the role of case manager. Where the community… Then with a Canadian organisation that also looks at trafficking. I am research director. It's a couple of hats.

I: Wow how do you cope?

P: No kids but married 16 years. It's not a jacket you can take off. These things happen all times of the day especially in SA.

I: I want to talk about the different policy options regarding sex work.

P: Many people don't really know what the difference is. The lobby groups want decriminalisation. But as soon as you are out of that lobbying field, people don't know what decriminalisation means.

I: Another interviewee who wanted to be anonymous felt my questions were biased towards decriminalisation, but the guy did have an almost 2-hour interview.

Anyway, what is your view on the different policies regarding sex work based on your work with sex workers.

P: So, my views… I deal with about four or five cases a week with interviews or with informants or those who share an experience with exploitation and abuse in the sex trade. We know it's rife. I know very well what the difference is between sex work and trafficking, and I will be the first to tell you that they can't be conflated. But where I do have a problem is that they show that sex work and trafficking when they actually come seamlessly together. I read this research, or what they claim to be research by some of these advocates, and when you read the lived experience of people telling their stories, some of these are laced with trafficking. Now the problem is, based on the research I have read, what they think is trafficking and what IS actually trafficking in terms of legislation, are worlds apart. So, sex work is definitely not work. If you claim that, it presupposes that sex workers are a homogenous group, which they definitely are not. To speak on behalf of sex workers, you are not speaking on behalf of the sex workers that I have dealt with, or the sex workers that Embrace Dignity has worked with. Or that the Kwanele movement has been dealing. I have a problem with a blatant lie and negates the

experiences of the practitioners working with sex workers – the police, the social workers, the courts – who know very well what the darker side of this all is. Fundamentally you dismiss the voices of sex worker survives. Some of them may not even use the word trafficked, but if you look at it in the legal sense of the word, they have been trafficked.

I: How do you define trafficking?

P: Well, those involved in the African Migration Centre ACMS, use a narrow definition in that there is force and coercion. That is an extremely small part of trafficking. It is far broader. One thing you must highlight in your study, is what is causing this polarisation in the definition. If I am saying that trafficking is A, then you say trafficking is B, then can we agree what trafficking is.

A fundamental part of the legislation is abuse of vulnerability. When that person submits to something, and they don't feel there is an alternative, be they a migrant, disabled, a child, someone who is undocumented. If you submit to exploitation, but you don't really want to do it, and you feel you have to, then this is trafficking.

There is so much polarisation.

The sad thing is that we actually agree on more than we disagree. I think we need to have a big debate. I know that lobby groups for example will go into brothels and hand out condoms and teach about health and safety without knowing that many of those women don't want to be there. Even that woman in that brothel will never disclose actually that she doesn't want to be there to these lobby groups because she is too scared.

Once, as a policeman, there was this woman in her mid-40s, and we had a conversation. She was sitting at the bar area in the brothel and was very confident. I had a ring on my finger. After five minutes she knows I am not there for business. Then I realised that there's more to the story. She was there as part of a debt bondage. In excess of R20k. There are fine systems, and her movements were controlled because she was a drug addict. She was in fact dropped off by a third party at the brothel.

You can stand on your head, but this is not free will.

So, others say is that by fully decriminalising this, you won't be protecting them. Yes, there are sex workers who have well paid jobs in the private sector and still do sex work for extra money.

There are so many gaps, and the lack of knowledge among the public and even politicians, that there are agendas being pushed.

We know that trafficking is systemic in this country and across all industries. We don't know the numbers though. Sometimes it's very clear and sometimes it's not.

I: So, you are saying sex work is not work. Will you use the word prostitute?

P: No that is stigmatised. I would rather say a prostituted person. Being a person in prostitution is implicitly harmful.

I am not talking about the woman sitting behind a camera on Skype and masturbating with sex toys. I am talking about where there's frequently a third party and where there is exploitation. So, sex work is implicitly harmful. It doesn't fall within the ambit of dignified work. You can have rights but if there is a dignity deficit then you can never convince me that sex work is work.

I: So, we don't know the full extent?

P: We know trafficking has been there since time started. Labour exploitation… Forced labour probably far outweighs the extent of the sex trade but I can't say that sex work is work and therefore it is not a labour issue. Um, and I think the government should be in the position to protect people from having sex work as it is a symptom of an unjust society.

I have spoken to sex workers whose done campaigning for big organisations. Really if I had an opportunity to have a better job opportunity those women would take it.

I: But are there better jobs?

P: It's a dilemma. Despite the knee-jerk response to some of my criticism. I can write a book about by Daily Maverick article. People just dismissed me as white and privileged. I have a statement where I say I have a job and there are copious amounts of privilege.

I: And the extent of sex work?

P: I have no idea. I think it is very high. But a person I know is a sex worker in an old age home as she is addicted to over-the-counter jobs. There is so much trauma and harm implicit in sex work. We elevate it.

I: It's to get an idea as the stats are outdated.

P: it's probably a lot more. Just reflections over the last 17 years though.

As I have written is that there are five factors. There are few economic opportunities. People are so desperate there. Do the lobby groups know even what's going on in rural areas? Then there is the fabric of the family unit and society disintegrated. This means people don't feel safe and loved in the family home and they leave and seek it elsewhere and they find it. Unfortunately, that's the same domain where men and predators and traffickers find people they can exploit and abuse them.

Then there are the drug addicts. Why aren't the SWEATs and the SISONKEs not talking about that about the endemic problem of drugs among sex workers.

The way they recruit and sample their participants they ringfence them. These people tell us what we want to hear and then furthers our agenda. These people don't want to talk to Kwanele and traffickers etc. You must actually consider all the sources of data. My study was on trafficking. But ja, why aren't we having a conversation about drug use. Why aren't we talking about children as the primary and secondary victims of the sex trade? Sex work is often transferred to the children. I can give you so many examples of moms who pimp their children out.

I: Yes, when I sat in the Cradle of Hope meetings, as I am part of the rape support group, this is what came up.

P: Why are SWEAT and SONKE – why are these voices not coming out in their research?

I: I think it's because they are talking about adult consenting sex workers. Not children.

P: Now we think we have these separate universes where somehow these things exist in separate universes. It affects not just the women. It affects the children and immediate community. You can't have these separate discussions.

I: The advocacy groups though agree that sex work doesn't include children.

P: I know this.

I: For underage they feel it should still be criminalised. Children are not their focus.

P: Yes, but then again you need to ventilate the fact that many people are affected by the sex trade.

I am increasingly leaning towards partial decriminalisation, however. I think the abuse the sex workers face at the hands of the police and the criminal justice system is not ok. And that is unfair. But goodness when you tell me that brothels and the buying of sex should be legal, I can't agree with that.

I: How would partial decriminalisation assist women? How would it protect them?

P: Who are the people inflicting the harm. If you decriminalisation the women, then they find a way to generate income without the harm.

I: Aren't you then putting the power with the buyer, who is criminalised. Because of the enormous risk of what the buyer now has to go through, they can determine the price and the treatment of the women.

P: my view is that the sex trade should not exist. The partial decriminalisation model seems to me that the current harms will be reduced. So, there can be legal assistance when the women are abused. At the moment because it's illegal there cannot be that.

There are multiple arguments. And I guess it can be a tennis match.

It should never be legal, as the buying of sex leads to abuse and trafficking. That door should never be opened. And I mean there has never been a golden midway in this debate.

The National Freedom Network doesn't take a position on either partial or full decriminalisation. Same with the Global Resources Epicentre because it is such a complex date. We don't take an unequivocal stance as people lose their place at the table.

After my presentation in parliament, I received threats and people casted serious aspersions. But yes, we would never support full decriminalisation. The demand must be constrained. When I speak about the prosecution law model, I speak about someone who has worked with the police.

I: Just having a look at the policy since 1994. Why hasn't there been significant change. What is your role?

P: Last year in parliament I haven't taken a specific position. My arguments were against the flawed and misguided arguments used by lobby groups. They don't understand what trafficking actually is. What I stated is that there is too much that we are ignoring. All of us should put our cards on the table. We need to ask why our views are so polarised.

I: Do you have a report you submitted. Can you send me a copy?

P: The Daily Maverick article response… they said Marcel based this on his own research. In fact, my research only backs what's known. Anyway, I don't get a response from these people when I show them all these reports.

I: Why have policies not had significant shifts?

P: I think that it is complex. If it is decriminalised though, wow, it will have major repercussions. Do you know what a lolly lounge is? If there is full decriminalisation you will have 10 of those popping up. All over the place. There is no way you can police this. We don't have the capacity to even take women and children seriously at the moment so how will we manage the sex trade? Let's address the problems. Let's address the police. The corruption. The buyers who rape and exploit. Now for full decriminalisation it is going to be a magnet for vulnerable people.

I: Have there been any changes?

P: Yes, I think police think twice about arresting women in prostitution. There has been a slight shift in attitudes. Even the language has changed. Yes, there is still stigma but there is an awareness being inculcated from various vantage points. We are acknowledging them as human beings and not deserving of abuse. We need to be deliberate though.

I would love to pursue johns etc.

I: What should take place for partial decriminalisation?

P: It's an entire culture that needs to change. Patriarchy is also at the centre of what we are experiencing here. A culture of impunity against women and children where they are objectified. They see women and children as commodities. Dr Tlaleng Mofokeng wrote a story about this about sex work is work in an issue of Teen Vogue. I have a major issue. She is grooming them on a societal level.

I: The Teen Vogue should be shut down. The other articles are not very good.

Anyway, what will the change ultimately take. The president has committed to decriminalisation.

P: What does he mean? Let me tell you full decriminalisation will not happen in SA.

People must not dilute the severity of trafficking and sex work. Actually, they do seamlessly connect.

I: Do you think it will be partial decriminalisation?

P: My owned lived realities is that it won't remain criminalised. We should be absolutely radical in constraining the demand for commercial sex.

Also, what do you mean by decriminalisation?

The evidence is overwhelming that a criminalised system fundamentally and adversely affects women and men. I have had a shift to say that women must be decriminalisation. There should however be really good exit programmes. There must be first class plans and the alternatives you are giving them.

I: A lot of the women may complain that they wouldn't be earning the same amount of money though.

P: Probably not.

I: they practice it because they need the money.

P: Many of the jobs out there do not pay well, I agree. So, we need to have a frank discussion – is it harmful, is it sustainable? I mean can you have a good life with wellbeing and health if you carry on doing this?

There are so many obscure agendas. I have been critical of both sides. Including the abolitionists.

I: You sound like you are leaning toward abolitionism.

P: Yes, but I am not black and white about this. Women can have agency yet, but it's muddled and often complex. Pleasantries and wrapping up.

Interview 14

Ms. Naomi Hill	WRHI	July 2019

Interviewer:

Participant: Even though we work in research we are involved in public health and are implementation focused.

I: First question…. The reason for asking about extent, whether the numbers are going up and if the study done doesn't give justice.

P: The 2013 study has been updated. There was a second survey conducted in 2018. It was run by an organisation called Aura. If you need additional info I can help.

There were a number of draft copies in circulation, but I am not sure which ones are public. What I can say about the data is that these are in collab with the global organisations. However, these are contested in the country owing to their accuracy. The figures we know are probably underestimated.

I can send you that data and you can compare it.

I: The other two parts of the question are linked to views on sex work and the reasons why women enter sex work.

P: The reasons are overwhelmingly economic, and that sex work is a survival strategy. That's not to say that there aren't individuals who don't make a choice and elect to go into this industry. But for the majority it's because of being on the poverty line. Then there are others who join the sex industry so that particular needs are met, whether it's sending children to school or studying further. Or buying books etc.

I: What is the level of agency?

P: Do you refer to the autonomy to enter in sex work or do you ask about coercion?

So, a caveat, all the sex workers are adult who we work with. Younger sex workers often enter the industry are pushed to enter because of economic reasons and because of pressure from their families. However, I think for most of the sex workers in general would prefer alternatives to sex work. Not for any moral reason but because they don't have options. These are women who are marginalised and don't have access to the employment sector and use sex work as a survival strategy.

Having said this, we recognise sex work as work. We don't have an approach that wants to have exit programmes etc. We just meet women where they are at, and we also are not against exit programmes. There are a number of projects that around the country that are involved in exit programmes. We are however focused on the health needs of sex workers, and also the other services, like psychosocial support.

I: What would the preferred policy be?

P: Our stance is that the criminalisation of sex work impacts sex workers' access to health services. Our evidence shows that sex workers get condoms and anti-retrovirals confiscated from them during police raids. This is police harassment which is difficult to do if sex work is decriminalised.

We see the criminalisation as creating barriers to health care.

The fact that sex workers criminalised also interfaces with moralistic and pejorative views on sex work.

I: Do you have reports?

P: We do monitor in routine programme work the number of human rights violations sex workers have experienced and we count police harassment as a human rights violation. There are also a range of people who actually harass people. I'll see what data we can share on that.

We do a risk profile which includes the sex workers age, the clients, the length of time in the sex work industry. So, for those who have just entered the industry we consider them more vulnerable as they don't necessarily have a network of peers and are not sure of how things work. There are a range of factors. That's where I can see what data we have.

I: What would be a preferred policy approach for SA?

P: It would be decriminalisation in that they have full access to a range of services without fear of harassment. We are not, in clarification, calling for the legalisation of sex work. Um, that is not our stance. What we are doing is recognising the barriers that criminalisation presents to health care.

I: Why hasn't there been any change to date regarding sex workers and maybe if there has been any change, how your organisation has been part of that?

P: Well, we have the sex work plan on HIV and STIs. This national sex worker plan recognises the rights and needs of sex workers. That has provided a framework where the needs of sex workers have been laid out. This provides a blueprint for government and non-governmental services. This is to provide sex-worker friendly services. This is an enormous achievement. But having this policy doesn't necessarily translate into the best practices on the ground. The other benefit of the sex work plan is that it provided direction to the international donor community like the global fund and PEPFAR. They have taken account of sex workers and key populations in their country programmes.

Sex workers have also been placed at the centre of the policy. It is peer-educated driven with current or former sex workers. They are thus in charge of their needs and has created a fledgling career path for sex workers in terms of peer educator work.

The National HIV plan also has a focus on sex workers and key populations which has been a positive.

It hasn't gone far enough in terms of the legal framework but there have been other concrete developments.

I: Why hasn't there been any significant change on a policy level?

P: I think because the policy level is subjected to the legislative framework. So, if sex work is criminalised it also places limitations on the policy environment. So, in terms of policy there have been changes in the health sense in terms of recognising for example that sex workers need to be adequately served in the public health system.

Like tailored sex worker health services. But still with criminalisation there are limitations.

So, for example prior to 1994 there was no national sex worker plan which leverages health providers AND is multisectoral. The justice service providers and social services are included.

With the National HIV Plan, you will see that the DSD is in charge of understanding the social determinants of health and within there, there is a key focus on key populations.

I mean there is no utopia, but there are shifts.

I: Why do you think sex work is still criminalised?

P: Well within that is a very long answer.

A lot of it is around traditions and moral norms prevalent in SA. Sex work remains a threat to the sexual and moral order where we are living in a society where there is a lot of gender inequity. And also, what is defined as "appropriate" work for women. I think there is also a fear that if it's legalised then many more women will enter the industry which can actually be countered by saying it wouldn't necessarily increase the number of sex workers, but it does allow safe access to services and safer from human rights violations.

I: What role have you played in pushing for change in this area?

P: An advocacy response is comprised many different aspects. We have positioned ourselves within the health response for sex workers. So, what we monitor through our data and strategic information is HIV and STI and access. This is our lens in the policy change environment.

This data is used on a national level. We submit routine data to our donors (PEPFAR) and the DoH district and regional offices.

I: DO you think the research is taken into account at a national level?

P: to the extent that government departments access academic journals is questionable but what we do is disseminate our lessons learnt and our best practices. Academic journals are one line of dissemination. We do project briefs; we are asked to be consultants and so it's a multiple dissemination strategy. The project data is also shared with the modellers. We were a key partner in the 2013 and 2018 surveys.

I: What needs to take place for change to happen?

P: Look I think the broader context needs shifting. The economic environment in which women are marginalised and the levels of gender inequity need to change. The violence they are subjected to. All these need to shift. In terms of policies, we must enact their good intentions. The health policy does promote access to healthcare services, but sex workers are not prioritised. There also needs to be sensitisation with healthcare providers. Training needs to happen to enact the policies on the ground. Now training doesn't only mean equipping people with competencies to work on the ground with key populations but around attitudinal shifts so that it's non-judgement and that sex workers' rights and needs are upheld just like anyone else seeking healthcare.

I: What do you think the policy change is going to look like?

P: are you asking what I think or what is likely to happen.

I: What do you foresee? Is it full decriminalisation.

P: I can't comment on that

I'd like to say that they shouldn't experience what they currently experienced. I can't as an organisation comment more.

I: What would the benefits and disadvantages of decriminalisation be?

P: If sex work were decriminalisation, there would be far greater protection for women. This would be the immediate impact on our programme and engagement with sex workers.

When you interviewed Francois did, he talk to you about the anti-prostitution policy? So, the US government has something called the anti-prostitution pledge. Which means that organisations who receive funding from the US, they may not support the legalisation of prostitution.

The other organisations are working on different facets. But those who get USAID funding, unfortunately it does impact our engagements about law and policy.

I: Can you talk about the difference between sex work and trafficking?

P: So, I mean people are unequivocal in that trafficking is that something not anyone would advocate for. They are very different – sex work and trafficking.

I: A lot of people are of the view that decriminalisation will increase trafficking.

P: I wouldn't know.

I: in your work with sex workers, have you ever seen how sex workers are actually charged after they are arrested.

P: SWEAT will give you data. We refer our human rights issues to SWEAT.

I: As a last question, what do you feel I should take into account when writing my report?

P: I think if you are looking at policy is the degree in which it is measured. There are no concrete indicators. So, a policy is only as good as the change it produces. But if we haven't set any targets then any data management systems can't actually calculate this. I mean it remains a document if there hasn't been a change in sex worker rights.

I would also like to point out that access to healthcare services for sex workers is not in an enabling environment as they are subject to abuse and harassment. And health care provider attitudes are problematic. The reason we need stand-alone clinics is that sex workers are not accommodated in the state system. We need to shift into a state system so that sex worker needs are absorbed into the public health system.

Are there any other people you want me to refer you to?

You may need to speak to Mariette Slabbert. She used to be the technical lead of the Wits RHI programme.

She has been very involved in the revision and review of the national sex worker plan. She doesn't speak as a SANAC consultant anymore, but she should be very interesting.

If you want to speak to someone doing sex worker services, then Jen…. At PHRU can help.

These are all people who are influential in the field.

I mean if you want to talk to a service provider on the ground…. I can send you these names and an email in terms of who they are.

Interview 15

Ms. Corinne Sandenbergh	STOP Trafficking	July 2019

I: I was having a look at the document at Stop's policy proposal. I am looking at the alternative to decriminalisation.

My first question, can you give me an overview about how your organisation views sex work/prostitution, it's extent and the reasons women enter prostitution.

P: We don't view sex work as work. It's degrading, demoralising and disastrously dangerous. It is prostitution. So that's why we call it prostitution. STOP's viewpoint is that from our experience, which is not much, I found that the girls I did deal with who were sex workers, were trafficked at some point in their lives. Whether it's by an aunt who sent a child to a girl to an uncle for his pleasure, or whether a child is sent to someone. Or harassment and abuse and then being groomed into that to be a full-blown prostitute. Many of the girls didn't learn to read or write. Mothers died at early ages and family members didn't take responsibility for them. I just say that no little girl runs around at 3 saying she wants to be a prostitutes and that trafficking, and prostitution are linked.

I: My second part of the question is why people enter the sex industry and what the extent of it is.

P: my girls mostly entered into the sex industry because of poverty and a desperate need for money. And not being educated. I am in a rural area. They are not on drugs, maybe here and there. But the girls in the rural areas don't necessarily drink or smoke. They come and work at night then go home. Some of the girls who stay in Tzaneen are addicted to gambling. And some have pimps who pimp them. In the cities, most are on drugs. We had a case of a girl who died of multiple stab wounds after a few days in the hospital. According to her write-up, she was on drugs and that she was raped and drugged by her father from an early age. She reported him a year or two ago and that's how I got to know her. Her father was then sent to prison. Now two weeks ago she was on the streets, and 14 weeks pregnant and on her own. There hasn't been an investigation, but I have a funny feeling that it was the father who got someone to do this to her.

This girl was going wild in the hospital. I know this because my husband is a gynaecologist, and he was involved with this case. This is a recent incident. The statistics I am not so good on, Corey as I don't work in a safe house. I don't keep stats, but I do keep a book where I write names down.

I can't answer your question about the extent, but we probably have about 20-30 girls working on the streets here in Tzaneen.

I: What is the level of agency of women entering the sex work.

P: What do you mean?

I: Their choices.

P: In rural areas. About 10 of the girls are pimped by their boyfriends. I can also say that in about the last two years, there have been more men, the presence of more men. Many of the girls also look after themselves and work for themselves. In the cities it is different; they all have pimps. How will the government get decriminalisation right on a societal level as they are unable to get it right within homes.

The children's homes are vulnerable places. So, a girl can leave on her own free will at 16. And because there are no relatives to follow the child, they are absolute victims for predators and are unable to say no to certain types of behaviour. Many of them end in Sunnyside in Pretoria. No one looks for them and therefore are sitting ducks. These girls come into our drop ins. We have to find them places to live as there is no home to go to.

I: Do you think any of them actually choose it?

P: In the cities, they are pimped and drugged. But in rural areas, they are jobless. They have education, but without jobs. So, these girls don't have kids yet, and they don't have grants. Their parents have died. All they have is prostitution to fall back onto. Unless they fall into a programme that I am running. Currently there is a pilot exit programme I am running. I really want to advocate that girls must not be criminalised if they come onto an exit programme. This must be written into the legislation. They choose to exit, get a beautiful skill and have a better life.

Women could be older – 45-55 – solicit from their homes. Many of their clients are white clients so many of them have coloured children. Some of the others are so sick and so broken that they have to go onto disability grants.

The girls come onto our programmes are between 21 and 35. I also have older girls, some of them are grannies. Seven of them are grannies.

I: The elderly have to sell their bodies to make money?

P: We have a Christian background so a loving god who doesn't judge, and when they come to us, they are reborn. We give them soul care and encouragement while we teach them trades and find jobs.

I: I have also heard that some went back to sex work because the money is good.

P: Yes, one or two. But they landed on the programme again. The industry is hard. They move from prostitution to boyfriending it what I call it. Yes, they don't prostitute but they are basically prostituting themselves to their boyfriends. I tell them how stupid they are. They have this guy coming to live with them for free. They wash his clothes; she's cooking his food. And she gets his filthy illnesses. They just think he's nice because he doesn't beat them. Then he does beat them, and they get an interdict against him. Next thing they're back with those boyfriends.

It's a father wound, Corey. So, they are looking for sugar daddies and one person who loves them and says nice things about them. These Zimbabwean boys pretend to be committed but actually only are using these girls.

I: My current question is around the current policy around sex work.

P: The Nordic model is very kind as far as the victim or the girl is concerned. But this only works well in a first world country where you only have 350 000 prostitutes in Norway and Finland and Sweden. It's manageable. The fact they criminalise the men and expose them in the media is great. But then they have amazing exit programmes. It works for the Nordic countries.

In SA our problem is that the moment you decriminalise the sex industry we will become like Thailand, where you have karaoke bars on the street corners, and we will be the biggest brothel in Africa like Germany is in Europe. What happened in Germany is that the girls went to be prosecutes for the 2006 world cup and then never went home. I remember this clearly; we will be the brothel in Africa. Girls will be streaming through the borders to do a legal job. And streaming in from the rural areas to dance on the streets.

My feeling is we need double criminalisation. The moment prostitution is legal then you have no control of organised crime. The moment you have prostitution legal, it is the sordid umbrella wherein you can have drug and child trafficking. Money laundering and the whole things.

You can't go into the brothels and rescue the children if its decriminalisation.

In Balletije street (?), the terrible reputation that Amsterdam has got now. I mean the terrible stories you hear and the brokenness. No parent dreams of having their child as a prostitute.

Maybe except in Russia and the communist countries like Romania. In a magazine article I once read, there was quotes by a survey of Romanian girls who about a third of them wanted to be a prostitute when they finished school. They qualified it saying you wear nice clothes and go into nice hotels and drive nice cars. This is what the communist regimes did to these beautiful girls.

I: would you say that criminalisation in its current stance should stay?

P: Yes, but there must be an exit programme. I am fighting for the total criminalisation of prostitution. I am giving my life to an exit programme. I am teaching them to make state of the art products to health. And to garden through Food and Trees for Africa. I want to protect these precious daughters.

I can present government with an exit programme which we are working together with Straatwerk.

They have been running a programme since 1965 and have been working on the streets. They went for training in Ethiopia where 2000 women came off the streets in a month or two. Absolutely amazing. They have something that's working to give the women hope. Straatwerk will give us some training too.

Do you have Madri at Straatwerk?

I: My third question is how the policy has evolved since 1994 and the other changes. What has your role been in trying to push for change.

P: You will see an article that I sent you. There was a man called Ambrose Sieni, an Italian guy (sic?). He was a part of the IFP and died a few years ago from pancreas cancer. He was on the justice portfolio committee for parliament. He had a liberal stance on everything. He got abortion legislation passed. He wanted prostitution to be legalised prior to the 2010 soccer world cup. And he wanted marijuana to be legalised. He was the one who resisted the trafficked persons legislation to be passed.

I dealt with him but what I would like to say is that there is something bigger about the decriminalisation people. I believe there is an international mafia style agenda that are enforcing decriminalisation and abortions, rhino horns, gun trafficking. It's worldwide organised crime.

I had a conversation with this Ambrosini guy. He asked me if the legalisation of prostitution was possible. He was sent here actually to legalise prostitution! I said that prostitution will never be legalised in a Christian country where we have family and moral values. Even in the black community, they know it's wrong.

This is the public stance. There is a little minority in the ANC Women's League who are trying to get Cyril Ramaphosa's ear. They are starting now to talk about legalising prostitution.

Do you know that in Xhosa there is no such word for prostitution. It is so far removed from their culture. This comes from years and years of experience.

I: I was asking about policy change since 1994.

P: the change to decriminalisation hasn't happened because there was a lot of public participation and many submissions from our side against decriminalisation. We sent many submissions to the Law Reform Commission in 2009 and roundabouts. The LRC had so many verbal submissions that they couldn't work through the data before 2011. Therefore, that's why prostitution was never legalised. Since then, there's evil stuff building up again.

Sadly, the ANC Women's League want to decriminalisation prostitution. When they heard that this had happened, they apparently had the same look on their faces when they heard that the right to abortion had also been legalised without extensive public consultation. Not having public consultation is illegal.

They had the same shock these black mamas – no one wants this legalised.

Maybe some small part – the sex worker union. They are running with it and getting the ears of some people. The general people of SA are a far cry from this.

Marcel van der Watt, Dignity Project, Salvation Army, us and others – we are a huge army fighting against decriminalisation in this country.

I am giving you a very different perspective. I am talking about the mouth of Netherlands and as a mother of a nation. If you go into the news, you will find that those countries who have done decriminalisation regret it so badly.

I: What role have you played in the process towards criminalisation?

P: our Stop team have done public submissions. We have done public participation in the LRC. We apply to speak on behalf of the public of SA. I am more focused on the ground running this pilot and exit project.

I: What needs to take place for your preferred change to happen? Also, maybe you could tell us what the change you think will probably happen.

P: I can see the Nordic model is being advocated. We need total criminalisation and an exit programme. The legislation doesn't talk about an exit programme with an exit programme that decriminalises you when you enter this programme.

I: And then would this come about?

P: I hope so. I will fight for it until I can't fight for it anymore. We know the seedy, dark side of prostitution. I see their wounds, and their brokenness. None of them want to be in the industry. There is no light in the industry.

I: Could you believe that perhaps there may be total decriminalisation?

P: Well in this modern, secular world and the freedom of the rights of people is fuelled by a small minority. When in fact, there are many, many more who believe in family and marriage and the beautiful things that make a nation strong. Just somehow the leadership is now being eroded. I wish I could find out who is influencing them.

I am praying for the prime minister, and the women's league to not fall into what they did with the abortion law when they just passed it.

I: Would the Nordic model be implemented?

P: Yes, it but won't succeed. The poverty is too great. There will be a tsunami of people flooding the streets. It cannot be successful in a third world country. You don't know that whenever you get into a car with a stranger you may be trafficked, or get HIV, or abused. The risk these daughters are taking is huge. We don't talk about these things.

I: My last question is the benefits of decriminalisation and the disadvantages vs the continued criminalisation.

P: We will be the biggest brothel in Africa. We will sit with poverty. There will be no control over organised crime. The police will be more handcuffed. Children are going to be trafficked. Pornography and blue films go together with prostitution.

I: Is there anything else that you'd like to mention?

P: I think you need to be fair to the criminalisation side, to us, and you need to be completely unbiased as this research won't be of any value. Representing both of us is not so easy.

I: The more interviews I do, the more difficult it has become.

Also have you seen the submissions?

P: That's with the Law Reform Commission and I can send you some info.

SA is a praying nation and is faith based. We are adamant to keep this a godly nation for beautiful alternatives for these girls. And the plan god had for them when they were infants.

You won't find many people fighting for decriminalisation on the ground.

Interview 16

Ms. Yodwa Mzaidume	Mothusimpilo AIDs Project	Julu 2019

I: What are your organisation's views on sex work, what the extent is, and why women enter into sex work.

P: Our org is working in a mining town near Carletonville. Before democracy, the miners had to stay in the hostels and women were not allowed to be in the hostels. I was born in a mining village; my father was a very senior clerk in one of the mines. We used to see ladies at hostels, but we didn't know it was sex work.

Now with the changes, women started practicing sex work in the bushes where they can't be seen because it's illegal. Some places in mine villages they didn't become a brothel as such, but women felt comfortable plying their trade there. You wouldn't believe what I am about to tell you, but white families turn their back rooms into a venue for sex. So basically, it became a norm. We knew it was also migrant women outside Carletonville who come into the hostels and do their sex trade. Police would go to the bushes and the sex workers will be arrested.

As I became a coordinator for my organisation, I needed to understand the different kinds of sex workers there are. You have private sex workers; you have those on the streets. You have married women and single women. The married women go nicely dressed to the bushes and comes home at 5pm. The husband doesn't even know she is a sex worker. The mines know all about this.

A woman can also take a man for the night and the prices are different.

Another part of my job is trying to understand why a woman would leave her job at KZN, and come to the mines? Often, it's because they have sent their CVs out, and they hear nothing. Or their parents have died. Your brothers and uncles some of them rape you and want money. You run away and have a shack in an informal settlement in the mining town. In these informal settlements the trade is alcohol and sex. 90 percent of the women there are sex workers.

At the end of the day, it is employment. Some of them can take their kids to school. Some of them fed their families. They don't know that this money comes from sex work.

I see myself as privileged. I went to high school and university. I started to see the difference between poverty, lack of education beyond matric and even Grade 7. The way of living and unemployment means you are driven to sex work. But the irony is that someone leaves home to put food on the table, during December they travel home with all the xmas presents. They don't say they are sex workers. Then the others see she is doing well and ask her to help their daughters out. And where do you think they are taken? They become sex workers too.

I: What is your view on sex work?

P: We accept that from the mineworkers' perspective that he has social needs. And a woman needs income. So, we can't reject that.

Both sides have almost the same reasons. He is a man underground far from home. Here is a woman also working. But for me, I don't approve. But who am I to say that when people are hungry, they can't work as sex workers?

As an organisation we have to accept sex work is work. We can't do outreach without accepting that sex work is part of life in SA. We will implement it.

I got the mines in Bloemfontein; I got the sex workers there an opportunity to get out of sex work. So, they can study as nurses or do something else. I didn't want to say though that I am helping them get out or grow out of sex work.

Now the mines have shrinked.

I: What is the level of agency – how much choice do they have to be part of the industry?

P: There are those who are pushed to be part of the industry and those who have chosen to be part of the industry. Like I said a sex worker will go home in December and have lots of presents. She tells her family she does piece work. Then the neighbour will say, please take my daughter with you so she can also do this work. But the sex worker doesn't tell them she is a sex worker. When they get to Block 8 and will tell the new girls that you now know what I do for a living. These new girls can't just stay for free with the sex worker, so the new woman is coerced into being a sex worker. Once you're in you can never get out.

I: My next question is around the current views on sex work.

P: In SA, we have been screaming and shouting about decriminalisation. But it doesn't matter what policy there is. Sex work is driven by social and economic circumstances including poverty. Like unemployment and inequality are key drivers. If it's decriminalisation, it must have measures to ensure that rules and regulations are followed. If not, we will have soaring HIV rates. With criminalisation, these women are killed, and the case never goes anywhere!

Two years ago, a woman was killed in her room, there still has been nothing done to her case. Then the police come and say, you see she got what she deserved because she is a sex worker. Even the police abuse them. They take the money these women have worked for and then arrest them. The law-abiding citizen and those implementing the law, they must have guidelines.

The women must be able to report the police. One woman had a relationship with a police officer, and then she became pregnant. He didn't want his wife to know so he arrested the sex worker's friends for loitering and for breaking bylaws.

These women are from an informal settlement from a mine. There is so much abuse. And extortion.

If it's decriminalisation, it must have policies and procedures.

I: Looking at why there is no change in the policy to date.

P: The policy has not yet changed; the last time we went to the Gauteng Legislature it is that either it is criminalised. But sex workers were asking for decriminalisation. Then you have those who want full criminalisation. And all everything is actually blamed on sex work. People think that there is a client and a seller then there will be HIV etc.

Unfortunately, the thing is now worse than in 1999 since we started the programme.

You have the ones who are publicly declared, then the others who don't want to go to the clinic even. When they come to us, we treat them, and refer them for HIV and STI treatment. We supply them condoms but there is still 40 percent that don't accept these programmes we have. They feel we are limiting their activities as sex workers. So, for me, it has become worse.

We have minors below 18 who are sex workers. You will be shocked. One day I will invite you to come to Carletonville. You will see that there is a woman in the bushes with her two daughters. That's how shocking it is.

It has grown in my mind. The business has grown. But the HIV and STI has not grown. But the sex workers need to be willing participants in this programme.

Before 1994, you could force them to get treatment. Now they say they have rights. The only time they say they are a sex worker is that they have a case against policemen or clinic staff.

They also don't want to tell their colleagues that they are on ARVs as the other sex workers tell a potential client that that sex worker is on ARVs, but they are not.

The gap between prevention and treatment and justice is widening. It is a triangle, and all three points don't meet.

Some of them have started using drugs like Nyaope. For me I definitely would say that it has changed. In 1994 sex workers were conscious. They knew they had to present their HIV and STI status. Now there is so much competition and they don't want to implement this prevention. You have the ones who are private and others who don't mind being known. They fight for clients even.

Sex workers had the same clients in 1994. Nowadays a client has 10 sex workers.

I: What has your organisation done to push for change?

P: We provide services to high transmission areas. When we get there, these are not services for sex workers, but for the community. But in one-on-one meetings with sex workers, we make sure we refer them to the clinics if they have to start ARVs immediately.

For clinics we have an agreement. There is one healthcare worker who supplies the medication to us. We then have a counsellor who goes with the mobile van and services them sex workers in the informal settlement. They won't come to the clinic we have to go to them.

There is a transport service for miners. The clinics that are near the hostels are for mine workers.

We also want to have destigma support groups. As an organisation we are preparing them for decriminalisation then they are ready to survive. Even with criminalisation they can survive. Although with criminalisation they get abused and killed. They go to SWEAT and get a lawyer to get justice.

The high transmission areas. If there is a problem with a hostel the police will ask if there are sex workers there. It's very scary.

The high transmission areas surround the mines. The people staying in the informal settlements therefore need to pay rent and it's usually through alcohol and sex. The areas are run by committees who give money to the landowner. They take a cut. It's very rare that there is ward counsellor walking around those communities.

In Khutsong, it has private and municipal and informal housing. The majority used to stay in informal settlements. But some they have RDP houses now. There are also back yard dwellers in the house.

In town, we have groups of sex workers from outside Carlteonville who come in and then leave in the morning after an overnight work stint. They also have special transport. These sex workers come from Vaal and Joburg. You know they normally laugh when I say that Carletonville is the capital for sex work.

I: Krugersdorp is also quite bad.

P: Yes, you also have houses with backyards where there is sex work. For each client that comes in, they share the money with the owner of the house.

To say the situation has changed. No, it hasn't changed. Even in 2018 but now we have rights and there is democracy. These sex workers though ignore the laws. But then they say the policemen are abusive. We actually have to tell the sex workers that it's illegal. And we always say the policemen will arrest you and they will quote municipal by laws.

I: When they are arrested do, they actually go to court?

P: We normally try to get SWEAT lawyers and the following day, there may be a bail. But they don't go back to court. We have never had someone following up a case. The only one I know about follow up is a murdered sex worker. Although I can't find a record.

If say, also, a sex worker is arrested, her buddies will go to the jail and speak to the investigating officer and the next day that sex worker is out of jail. Some of her buddies may have paid. I asked a policemen and he said they were lying.

I: I haven't seen anything about giving a sentence to a sex worker.

P: They can only be sentenced for shop lifting not sex workers. Since I have been working in a sex worker organisation, I have never ever seen a sex worker being sentenced for sex work, only for breaking the by-laws.

You go there knowing she has been arrested and when she is released there is nothing.

We once went to a dialogue and the counsellor said sex work is a crime. Then the sex workers screamed that they knew. Then the counsellor said then why do you behave as if it isn't a crime. Then the sex workers said it's because you are disturbing us and our business. They say how will I pay my fine when you have arrested me?

The sex workers made the presentation at the legislature, and they were fighting for decriminalisation. We had then done our best to make sure that everyone knew what decriminalisation entails.

Their arguments were good. And I am not sure if our president who was in SANAC. He understood. Unfortunately, there is not a lot of awareness about what is decriminalisation is among parliamentarians even. They don't know the different policies and laws about sex work.

I: And then, just quickly, I know it does come up in our later questions, but how do you feel about partial decriminalisation?

P: What will be included and what will be excluded? This is my problem. What do the charges mean for example. With criminalisation, we know everything sex work is illegal.

I: The seller is not going to be criminalised.

P: How do you criminalise a brothel? It's where they stay. Some of them also say that there must be some observation and control. Like those girls outside SA who are drugged and then made to be sex workers. If there is total decriminalisation, and these girls arrive in SA, they would be able to work for themselves.

Decriminalisation has advantages, yes. I make an example with Lerafong in Carletonville. The sex workers go to the bushes or takes the client to their shacks. It's better in a house and in these confines. If men pick them up in their cars, they are at great risk.

At the end of the day, sex workers should be able to express their views no matter what the policy. They are the ones who understand their situations and who know the dangers in their jobs. We still have elderly women who are sex workers. The thing with decriminalisation, if this woman doesn't have money, then she can actually make money for herself. We must look at the benefits. And if it's partial, you will have sex workers coming to getting ARVs and coming to be tested. At least there will be more healthcare.

Which way is best to benefit the health of the country?

We have married men who access sex workers. We even have men who are sex workers, and they are going like hotcakes. We give them lubricants. Guys why are you popular? They say, you must ask our clients!

The people who do the trade must be given the opportunity to decide among themselves. At the end of the day, we take responsibility to also put measures in place to support the decisions taken by the government, whatever that is. We are not proactive we are reactive. We must be prepared.

We cannot make decisions for sex workers without sex workers.

I: I think you partly answered my next question. What needs to take place to change the sex worker policy.

P: If it is decriminalisation, there must be policies and procedures to safeguard the industry. Like you should know your status. If it will be decriminalisation, then sex workers must know they have to take responsibility for their own health and their own situation. Measures should be put in place.

I have worked with literate and illiterate sex workers, there was this one young woman, I said she was beautiful. I said don't you want to do ironing. She said no, she would prefer to do sex work. When she was on ARVs though she wanted to change her mind. She said it was the money talking not her talking.

Some guys will offer you more without the condom.

You know we have a range of people in SA. We have those who will say that decriminalisation will be done over their dead bodies. Others are ok. For me if its decriminalisation, and there are policies in place, then they can choose for themselves. At an HIV conference, they will even access sex services! At the end of the day let it be decriminalisation. Once it is no longer a crime, people will be known by the public that they are sex workers. The more it stays criminalisation, people will continue to do it behind closed doors. We will never be able to therefore reach the targets of the 90/90/90 strategy. 90 on ARVs, 90 percent less infection rate etc. We will never though with criminalisation.

For hundred rands the man says please I don't want to use a condom, then with decriminalisation, the lady can say no, I don't want to get sick. Decriminalisation is safer sex. They can now go to the police!

You know I started with low socio-economic sex workers in informal settlements. When we had a burial society, when we take them home it is the rural areas of SADC countries. Then we have to not tell their families that this lady was a sex worker. It is too stigmatised and also, it is a crime. It is largely unacceptable.

It has to be decriminalisation with policies and procedures. They can at least go and get treatment on their own, without having someone accompany them. Now they are too scared to go. If it's decriminalisation they can go

on their own and their treatment will be straightforward. So, for me if we want to win the war in SA, decriminalisation would be ideal for women on the ground.

In areas like our mining towns, it's women of low socio-economic status who are into sex work. It's the low class. And this is done because of poverty and unemployment and lots of things have to change.

A lot has to change. So, it accommodates even that one person who is a sex worker.

I: You have answered my last question. I think to round up, is there is anything else I must account for?

P: I think at the end in your conclusion, you must highlight the advantages and disadvantages of each decision. What would be the benefits and the disadvantages of everything. So, when we read your report, I will be able to understand ok, without forgetting that it's criminalisation, I think that maybe there can be another option. They can identify what would be best suited to sex workers in SA.

I am looking forward to reading your article.

Pleasantries and goodbyes.

Interview 17

Cause for Justice	Cause for Justice	July 2019

1. Thank you for inviting us to participate in your research project. We are grateful for all opportunities to meaningfully contribute to the debate on the eradication of all forms of sexual exploitation in SA.

BACKGROUND TO CAUSE FOR JUSTICE

2. CFJ is a non-profit human rights and public interest organisation founded in 2013 to advance constitutional justice in SA, primarily through participation in the legislative process and governmental decision-making structures, litigation and through creating public awareness on matters of public importance, especially those affecting the public interest.

3. We focus on matters affecting rights, values and interests protected and promoted in the Bill of Rights.[1]

4. Our five core values are (1) the responsible exercise of freedom, (2) the protection and promotion of human worth/dignity, (3) the protection of the vulnerable in society (social justice), (4) ensuring accountable government action and (5) protecting the family against destructive outside (and inside) forces.

5. Over the past six years, CFJ has been deeply involved in matters pertaining to the law on combating sexual exploitation in SA (especially sexual exploitation in media), including law reform on prostitution. We envision and work towards a SA free from all forms of

[1] Chapter 2 of the Constitution of the Republic of SA, 1996. ("*Constitution*").

sexual exploitation and where the human dignity of all people is recognised, protected and respected.

RESPONSES TO INTERVIEW QUESTIONS

Question 1: Can you give me an overview of how your organisation views sex work (prostitution) giving an indication of the extent of sex work in SA and the reasons why women enter the sex work industry?

6. The South African Law Reform Commission's ("the SALRC") *Report on Project 107 Sexual Offences: Adult Prostitution*[2] ("the Report") refers to a *Special Report*[3] of the South African National AIDS Council ("SANAC"), which estimated the number of persons in prostitution in South Africa (in 2013) at approximately 153 000.[4]

7. The Report notes that there are divergent theories on why prostitution exists.[5] It classifies the theories in two "categories", namely theories on exploitation and theories on free market involvement and autonomous agency.[6] In the section addressing "Prostitution in the Context of Exploitation", the Report notes that prostitution is a survival strategy and that poverty, inequality, violence and abuse make people – and especially women[7] – vulnerable for exploitation (by prostitution).[8]

8. The Report includes a list of categories of people who enter prostitution.[9] Again, the overarching reason why people enter prostitution can be summarised as desperate socio-economic circumstances that place a person in a position of vulnerability where that person allows her/himself to be exploited for the sake of survival.[10]

9. Conditions that create a position of vulnerability include Poverty and/or lack of financial resources; lack of education, training and/or skills; lack of employment opportunities and/or other.

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[2] SALRC *Report on Project 107 Sexual Offences: Adult Prostitution* (June 2015). ("SALRC *Report*")

The Report is the product of long and intense research, expert knowledge and insight, and a thorough public consultation process with persons/organisations representing the whole spectrum of the prostitution law reform debate. Its conclusions and recommendations should be considered seriously and not be dismissed lightly.

See also paragraphs 92 and 165 of CFJ's Submissions on the *SALRC Report* (26 February 2018) ("CFJ *Submissions*"). Available at: https://causeforjustice.org/newsitev2/wp-content/uploads/2018/03/CFJ- Prostitution-Submissions_02.03.2018_Final.pdf.

[3] SANAC News *Special Report: How many Sex Workers in SA?* (June/July 2013).

[4] SALRC *Report* at [2.90] on 77.

[5] Ibid at [2.6] on 46.

[6] Ibid.

[7] Ibid at [2.37] on 57.

[8] Ibid at [2.52] to [2.54] on 63.

[9] S Bromberg *Feminist Issues in Prostitution*. Available at http://www.feministissues.com/.

[10] SALRC *Report* at [2.6] on 46.

means to earn an income / a living; mental and/or physical disability; and lack of or broken family and community structures.[11]

10. It is common knowledge that poverty, inequality, violence and abuse (and much of it 'gender- based') are rife in SA, which means many South Africans, and especially women, find themselves in desperate and vulnerable positions.

11. We agree with the Report that prostitution is predominantly a last resort survival strategy used by certain vulnerable persons to alleviate the pressure of desperate socio-economic circumstances.

An important note on terminology

12. We do not agree with the use of the terms "sex worker"to refer to a person in prostitution (prostituted person), or "sex work" to refer to prostitution (prostituted services). To use these terms prejudges the issue of whether prostitution is properly construed as exploitation (which it is)[12] or a form of work (which it is not).[13]

13. We categorically disagree that prostitution is a form of work in any labour law or labour rights sense. We agree with the view that "prostitution is inherently exploitative, and that domination and violence are its essential features" and that "the sexual acts of prostitution per se constitute violence, even where the prostitute "consents" to such acts".[14] We therefore conclude that prostitution is a form of exploitation and not work - as "work" cannot be inherently exploitative in nature; work that is inherently and necessarily exploitative in nature is more akin to slavery.

14. South African law does not recognise or accept that prostitution is a form of work. The International Labour Organisation ("the ILO") does not regard prostitution as "decent work".[15]

15. The Report notes that "*Proponents of the theory that prostitution is an economic contract also argue that laws against prostitution constitute a violation of human rights, whereas prostitution itself does not*"[16] However, the acts of prostitution necessarily violate the person in prostitution's human rights.

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[11] Ibid.

[12] Ibid at [2.460] on 204.

[13] Ibid at [2.452] on 200.

[14] Ibid at [2.52] on 63.

[15] Ibid at [2.44] on 59.

International Labour Office *Recommendation Concerning HIV and AIDS and the World of Work* 2010. Available at: http://www.ilo.org.

[16] SALRC *Report* at [2.9] on 47.

16. In the landmark case of *State v Jordan*,[17] the Constitutional Court held that engaging in the act of prostitution violates the inherent human dignity of the person in prostitution (and not the law's criminalising thereof).[18] The Court's finding in respect of human dignity was expressed in a joint judgment of Justices O'Regan and Sachs, the findings and reasoning of which was affirmed or supported (alternatively, was not contradicted) by the majority judgment of Justice Ngcobo and others. We agree with the Constitutional Court that prostitution is inherently a human rights violation: The violation of the right to human dignity of the person in prostitution.

17. For the sake of completeness, we quote paragraph [74] (partially) of the *Jordan*-judgment:

> ***[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.[30] 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. … "***

18. It is clear from the above passage from the *Jordan*-judgment that the only way to protect and promote the human dignity of a person in prostitution, is to assist that person to permanently exit prostitution. Only once a person has permanently exited prostitution, will that person's human dignity be safeguarded from the inherent human rights violation that the prostitution of a human being (commodification of the human body) is.

19. We believe both the terms "prostitute" and "sex worker" are degrading (since the activity itself inherently and therefore necessarily infringes the invaluable human dignity of the person involved in prostitution). Furthermore, the term "sex worker" is not only degrading but inaccurate, although it is effectively misappropriated for purposes of driving propaganda. In light of the aforegoing, we prefer to use the longer, accurate and less degrading term "person in prostitution", in an attempt to protect and promote the human dignity of these individuals.

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[17] *S v Jordan* 2002 (6) SA 642 (CC). ("*S v Jordan*"). Available at: http://www.saflii.org/za/cases/ZACC/2002/22.html.

[18] Ibid at [74].

Question 2: How does your organisation view the current policy on sex work in SA and what would your preferred policy approach to sex work in SA be in light of the different approaches taken in other countries?

Current policy

19.1 As far as the current policy is concerned, it is clear from the *Jordan*-judgment[19] that the criminalisation of prostitution is constitutional. The current policy is therefore constitutionally justifiable, i.e., it is not without legal merit or unwarranted. As indicated above, in affirming the joint judgment in respect of the human dignity challenge,[20] the Court found that prostitution itself (engaging in an act of prostitution) necessarily infringes the right to human dignity of the person in prostitution and that the law's criminal prohibition does not limit or diminish the prostitute's human dignity.[21] Nor is there a violation of the right to freedom and security of the person by the legislative prohibition – the invasion of the prostitute's freedom of her person (through arrest or imprisonment) is the result of her act(s) of contravening the law.[22] The Court found that limitations of other rights, such as the right to freely engage in economic activity[23] and right to privacy,[24] were reasonable and justifiable in an open and democratic society based on human dignity, freedom and equality.

19.2 We regard the current policy as deficient to the extent that exit programmes (diversion programmes) are not prioritised. If we truly care about persons in prostitution, we will prioritise and implement effective strategies to assist them in escaping a life of sexual violation and degradation.

19.3 In our submissions to Parliament's Multi-Party Women's Caucus,[25] we proposed "the retention of the total criminalisation of prostitution coupled with strong diversion programs. A human rights- based society cannot condone and tolerate human rights violations that originate from the vulnerability of a group of persons which renders that group relatively powerless and easily exploitable due to their desperate socioeconomic circumstances."

[19] *S v Jordan*.

[20] Ibid at [1].

[21] Ibid at [74].

[22] Ibid at [75]. See also [1] and [31], for the majority's affirmation of this decision of the joint judgment.

[23] Ibid at [23] to [26].

[24] Ibid at [27] to [29].

[25] CFJ Submissions at [160] – [164] on 34. Available at: https://causeforjustice.org/newsitev2/wp- content/uploads/2018/03/CFJ-Prostitution-Submissions_02.03.2018_Final.pdf.

Preferred approach

19.4 The SALRC Report,[26] as well as our submissions,[27] provide overviews of the various legislative approaches followed in foreign jurisdictions. The Commission divides the various legislative models into four categories:[28] Criminalisation,[29] partial criminalisation,[30] non-criminalisation,[31] and regulation.[32] In general, there seems to be a trend towards viewing prostitutes as victims of sexual exploitation and those who manage to escape or exit, as survivors of the exploitation industry.

Supply side

19.5 In our submissions to the Multi-Party Women's Caucus, we wrote:

"Since the origin of prostitution is socio-economic circumstances coupled with commodification/devaluation of women, the only way to effectively eradicate the harms of prostitution is to address the socio-economic circumstances that give rise thereto. The challenge to eradicate prostitution is therefore a developmental challenge. This is admittedly an enormous challenge, and we appeal to the MPWC to focus their attention on the development of social and economic development strategies that will focus on the socio-economic upliftment of women and ultimately enable women caught in prostitution to exit from it."[33]

19.6 It is also important to prioritise the provision of adequate alternative opportunities to earn an income to persons who have exited or are exiting prostitution in order to prevent re-entry into prostitution. Therefore, in conjunction with effective exit programmes, persons in prostitution need alternative maintenance options and choices. It is equally important to create a socio- economic environment and sufficient opportunities to protect vulnerable persons from entering prostitution in the first place. Inasmuch as the plight of vulnerable individuals and groups is the responsibility of all role players in society, including civil society/private sphere (consisting of individuals, families, communities and projects, and businesses), the state/public sphere and

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[26] SALRC *Report* at [2.136] to [2.191] on 95 to 117.

[27] CFJ Submissions at [45] to [60] on 10 to 14.

[28] SALRC *Report* at [2.136] on 95.

[29] SA and also: The United States of America (apart from Nevada), and many African countries including Namibia, Botswana, Malawi, Zimbabwe, Zambia, Burundi, Cameroon, Central African Republic, The Gambia, Liberia, Morocco and Sierra Leone. (SALRC *Report* at [2.137] on 95.)

[30] Where either the actions of the prostitute are not criminalised – most notably the Nordic countries (Sweden, Norway, Finland, Iceland) – or only certain prostituted behaviour (but not selling and buying sexual services per se) is criminalised (in the United Kingdom and Canada). (SALRC *Report* at [2.138] on 95 (Sweden), [2.148] on 100 (United Kingdom), and [2.155] on 103 (Canada).)

[31] New Zealand. (SALRC *Report* at [2.167] on 108.)

[32]Prostitution allowed subject to regulations: Victoria (federal state of Australia), Germany and the Netherlands. (SALRC *Report* at [2.178] on 112 (Victoria, Australia), [2.180] on 113 (Germany), and [2.185] on

114 (the Netherlands))

[33] CFJ *Submissions* at [144] on 32.

collaborative efforts in the form of public-private partnerships, it is crucial that the state commit to allocating sufficient budget (funds) to achieve this purpose.

19.7 Skills development and the creation of new jobs will provide persons in adverse socio-economic circumstances with opportunities to earn income legally, in a dignified manner and free from harm (such the harms inherent in prostitution). The availability of decent work (and the necessary skills to do the particular work) will have the dual benefit of diverting persons out of prostitution and protecting persons from entering prostitution in the first place. To facilitate job creation by civil society, the state has a critical enabling role to play in the creation and/or maintenance of an environment and associated infrastructure which is conducive to economic growth (and which leads to job creation).

Demand side

19.8 Society has to be made aware that prostitution is a form of sexual exploitation and that it cannot remain apathetic to sexual exploitation in its midst. Therefore, the public has to be encouraged to actively participate in initiatives, and contribute to, ending prostitution and all other forms of sexual exploitation.

19.9 It must be emphasised that the responsibility to eradicate all forms of sexual exploitation does not solely, or even primarily, fall on the shoulders of the state. If anything, one of the most valuable contributions the state can make to the lives of its citizens, is to provide them with an enabling environment and the necessary infrastructure within which the citizenry and civil society institutions (such as the family, faith and community organisations, businesses, educational institutions, etc.) can thrive - without undue state interference.

19.10 For example, local government leaders and their communities (businesses, NGOs, CBOs, FBOs, education providers, and private citizens) should make the eradication of sexual exploitation and violence a key objective on their local agendas. Where this is not already a priority or not sufficiently prioritised, national and provincial government either on their own, but preferably working with those organisations and individuals already working to eradicate sexual exploitation, should educate, equip and empower communities to actively support local efforts to eradicate sexual exploitation. This may be a very big undertaking, but protecting persons in prostitution from physical, psychological and other harms,[34] as well as their human dignity, is worth much more than the cost of such an undertaking.

[34] M Farley "*Bad for the Body, Bad for the Heart*": *Prostitution Harms Women Even if Legalised or Decriminalised* in Violence Against Women (October 2004) on 1106. Available at: https://www.researchgate.net/publication/240698342_Bad_for_the_Body_Bad_for_the_Heart_Prostitution_Harms_Women_Even_if_Legalized_or_Decriminalized.

19.11 It is a logical inference that without a demand for prostitution, neither prostitution nor sex trafficking would exist. If no person was eager to, wanted to or was able to pay (or give consideration of any kind) for a person in prostitution's "services", there would be no need for any person to prostitute themselves. Therefore, any policy that fails to focus on and address the demand for prostitution is deficient. The various factors that cause and drive the demand for prostitution need to be addressed in order to reduce demand.[35] The Report notes that "*the demand for prostitution is an important factor to consider when evaluating policy choices on prostitution*" and that there are various motivations (factors) that drive demand.[36]

19.12 In order to combat sexual exploitation and violence against women, it is crucial to actively and effectively police and prosecute users of "prostituted services" (and the supply-chain of pimps, brothel keepers and traffickers as well).[37] The actions of users of "prostituted services" are now specifically criminalised in section 11 of the Sexual Offences Amendment Act.[38] For the law to be effective in achieving its purpose, it is necessary for the law to be applied, properly implemented and enforced, otherwise it would not make any difference. In this regard, the lack of actual figures for arrests from either the National Prosecuting Authority or the South African Police Service, is problematic, to say the least.[39]

19.13 The Report sets out a concise, but thorough exposition of the criminalisation of the actions of buyers[40] and "third parties" (pimps, brothels keepers).[41] The actions of traffickers are criminalised in the *Prevention and Combating of Trafficking in Persons Act*.[42] While trafficking is not the subject matter of these research questions, we do suggest that you consult the recent PhD thesis of Dr Marcel van der Watt (relevant to the South African context), "*Investigating Human Trafficking for Sexual Exploitation: From 'Lived Experiences' towards a Complex Systems Understanding*",[43], as prostitution and trafficking are very closely linked in practice and in survivors' lived experiences.

National Center on Sexual Exploitation *Amicus Brief (Erotic Service Provider Legal Education and Research Project v. Gascon, 16-15927)* (2018). ("NCOSE *Amicus Brief*") Available at: https://endsexualexploitation.org/wp-content/uploads/NCOSE-Amicus-Brief-ESPLERP.pdf.

[35] SALRC *Report* at [3.81] to [3.86] on 226 to 268, especially [3.85] on 268.

[36] SALRC *Report* at [3.81] on 266.

[37] SALRC *Report* at [2.148] on 100, [2.261] on 137 and [2.424] on 188.

Radio Sonder Grense *RSG Regsake 24 Junie 2019* (24 June 2019) from [24:20]. ("RSG *Regsake 24 Junie 2019*")

Available at: http://www.rsg.co.za/Program-Vorige/295/Regsake.

[38] Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007.

[39] SALRC *Report* at [3.55] on 257.

[40] SALRC *Report* at [3.49] to [3.57] on 255 to 257.

[41] SALRC *Report* at [4.5] to [4.95] on 292 to 317.

[42] Prevention and Combating of Trafficking in Persons Act, 7 of 2013.

[43] M van der Watt, PhD *Investigating Human Trafficking for Sexual Exploitation: From 'Lived Experiences' towards a Complex Systems Understanding* (PhD thesis) (3 September 2018). Available at: http://uir.unisa.ac.za/handle/10500/24803.

Question 3: In the view of your organisation, how has the sex worker policy evolved or not evolved since 1994, and, if not, why has the sex worker policy not seen any significant change to date, and how has your organisation been included within these processes?

Changes in prostitution policy since 1994

20. Section 20(1)(aA) of the Sexual Offences Act[44] only criminalised the behaviour of the person in prostitution. Since 1994, the conduct of the user of a person in prostitution's services (buyer), which had been criminal behaviour in terms of other legal prohibitions,[45] has also been criminalised specifically. Section 11 of the Sexual Offences Amendment Act[46] now expressly criminalises the user of the prostituted services.

21. Other than the above, the policy on adult prostitution in SA has not changed. Currently, no other policy or legislative changes have been affected on account of the Report.

Reasons why prostitution policy has not changed.

22. There are various reasons why the policy on prostitution has not changed in any significant way since 1994. We will highlight three reasons.

22.1 Firstly, the *Jordan*-judgment found that the current legislative regime and policy position is constitutionally justifiable.[47] There are therefore no constitutional grounds based on which a legislative or policy change is necessitated.

22.2 A second contributing reason is apathy. Without being pessimistic about and unhopeful toward socio-economic improvement, the reality is that SA faces many serious socio-economic challenges. Perhaps due to too many such urgent problems competing for the attention of government, politicians and private citizens alike, decision-makers and elected officials may already be overcommitted or overwhelmed, or simply don't care. Where there is a lack of public or private will and/or of requisite funds (budget) to seriously and dedicatedly work towards the eradication of sexual exploitation (which is a long-term commitment), the status quo is unlikely to see radical change.

22.3 Thirdly, failure to address the true/root causes of the problem (both sexual exploitation, objectification and commodification of human beings, especially women, which drives the demand for prostitution; and lack of other career choices to earn an income and make a living due to poverty and job shortages, which pushes women and other vulnerable persons into

[44] Sexual Offences Act, 23 of 1957.

[45] *S v Jordan* at [11] to [14].

[46] Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007.

[47] *S v Jordan* at [30] to [32].

prostitution) perpetuates the existence of prostitution. As noted above (under question 2), it is imperative to address (stop) the demand for prostitution. If the roots of a problem are not addressed and corrected, the problem will persist. Again, the SALRC Report catalogues various causes of prostitution, such as poverty, inequality, lack of education, prejudicial gender norms, etc.[48] Changing the current law or policy on prostitution to decriminalisation or legalisation, will not address roots – it can only entrench and perpetuate the problems and harms faced/experienced by persons in prostitution.

CFJ involvement in prostitution policy reform debate

23. CFJ's most notable involvement in the process of policy reform regarding adult prostitution, has been our participation in the Adult Prostitution Summit hosted by Parliament's Multi-Party Women's Caucus ("the MPWC") on 5 March 2018. Through CFJ's intervention, the MPWC gave interested parties and stakeholders a reasonable opportunity to make submissions on the SALRC Report. We made both written submissions to the MPWC,[49] and oral representations[50] at the Summit.

24. We also wrote an opinion piece which was published in the Rapport newspaper[51] (and recently mentioned on a national radio programme dedicated to the discussion of legal issues)[52] and participated in an interview for a television programme that discussed the possible decriminalisation of prostitution.[53]

Question 4: In the view of your organisation, what would need to take place in order to see change in the sex worker policy in SA and what form do you think this change should/would need to take?

Necessary changes

25. We believe that a shift in focus to address (reduce and eliminate) the root causes that create and drive the demand for prostitution and supply of prostitution, is crucial.

26. Unless this necessary shift in focus takes place, the policy will continue to look at the consequences of prostitution instead of understanding the reasons why the criminal behaviour.

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[48] SALRC Report at [2.52] to [2.54] on 63.

[49] CFJ *Submissions*.

[50] CFJ *Presentation Slide Pack for MPWC Summit* (5 March 2018).
Available at: https://causeforjustice.org/newsitev2/wp-content/uploads/2018/03/CFJ_Oral- Representations_05.03.2018.pdf.

[51] R Smit *Menslike Liggaam nie te Koop, sê Wet* in Rapport (Netwerk 24) (8 April 2018)
Available at: https://www.netwerk24.com/Stemme/Aktueel/menslike-liggaam-is-nie-te-koop-se-wet-20180406

52 RSG *Regsake 24 Junie 2019.*

[53] KykNet Verslag in Gesprek *Sekswerk Wettig?* (11 April 2018).
Available at: https://www.youtube.com/watch?v=0UBQv-dPgPA.

exists in the first place. This results in a reactive approach (i.e., reacting to the criminal behaviour of persons in prostitution after the fact) instead of a pro-active preventative approach.

Form that changes should/would need to take.

27. A pro-active preventative approach is necessary. It will focus on factors and include elements that protect persons from entering prostitution in the first place and assist persons who have fallen into prostitution to exit, such as:

27.1 Effective diversion/exit programs;

27.2 Economic empowerment (of especially the disenfranchised);

27.3 Proper education, teaching, training and skills development of youth and adults;

27.4 Supporting family stability (primarily) and other community support structures (especially for youth);

27.5 Specific focus on addressing the causes of gender-based violence, especially underlying negative or prejudicial attitudes towards and views or estimations of women in the wide range of communities and cultures represented in SA;

27.6 Job creation and economic growth;

27.7 Incentives (such as tax benefits) for businesses that create employment opportunities (general);

27.8 Incentives (such as tax benefits) for businesses that specifically employ persons who exit prostitution and/or provide training and/or economic empowerment to aid and sustain successful long-term diversion; and

27.9 Proper prosecution of buyers of "prostituted services", brothel keepers, pimps, traffickers, etc. (including novel legislative and/or judicial interventions, such as financial penalties in the form of an order of forfeiture of part of the offender's estate in favour of a trust fund established to help victims (prostitutes) exit prostitution).

Necessary precursors to change

28. In our view, without a proper recognition and understanding of the harms of prostitution (which are inseparable from engaging in prostitution) to both the person in prostitution and society, the

necessary policy changes will not take place.54 Recognising and understanding the harms are required to create the political will to actually do what is needed to prevent and eradicate this particular form of sexual violence and exploitation. It will also logically focus policy makers' and implementers' attention and efforts on removing any and all causes of entering into or remaining in a life of prostitution; and reduce demand for and dismantle the supply chains of prostituted persons and their "services" (exploitation).

29. We cannot emphasise enough the importance of acknowledging the essence or true nature of prostitution. Prostitution must be seen for what it really (inherently and of necessity) is. This is what the Constitutional Court did in the *Jordan*-judgment.[55] Prostitution cannot be delinked by clever re-branding or artificial linguistic re-engineering from the being a human rights violation, more specifically the violation of the right to human dignity (as the Court pointed out). Therefore, referring to prostitution as "sex work" only changes its label; it does not change the nature of what it is and always will be. It "mis-brands" and misrepresents the true nature of prostitution, which is extremely irresponsible and hazardous to the wellbeing of persons in prostitution and society as a whole.

30. When something which is a grave violation of human dignity is re-interpreted (or more correctly misinterpreted) as benign and not a human rights violation, it does not change reality and cannot change the nature of it into no longer being a human rights violation. It only, tragically, means that that particular human rights violation has become socially acceptable.

31. A society where human rights violations become acceptable, is not a society in which people are able to flourish. It is a society that does not recognise, value or protect the inherent human dignity and worth of every human person.

32. Therefore, we believe that social justice social engineers who try to artificially change culture and public policy (shared and common morals, norms, standards, values that give expression to the objective normative value system contained in the Bill of Rights) in SA (e.g. those who try to re-interpret and re-brand prostitution as "work"), should withdraw from the debate. Their views run counter to the Constitutional Court's findings in *S v Jordan.*

33. The scientific research evidence that documents and proves the harms of prostitution need to be taken seriously and form the basis for any prostitution law and policy reform. The irresponsible anti-women myth that "prostitution is work", must be exposed.

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[54] CFJ *Submissions* at [64] to [73] on 15 to 17.

[55] *S v Jordan* at [74].

Decriminalising prostitution is NOT the answer to helping women in prostitution.

33.1 Julie Bindel, feminist political activist and founder of Justice for Women,[56] writes that "*the practice of using human bodies as a marketplace has been normalised under the neoliberal economic system. Supporting the notion that prostitution is "labour" is not a progressive or female-friendly point of view*."[57] She further argues that if "*prostitution is "sex work", then by its own logic, rape is merely theft*" and insists that the "*inside of a woman's body should never be viewed as a workplace*."[58] According to Bindel, "*prostitution is inherently abusive, and a cause and a consequence of women's inequality. There is no way to make it safe, and it should be possible to eradicate it.*" She rejects the "*sanitising description of "sex worker"*" and concludes that "*abolition is the only progressive solution*."[59]

33.2 Dutch feminist activist, Renate van der Zee, echoes Bindel's sentiments, in saying that: "Prostitution is not a normal job."[60] Referring to the situation in Holland, she says that she "realised that legalisation didn't change anything in prostitution" and that "the whole Dutch system was set up by wishful thinking".[61] She concludes that "women are not safe under legalisation."[62]

33.3 German psychologist and anti-prostitution advocate, Dr Ingeborg Kraus, and her team of expert psychotraumatologists,[63] are making the scientific case against prostitution.[64] One of her team members, Professor Wolfgang U Eckart, says "*prostitution is violence, not a profession*."[65] Another psychologist, Michaela Huber, asks: "*Who even gets the idea to sell their own body? The prerequisite for that is to be alienated from one's own body.*"[66]

34. To activists and experts such as Julie Bindel, Renate van der Zee, and Dr Ingeborg Kraus and her colleagues, it is clear that decriminalising prostitution will not address its harms (only the eradication of prostitution will achieve that) and legalising prostitution only turns a cold blind eye.

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[56] Justice for Women: https://www.justiceforwomen.org.uk/.

[57] J Bindel *Prostitution is not a job. The inside of a woman's body is not a workplace* in The Guardian (30 April 2018). Available at: https://www.theguardian.com/commentisfree/2018/apr/30/new-zealand-sex-work- prostitution-migrants-julie-bindel.

[58] Ibid.

[59] J Bindel *Why prostitution should never be legalised* in The Guardian (11 October 2017). Available at: https://www.theguardian.com/commentisfree/2017/oct/11/prostitution-legalised-sex-trade-pimps-women.

[60] Z Van der Zee *Prostitution is not a normal job* in Red Light District News (17 July 2014). Available at: http://redlightdistrictnews.blogspot.com/2014/07/prostitution-is-not-normal-job.html.

[61] S Manning *Appalling truth about Amsterdam's red-light district* in Daily Mail (11 February 2018). Available at: https://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=11992329.

[62] Ibid.

[63] Trauma and Prostitution *The Appeal*. Available at: https://www.trauma-and-prostitution.eu/en/the-appeal/.

[64] Trauma and Prostitution *Scientific Texts*. Available at: https://www.trauma-and- prostitution.eu/en/category/scientific-texts/.

[65] Trauma and Prostitution The Appeal.

[66] Ibid.

to the violent and exploitative reality of prostitution. Therefore, from a policy perspective, decriminalising prostitution is not an option.

Eradication of sexual exploitation: Everyone's responsibility

35. All members of society (both private and public) need to get serious about addressing and eradicating sexual exploitation. Apathy and turning a blind eye to violence and abuse is not an option. Without understanding the true nature of prostitution as a form of sexual exploitation, and caring about current and potential future victims of the sexual exploitation industry, we will not see public and private actors do what is necessary address the socio-economic factors that create the supply and demand for prostitution, which includes creating the necessary education and employment opportunities, extending financial incentives and imposing financial penalties.

Question 5: What would be, do you think, the benefits or disadvantages of the decriminalisation of sex work versus the continued criminalisation of sex work in line with the current policy on sex work in SA for women on the ground? Would your organisation, consequently, recommend partial-decriminalisation/criminalisation as a possible policy option; why or why not?

Advantages of decriminalisation

36. None of the alleged benefits, claimed by advocates for the full decriminalising of prostitution, have been substantiated by any real-world examples and/or research findings.[67] In fact, real- world research shows that prostitution is a form of gender-based violence;[68] legalising and decriminalising prostitution does not decrease illegal prostitution, does not reduce stigma, increases human trafficking, is associated with regulatory failure and low levels of adherence, and increased organised crime.[69]

37. This is not surprising, as it is within the act of prostitution itself where the harms of prostitution are located and realised. It therefore logically follows that legalising prostitution will not eradicate the harms of prostitution; it will only legalise the very source of the harm.[70] It will legalise the

[67] Demand Abolition Why Prostitution Shouldn't Be Legal. Available at: https://www.demandabolition.org/research/evidence-against-legalizing-prostitution/.

Prostitution Research and Education *Abolish Prostitution and Provide Real Alternatives*. Available at: http://prostitutionresearch.com/.

[68] NCOSE *Prostitution: "The Zone" of Raw Male Physical and Sexual Violence*. Available at: https://endsexualexploitation.org/wp-content/uploads/NCOSE_Prostitution-Violence- Booklet_2017_FINAL.pdf.

[69] Demand Abolition Why Prostitution Shouldn't Be Legal. SALRC *Report* at [2.209] to [2.216] on 123 to 124.

[70] M Farley Very Inconvenient Truths: Sex Buyers, Sexual Coercion, and Prostitution-Harm-Denial (2017). Available at: http://logosjournal.com/2016/farley-2/.

commodification of the body parts of a living human. It is self-evident that this is not in the best interest of persons in prostitution or society.

38. Only the partial decriminalisation (abolition) model, for example implemented in the Nordic countries, has delivered limited successful results. This model has been correlated with reported decreased levels of street prostitution and overall prostitution.[71]

Disadvantages of decriminalisation

39. From the above, we conclude that, based on the available facts and research evidence, the demand-side of prostitution should not be decriminalised under any circumstances. It would not be the best interest of persons in prostitution or society.

40. In our submissions to the MPWC, we noted the manifold inherent harms of prostitution and concluded that the only way to prevent and stop these harms is by eradicating prostitution itself.[72] We compiled a list of these harms from the *Jordan*-judgment, the SALRC Report and other research findings.[73]

41. The many inherent harms of prostitution include: It is inherently exploitative in nature and characterised by violence (especially gender-based violence);[74] it is not work in any conventional sense, but rather at best a survival strategy;[75] it carries an extremely high risk of experiencing physical violence and psychological trauma;[76] experiencing racism, sexism and class prejudice is intrinsic to prostitution;[77] a high risk of indirect sexual coercion for socio-economically marginalised persons;[78] a close association with sex trafficking, substance abuse and other criminal activities;[79] it is an inherent violation of the fundamental right to human dignity;[80] carries

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M Farley The Real Harms of Prostitution (2010). Available at: https://www.mercatornet.com/articles/view/the_real_harms_of_prostitution/8143.

[71] Demand Abolition Why Prostitution Shouldn't Be Legal.

[72] CFJ *Submissions* on pages 14 to 21.

[73] By, for example Dr Melissa Farley and the National Centre on Sexual Exploitation ("NCOSE"). The work of researchers like Dr Farley and organisations like NCOSE, focus on prostitution specifically and the sexual exploitation of women generally.

[74] SALRC *Report* on pages 204, 218 and 225.

[75] Ibid at page 200. On xviii the Report recommends that "*prostitution should not be recognised as a reasonable means to secure a person's living in SA, and from a formal labour perspective should not be considered to be work or decent work.*"

[76] NCOSE *Amicus Brief.*

M Farley *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly* in Yale Journal of Law and Feminisms (2006). Available at: https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1243&context=yjlf.

[77] Ibid.

[78] Ibid.

[79] Ibid.

[80] *S v Jordan* at [74].

a high risk of exposure to STIs and HIV;[81] and persons in prostitution experience social stigma and further marginalisation and victimisation.[82] As already indicated,[83] the research shows that decriminalising prostitution does not address these harms. Recently, in the Netherlands, where prostitution is legal, 42 000 young people signed a petition to have users of prostituted services criminalised (the Nordic/abolition model).[84]

42. Furthermore, since legalising and decriminalising prostitution does not decrease illegal prostitution,[85] decriminalising prostitution in SA would merely have the effect of creating another level of prostitution (legal versus illegal) in the hierarchy of sexual exploitation.

Benefits of continued criminalisation

43. The continued criminalisation of prostitution recognises and sends a clear message that the sexual exploitation of human beings (and its associated ills/harms) is unacceptable, and sufficiently serious for the law to take cognisance of by way of criminal prohibition as well.[86] Criminalising prostitution recognises it for what it is – sexual exploitation – and sanctions an appropriate and proportionate public policy response to the offending actions.

44. If applied, implemented and enforced properly and adequately, the criminal response will be effective to eradicate the demand and attendant supply of prostitution. In the absence of effective diversion programmes for persons who are already in prostitution and alternatives and job opportunities for those who are vulnerable to be pulled into prostitution, the effectiveness of criminalisation will be negatively affected.

Disadvantages of continued criminalisation

45. There are no real disadvantages to the continued decriminalisation of prostitution. Since the harms of prostitution are inherent to prostitution itself,[87] the harms can only be reduced to the extent to which prostitution is reduced. Therefore, decriminalising prostitution does not address the harms faced and experienced by persons in prostitution – even if they are called "sex workers".

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[81] SALRC *Report* on 142.

[82] SALRC *Report* on 146.

[83] Demand Abolition Why Prostitution Shouldn't Be Legal.

[84] BBC News Europe Dutch Prostitution Debate in Parliament forced by Youth Petition (10 April 2019). Available at: https://www.bbc.com/news/world-europe-47865363.

[85] Demand Abolition Why Prostitution Shouldn't Be Legal.

[86] SALRC *Report* at [2.208] on 122.

[87] See the discussion of the harms of prostitution under "*Disadvantages of decriminalisation*" above.

46. Serious issues such as police brutality and/or medical professionals' refusal to provide treatment, are already prohibited by law.[88] Freedom and security of the person,[89] and access to health care services,[90] are both constitutional rights. The unacceptable contravention of the law by police officials and medical professionals, should not be ascribed to the current criminalisation of prostitution, but to the unlawful conduct of the officials and professionals involved.

Extent to which law reform is required.

47. In our submissions to the MPWC,[91] we noted that the harms of prostitution are inherent in the activity of prostitution itself. When weighing the "prevention of harm" and "improvement of quality of life" policy considerations, law reform (i.e., moving away from full criminalisation) will only be required if two factors were present:

47.1 If the harms and the social/economic marginalisation of prostitution flow either solely or mainly from the fact that prostitution is fully criminalised (current status of our law), as opposed to from the act of prostitution itself and/or its underlying causes; and

47.2 If the decriminalisation of prostitution, whether fully or partially, would result in the reduction or negating of the harms of prostitution and result in improvement of the quality of life for prostitutes.

48. The conclusion is inescapable - 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 inherent in prostitution. As such, it would therefore be inconceivable that the decriminalisation of prostitution will address the harms and improve the social circumstances of women.

CFJ recommendations for law reform proposals

49. In light of the above, we made several recommendations for law reform proposals to the MPWC as set out below.[92]

Full criminalisation (with diversion programmes)

50. We support full criminalisation because it legally recognises that prostitution is undesirable since it is a human rights violation and inherently violent and exploitative. It recognised that, as is the case with drugs, society - through the legislature - has a duty to protect its people from harm.

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[88] SALRC *Report* at [34] on xviii, [2.220] to [2.223] on 126 to 127, and [2.465] on 206.

[89] Section 12(1) of the *Constitution*.

[90] Section 27(1)(a) of the *Constitution*.

[91] CFJ *Submissions* at [101] to [102] on 22 and 23.

[92] Ibid at [103] to [116] on 23 to 25.

51. In *Principles of Criminal Law*,[93] an authoritative legal textbook, the authors (Burchell and Milton) note that the crimes typically found in a modern state indicate a decision by legislatures to criminalise conduct that threatens certain prized values and interests.[94] These values and interests, that motivate criminalisation on certain acts, can be grouped under four broad headings: (1) Maintaining or retaining human and civil rights; (2) public sensibilities; (3) collective welfare; and (4) maintenance of the government or state.[95]

52. Traditionally, prostitution was seen as offending public sensibilities.[96] While Burchell and Milton note that "public sensibilities" are usually drawn from cultural and religious beliefs and values, crimes in this "category" are not merely criminalised because offending acts are seen as immoral, but because they are considered – based on empirical evidence – to be "harmful".[97]

53. Empirical research evidence has shown that prostitution is harmful.[98] On that basis alone, the full criminalisation of prostitution is legally justified.

54. When considering the joint judgment in the *Jordan*-judgment, that engaging in prostitution violates the inherent human dignity of the person in prostitution,[99] it is clear that criminalising prostitution can also be justified for "maintaining or retaining human and civil liberties". This "category" relates to the recognition and upholding of certain basic human rights. According to Burchell and Milton, the harm (violation of basic rights) to the individual (victim) provides the reason for punishing the conduct.[100] In our view, the conduct of the buyer, who sexual exploits the prostitute, clearly falls in this category.

55. The "collective welfare" "category of crimes, recognises the necessity to protect and advance safety, health and welfare of each member of society.[101] Again, given the body of empirical evidence which clearly shows that prostitution is harmful not only to the individual, but also to society (associated criminal activities such as trafficking, substance abuse, theft, sexual violence and health issues such as HIV/AIDS and other STIs/STDs, and the socio-economic cost of addressing these issues),[102] the existence of prostitution is clearly not beneficial to public safety, health and welfare.

56. In light of the above, we support full criminalisation. We recommend that full criminalisation must be coupled with effective diversion programmes, to justify and support its legitimacy. Diversion

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[93] J Burchell and J Milton. *Principles of Criminal Law (Second Edition)* Juta (1997). ("Burchell and Milton *Principles of Criminal Law*")

[94] Ibid on 25.

[95] Ibid on 25 to 28.

[96] Ibid on 26.

[97] Ibid on 26.

[98] See [19.10] above.

[99] *S v Jordan* at [74].

[100] Ibid on 25.

[101] Ibid on 26.

[102] SALRC *Report* at [1.120] on 39 and [2.208] on 112.

programmes recognise that persons in prostitution, which are mostly women, need help to exit prostitution. It recognises that most of these persons are victims of their circumstances. We would also suggest expunging of criminal records of persons (victims and survivors) who successfully exit prostitution, in relation to prostitution and prostitution-related crimes.

Partial decriminalisation (person in prostitution not criminalised)

57. We support partial decriminalisation's focus on addressing the demand side of prostitution.103 We also note that this model (the Nordic / Abolition-model) is garnering support in a growing number of jurisdictions.104

58. We support this model's recognition that prostitution is harmful and needs to be eradicated and that persons in prostitution are victims of sexual exploitation.[105] To be practically effective, partial decriminalisation requires law enforcement to actively address the demand side of prostitution. Otherwise, prostitution and prostitution-related activities will continue or even increase (since the demand side of prostitution is already not deterred by the criminal prohibition of buying). If not actively policed, the partial decriminalisation model will prove ineffective.[106]

59. We have two reservations in respect of the partial decriminalisation model. Firstly, the generally known challenges faced by the South the African police force relating to management, resources and staff. Unless a specialised prostitution/sexual exploitation unit (as recommended by the Commission)[107] can be established and maintained, we cannot support this option, because if this option is not effectively implemented, it will likely do more harm than good.

60. Secondly, we also have reservations about decriminalising inherently self-harming behaviour, which in addition also constitutes a human rights violation. To use the example of harmful drugs: The state has a duty to take appropriate steps to address activities in relation to the production, distribution and consumption of substances that are obviously harmful to an individual and to society.[108] The same would apply to actions that have a similar impact on individuals and society.

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[103] SALRC *Report* at [3.61] on 259.

[104] EU Parliament News *Punish the Client, not the Prostitute* (26 February 2014). Available at: http://www.europarl.europa.eu/news/en/press-room/20140221IPR36644/punish-the-client-not-the-prostitute.

M Goldberg *Swedish prostitution law is spreading worldwide – here's how to improve it* in The Guardian (8 August 2014). Available at: https://www.theguardian.com/commentisfree/2014/aug/08/criminsalise-buying-not-selling-sex.

Nordic Model Now *What is the Nordic Model?* Available at: https://nordicmodelnow.org/what-is-the-nordic-model/.

[105] SALRC *Report* at [3.61] to [3.63] on 259 to 260.

[106] CFJ *Submissions* at [153] on 33.

[107] SALRC *Report* at [4.275] to [4.276] on 379 to 380.

[108] CFJ *Submissions* at [155] on 33

Decriminalisation and/or legalisation

61. We do not support or recommend full decriminalisation and/or legalisation (regulation).

A note on socio-economic intervention programmes

62. In our submissions, we noted that the origin of prostitution is for the most part socio-economic circumstances coupled with commodification/devaluation/sexual exploitation of women.[109] Therefore, the only way to effectively eradicate the harms of prostitution is to address the socio- economic circumstances that give rise thereto. The challenge to eradicate prostitution is therefore a developmental challenge. This is admittedly an enormous challenge, but both the government and civil society need to prioritise social and economic development strategies that will focus on the socio-economic upliftment of vulnerable persons – to prevent them from ever entering prostitution and enable persons in prostitution to exit from it.

63. Therefore, we propose that civil society be encouraged and incentivised to establish effective and sustainable diversion programmes to help persons to permanently and successfully exit prostitution. These programmes will have to focus on economic and social re-integration, psychological counselling and education with a focus on skills training that will enable persons in prostitution to either join the formal labour force or earn a living from non-exploitative entrepreneurial exploits.

64. It is equally important to protect persons who are vulnerable to exploitation (typically due to dire socio-economic circumstances) from entering prostitution in the first place. Therefore, although crucial, sustainable diversion programmes is only part of the solution.

65. In the end, it is about securing and offering better options than a life of prostitution and providing people with, as well as equipping them, to take advantage of those better alternatives (instead of being taken advantage of by others) and build a healthy and good life. Persons in prostitution are human beings with inherent dignity and worth. If we truly recognise their humanity, as well as recognise the true nature of prostitution (which is exploitation), we will be committed to formulating, implementing and maintaining a law and policy regime that will effectively eradicate prostitution. We will also be committed to protect others from entering this exploitative system.

CONCLUSION

66. We trust that the above answers will be of assistance to you, and we look forward to your response thereto (if any) in due course.

67. CFJ remains at your disposal to answer – or assist with – any further questions or queries that you may have.

[109] Ibid at [107] on 24

Interview 18

Dr Mariette Slabbert	Consultant	August 2019

I: I want to ask you what organisations you work for.

P: Will send you a list but involved mainly in policy work.

I: What is your view around sex work or prostitution, its extent, and the reasons.

P: People enter the industry for different reasons. Some do it as income in the absence of any other sources. Some don't have work permits, so it's something that they can do. Some people enjoy a career where they can be entrepreneurial and decide on their own hours and flexibility.

I: To what extent?

P: I view it as work. Sex work is a large part of the economy, and it should be decriminalisation so it can be recognised as work. They currently don't have access to workplace laws and protections.

I: Are the numbers of sex workers accurate?

P: There are more recent numbers. But we need to also know what the definition of sex work. Some do it full time, others not, others don't only get money. People don't sometimes do sex work in exchange for money.

I: what is your definition?

P: I think with decriminalisation it should be sex in exchange for money so that there is workplace protection. Others who don't have sex in exchange for money should still not be criminalised as there are other protections they deserve.

I: These SANAC stats, do you have copies of this document?

P: The sex worker plan is 2019-2022. The new one is based on the most recent developments. The report is currently unfinished.

It is very good to keep the activism alive and that decriminalisation mustn't be left off the table.

SWEAT and SISONKE are organisations are devoted to sex worker rights.

I: I am more trying to get the data against the decriminalisation of sex work.

There are many people say that are against decriminalisation in the public sphere.

P: There was a parliamentary discussion with many submissions. It started at SANAC and ended with a public discussion. There is a lot that went to parliament.

People are trying to keep it alive.

I: Why are you against criminalisation, and why would you support decriminalisation.

P: South Africans have a liberal constitution that allows all people to actualise their human rights. If we criminalise jobs, then this goes against this. Then in terms of achieving gender equality, we need to have options. Because of criminalisation there are many human rights violations. It's difficulty to report crime. The healthcare industry and the workers are very bias against sex workers.

IN principle and as a South African, it's not right.

I: Why is decriminalisation a better option versus other options?

P: To only criminalise certain aspects of the industry, then it often increases the dangers. Sex workers have to still go underground even if they won't be criminalised, they would need to go to dark alleys, so their clients are not caught. With sex workers they say that there is no other option other than decriminalisation.

Sex workers would reject anything, but decriminalisation should it be put on the table.

I: Why would it be rejected.

P: Because they would be violated with all the other options. Decriminalisation means they can operate in the labour market and have all of their rights respected.

I: And legalisation?

P: It's all in the new plan.

I have a lot of stuff that I can send you. The consensus is that decriminalisation is the only option.

I: The Gauteng Leg said they leaned towards legalisation. They feel it needs to be regulated. They feel that decriminalisation means that sex workers won't be protected.

P: As soon as you regulate it, it is still imposing rules. It is a half measure that won't protect the sex workers.

I: How has the policy evolved since 1994? What role have you played in this change?

P: Ok so I was involved at SANAC and also the technical working group. The subcommittee sent legal arguments for the decriminalisation of sex work. But nothing happened for about 10-15 years. At that stage, we didn't have agreements, but we said we didn't want criminalisation with no consultation.

Part of the reason it stalled because the condition was decriminalisation or nothing. So, we then split this and had a national sex work plan. We were I think the only country with a national sex work plan.

We now have a national sex work plan that is fully aligned with the national strategic plan on HIV.

I: The National Strategic Plan – has that been published.

P: Yes, 2017-2022. It's on the SANAC website.

I: Why do you feel that there hasn't been any change. What else has hindered policy change.

P: Well, when Ramaphosa was the head of SANAC he supported decriminalisation and sex work as a job. We have always had individuals coming forward but never a huge movement from the public. It doesn't get you votes if you promote sex work as work.

There are also moral and religious objections. These personal opinions affect public support.

You have seen the protests in cities with places like Hillbrow seen as the symbol of the moral decline of the city. I think that's problematic. There are many things associated with the sex industry which often influence the discussion on decriminalisation. This could be drugs, trafficking etc.

I: Could Ramaphosa change it?

P: He has other things on his mind, but there are discussions with the Department of Justice, with the minister. He released a statement about two weeks ago. The individual support is there, this does not mean it goes through.

There are many discussions in parliament but it often I stalled because of a fear of the public reprisal.

I: In the write up of the meeting, the current multiparty women's caucus, and the LRC report, and the public hearings in parliament and then there must be sex worker law reform.

P: We have waited for a long time on feedback yes, and then of course when we got that feedback it was basically supporting the status quo, which was so disappointing. There was anticipation of change, and it wasn't in there.

I: What are your views on the LRC's report?

P: It was disappointing. It was not what we were looking for. I think it reflects that it's a mixed bag and that activists were represented across the spectrum. The report was very emotionally laden.

This is the problem is that everything is so emotional. No one is just level headed and asks about the issues around human rights. Or that we have to observe the constitution. It is painted by morals and values and jealousy and religion.

I: I was reading about what SWEAT said and they were disappointed as there wasn't their viewpoints.

P: If you look at the submissions presented at the parliamentary meeting, you can see it.

I: DO you think that it would end up being decriminalisation?

P: We were so positive about the whole process and how valid and balanced the submissions were from SANAC's side and then the parliamentary response was awful. So, I don't think much will change. What we can do is keep the discussion alive. We have to look at key populations. The HIV epidemic helped us get sex work as work on the public health agenda.

We have also just published the human rights framework and that all these must be protected.

It's wrong that the leverage only comes from the public health point of view, but at least it helps us. Also, we have now split the issues into two: decriminalisation and public health.

I: What has to happen for the change to take place?

P: Parliament needs to take the decision. If you look at Sonke and the full submission on their website is there. It gives a nice action plan. We also have an advocacy plan. With Dutch funders they support advocacy and human rights.

We just need to keep it alive.

I: The last question I have is that is there anything else we can do?

P: Well sex workers can't report their crimes against there. It affects their children and their mental health because they often feel isolated by family members. There is a lot of stigma. It affects their access to health services so all around they are compromised.

Yes, decriminalisation won't reduce the stigma. A destigmatisation process is important alongside human rights and public health issues.

We do have dedicated sex worker health services, which is great.

I have also written a review on the previous sex work plan. We looked at the challenges and opportunities of the previous sex worker plan. We then developed a new sex worker plan. I did this for SANAC.

I: Do women have agency?

P: well, we live in a very patriarchal society and so we need to do community capital building for sex workers. To get their rights achieved it must be multileveled. There are many barriers, and we can strip them away one by one. We are almost using the small things as leverage.

Their current agency is very poor.

On the one hand you don't want to describe sex workers as victims, but they are also victimised in many ways.

I: Is there anything specific I should take into account on this specific subject.

P: If I send you the review and the new national sex worker plan, you will get an idea as to where we are going. The national strategic plan describes SA's response to HIV, TB and STIs. So, everything must be aligned. This is aligned with the NDP which is then aligned with the constitution.

Thanks to our good constitution, we can practice what we preach.

I: What I want to do with my report is to show both sides of the argument so we can get a clear view. Why are they also arguing this.

P: Look at the parliamentary review.

One of the very big arguments that dredge up a lot of emptions is exploitation. Yes, from the policy viewpoint, there is exploitation, and young people who sell sex who are under the age of 18 is against the law. That is prostitution. This a different issue altogether. Of course, those under 18 still have access. The exploitation and trafficking are crimes in themselves and must be managed in a criminal capacity.

I: Many argue that sex work and trafficking can't be separated.

P: Yes, but does this still mean that it allows sex workers' lives to be threatened? Even so, where are these rights. Yes, like for drugs, it doesn't mean it should be allowed that drug users don't have access to human rights. Drugs tear families apart. But the users need services as much as anyone else.

There is so much emotion. We need to see the wood for the trees.

I: Have you read the book by Rachel (?)….

I will send you the full title.

The way she talks about being a skillset – control your urge to cry, control your gag reflex, hone your ability to pretend you are somewhere else. These are her own experiences.

P: I am not saying there is nothing negative about being a sex worker. It still doesn't mean that because there are negatives that somehow those in the institution should be treated badly.

I also have horrible parts of my jobs.

There are also a lot of benefits of sex work: flexibility, entrepreneurial etc versus working as a domestic work. A domestic worker has a ceiling on their income too.

We looked at sex worker job satisfaction. The results were surprising. Yes, there are terrible things, but there are also upsides and reasons why certain people choose to stay in sex work. Yes, there are also those who choose it out of desperation.
You will get a lot out of the National Sex Worker plan.
Pleasantries and goodbyes.

Interview 19

Ms Madri Bruwer	Straatwerk	August 2019

P: So, the organisation Straatwerk has been around for 50 years. We are a Christian organisation so focusing on the groups we do. We have the prevention and restoration programmes. I have been here since 1995. I was 24 then. I studied psychology and practival theology and a master's in ministry. I am now doing a PhD in exit support. In a long-term relational model to journey with the ladies. This our model to healing.

I saw that you are doing quals research. Do you work with your questions. Can I read my response to the SALRC report.

(She reads the report, here:

Response to the SALRC Report on Project 107 Adult Prostitution

Introduction

After more than 35 years of focussed interaction with individuals (in and exiting from prostitution) we (Straatwerk) support the Criminalisation Model. We take our hopeful stand, based on the reality of broken and transformed lives, well-documented research and strong conviction.

However well intentioned, decriminalising prostitution (in any form) cannot be a gift to those exploited. Research clearly shows that most prostituted individuals want to exit. Journeying with many precious people, over decades, has given us a very privileged position. Our conclusion is that everything needs to be done to prevent entry into, as well as support exit out of, prostitution.

SALRC Report on Adult Prostitution – Comments

Reading the South African Law Reform's Report on Adult Prostitution has been encouraging and enthusing. We hear the voices of our people and the stories of their lives. The well-researched, clearly reasoned, and professionally compiled document addresses the realities and opens the truths needed to be understood to make wise and responsible decisions concerning the legislation.

Motivation for Total Criminalisation

- We would like to mention a few aspects, specifically apparent from our vantage point. (We are aware that each point asks for a whole conversation, which we are more than open to.)
- The law needs to communicate hope.
- Criminalisation of prostitution is helping to keep the (already horrifying) statistics down.
- The context for exploitation, injury, damage and devastation in prostitution is not the law, but the industry of prostitution.
- Perceived "safer environments" does not stop the violence and abuse women involved in prostitution suffer.
- Criminalising prostitution does not criminalise people, but an industry which degrades and damages people.
- Prostitution mostly preys on the most vulnerable.
- The environment created through prostitution is detrimental in the development of our youth.
- Our society is fertile soil for prostitution to grow, because of rampant sexual exploitation.
- In many ways, prostitution furthers the perception that women are commodities who can be bought.
- Damage caused by prostitution cannot be prevented, as it is intrinsic to the act.
- The physiological damage is severe.
- Prostitution does not fit the definition for "decent work" and cannot be positioned as if it does.
- Negative attitudes towards prostituted individuals does not originate in the law, but in the hearts of those needing change.
- It is an illusion that prostitution is only a "choice"!
- Legalising prostitution does not eradicate violence.
- Regardless of our high unemployment level, we do not need prostitution to take care of our people!
- Money is not made through prostitution, only moved around from one broken and needy individual to another, further causing damage to those involved.
- Women involved in prostitution are not denied health care!
- A high percentage of women involved in prostitution wants to exit.
- A transformed society is needed and cannot be established with prostitution freely being practiced.
- Prostitution can be ended, but it needs to be believed!

Roots of Prostitution

Intense TRAUMA and severe DEPRIVATION are at the root of prostitution, usually suffered over an extended period, and often in a context where they should have been cared for and loved! It is extremely sad and ironic that those abused and neglected are willing to be traumatised and used repeatedly in an attempt to no longer be deprived. The reality is that prostitution does not provide what they hope for.

Seeing the Prostituted Individuals

Addressing the phenomena of prostitution, we need to truly see and hear those involved. It is necessary to hear their "voices" - not only their words spoken, but also the stories of their lives. They are honest when they are convinced that those listening want to hear, care and have hope to offer them. To survive prostitution, the men and women involved usually cut off hope, because they cannot hope and be involved in the lifestyle. We need to communicate hope!

It is especially helpful to hear and see those who have exited and are on their journeys of healing and restoration. Once they are not trapped anymore, they see clearly and often eagerly share about the reality of the lifestyle and what is needed to exit.

Taking Responsibility

When we give permission for any of our precious (and often in different ways most vulnerable) people to be sold, we are doing so from a position in which we are not taking up our responsibility. When we say it is their right to sell themselves, we are neglecting our responsibility to care, by giving them the right to do what they do not want to.

Exiting Prostitution

Exiting prostitution is a brave step, as change is difficult! The journey following the exit is long, intense, challenging and unique (as each individual is). All the rehabilitation and habilitation need to happen in a context of respect, care and hands-on support and guidance. For each individual, this journey will be different and yet there are many principles and "themes" which are the same. A holistic approach is needed, nested in committed, caring relationships. Those involved usually see prostitution as their only way of survival. Their belief is based on their seen needs (accommodation, food, clothes, toiletries and other necessities). Yet, there is a deeper need. This need is for belonging. Brokenness happens in the context of relationships. Healing does too; and when this healing happens, the need for prostitution is not present anymore – partly because they then realise there are other options and pursue those options, but mainly because care spontaneously happens in the context of a constant, nurturing Community of Love.
Thus the "exit strategy" suggested is a group of loving, caring people adopting a motivated, exiting individual into their family, where he/she would be cared for and guided on the journey. Consequently, our suggestion does not start with extra resources and services, but groups of caring people helping the individual to access needed services, resources and opportunities. The provision of such services and resources could be addressed in many ways.

Services and Resources

We need mechanisms in place to facilitate and provide care. Journeying with exiting individuals, we have found that much of what is needed already exist in our Social Work System; Health Care System; Training Opportunities; Entry Level Job possibilities and in other unique and creative opportunities which could and need to be explored. Attention can be given to further develop these services, resources and opportunities.
The needed services, resources and opportunities should be available for those desiring to exit prostitution as well as those at risk of entering! This implies that everyone in need should be able to access the services, which is a healthy principle.

Conclusion

Prostitution is a trap of deception and destruction. We need to do everything to keep more women from entering and we need to do everything to come alongside those who desire to exit. They can all live brilliant, beautiful lives when they become part of a Community of Love and find their part in making the world a better place!

I: You talk about prostitution?

P: Yes, and we say women involved in prostitution. We also don't want to label them.

I: Why are you against the term sex work?

P: Well, we are against any definition if it narrows this person down into something. Because we holistically look at people. One part of this person's life is prostitution only. Our communication is long, but we prefer it that way.

I: and the extent of prostitution?

P: I don't feel qualified as I don't have data. We work with 'visual' prostitution. So, this is women standing on the streets. So that is obviously the tip of the iceberg. Then this is more rampant clearly. There are also women in relationships where they are being prostituted but it is not as clear cut.

We are also working with women who have had a high prevalence of sexual abuse.

I: How do you define prostitution? You have also spoken about the lover boys and transactional sex.

P: The way we think of it is if there is any form of compensation for the act, whatever form that takes, then that is prostitution. It may or may not be in a committed relationship.

I: You spoke about economic reasons and child sexual abuse for women entering sex work.

P: Yes, the traumatisation and deprivation. There may be a pull when they see the money but there are many people who are poor and need money. Yes, the financial aspect is there, but this is not the start of it. They have had a history of trauma.

I: What is their level of agency in the sex industry?

P: I don't understand the question.

I: I mean their ability to choose whether to be in the industry or not.

P: Well in the most extreme form of trafficking then there is no choice. This seems to me that the more choice there is, the more trauma and deprivation is present. They may not have a pimp and they work independently, but you will find they have been neglected.

Say for instance, this lady is excluded from the economy, and is also traumatised, then what really is her choice.

But there are some choices which are made, even if they are bad choices. This positions someone who we thought as a victim as also a decision-making person.

I: And what would you say the links are between sex work and trafficking?

P: Ja, there is a seamless connection between trafficking, prostitution and pornography. Even if someone is brought on false pretences. So, the challenge is that trafficking can also be debt bondage.

On Friday night I spoke to a lady who I asked if she knew it was going to be like this, and she said that she had no idea it was going to be like this. SO technically according to the new definition, she has been trafficked.

If a child is three years old and is sexually abused. Then at the age of 18, with that brokenness, they have to make a choice to go into prostitution. I am not sure if this is a choice.

I: My second question is around the current policy and the other policies.

P: The partial decriminalisation makes some sense to me. But concerning criminalisation, I have no doubt that if we choose any of the other model – whether it's full decriminalisation, partial decriminalisation and legalisation – then the industry will grow. We are fertile soil for more abuse. So, if we open that door, more will enter. It is a big journey to be part of the industry and it takes a lot of healing. Now if we are giving people the option to enter sex work, and to choose that, I don't think we are taking proper responsibility for these women. There is a saying that says prostitution to a society is what incest is to a family. And that is the reality we are sitting with.

What about the questions about how to provide help for these women in exit programmes? The people who help are those who are advocating for full criminalisation. My concern is that while no one is having bad intentions in advocating for decriminalisation, but they just don't have the knowledge. We know full well what the damage is. We obviously don't want to stop people from going into the work, they have their rights. But we have a responsibility, and the government too. Again, I just don't think there's ill intent from these advocates, it's just that they don't know the full devastation.

I: Going back to partial decriminalisation. What is your view on only criminalisation the client?

P: My concern. Our women are very broken. The women then think they can do whatever they want, and so they get the control. I don't think they can handle this control and power. This now encourages more women to enter. Why not enter and you can have manipulation over the clients.

Part of this debate is that we don't actually know what it's like should it be decriminalisation.

I: You mentioned that partial decriminalisation allows for the women to have more control. In some instances, they are saying it allows for the client to actually have the control. Why do you say women would have more control?

P: She can say this is what I will do, and I will keep you from the police. I mean they don't think like that necessarily, but they are desperate. I mean I don't feel I know but I am guessing. It's just that there is an extent where they can do anything.

I: You are saying that there are women who have access to health care even in criminalisation.

P: No one can be denied any healthcare service? I don't understand how there will be better healthcare access? We have people in the clinic here are very sympathetic to the women here.

I: My next question is the evolution of the sex worker policy.

P: I don't think I can give a helpful answer. If you ask people though about the different sex worker policy models, they will ask you which ones you are talking about. They are not following this.

In 2009 when Selebi said that for the World Cup that prostitution should be decriminalisation for that time. I mean how can you do this and then retract it? Something that has been helpful for me is that when archaeologists can learn about human life in a certain time, they could like on a garbage heap.

Prostitution doesn't create money, but it moves it around. It moves between people who are broken.

Frankly I am glad it wasn't accepted for the world cup in 2010.

I: Why is sex work still criminalised? People are calling for decriminalisation, but it hasn't been achieved.

P: There was a lot of enthusiasm, but they know it's very complex. You can't give people their rights. I think they know that they are grappling with a lot of complexity.

I: Some people say the SALRC report doesn't account for HIV reports and that data was missing. You said it was well researched?

P: It seems they looked at individuals and looked into many different facets. If we want to stop the risk, they know we have to stop prostitution.

I was really surprised because those people who advocate for full decriminalisation – they know that working in prostitution is harmful, but they also then said well so is working in an asbestos mine. There is clearly a deep awareness.

But there is a risk anyway and you won't change a thing if you decriminalisation. The spreading of HIV – well yes now with decriminalisation you can have access to healthcare but why would you care to go on treatment if you are a prostitute because you are so broken. You are too desperate.

We have people who have exited and are part of our programmes. I wish you could hear them. They have such hope and excitement. There's an understanding that once they are out of the industry they can see clearly. There is a lot of psychological damage. You hear these terrible traumas. Trauma is just built on trauma from childhood.

I: So, they were abused by kids?

P: Yes. But people must know there is hope instead of saying let's allow you to do what you don't really want to do but it's decriminalisation so go ahead.

I: What needs to take place to change the policy?

I am guessing you want to see that there needs to be criminalisation with exit programmes.

P: Yes, but the thing about exit programmes is that we don't just want people to think well I can enter prostitution because I know there's help down the way. Yes, we want to make it accessible, but we don't want to encourage anything. Our emphasis is we believe in communities of love, like churches. It is like a family as adopting a child and help people access care.

We look at possible matches for jobs. Yes, you may want to be a nurse but perhaps for now you can go into home-based care.

I: DO you think that sex work would be decriminalisation?

P: I hope not. There are loud voices.

I: Why?

P: Because then it will be easy to join. Because then this is just an indictment about how we view humanity and how we don't take responsibility to fix brokenness. The first thing though is more entries into the lifestyle.

I: What are the advantages and disadvantages. Is there anything else you want to add?

P: Let's take the angle of psychological damage caused by prostitution. My concern is that what this does to society. They live in ignorance about how our psyche and social connections work. I am convinced it will have a breakdown in our moral values in society.

I: Is there anything you want me to take into account when I write my report.

P: Yes, think hopeful. Don't just look at what is scientifically correct or what makes legal sense etc. Rather look at it with hope to say that we can have a system where not one man, woman or child is trapped in prostitution. That there is a society where broken relationships can be healed. Because when we look at this from a point of hope, we know what human beings need.

There is so much hope. I have seen it over again.

I: Do you think a world in which prostitution doesn't exist is possible?

P: I hope so. If we work with 100 percent love and zero percent tolerance, then we will achieve this. We have to learn to love again. We are also against figurative prostitution. So, if you give yourself over to something that you know is not your worth.

I: The arguments around the money aspect are that other industries don't pay.

P: Surely you should live a good life even if it's a minimum wage. Is it realistic to have immediate gratification? It is now about discipline. Yes, there are higher classes of prostitutions who have money, but it actually impoverishes their souls. They aren't in peace. They just want to have normal lives.

Many people can use their money wisely even if it's little.

People dream of other things and then prostitution steals from them. The A21 campaign, called can you see me, is about labour, domestic, and sexual trafficking. It warns how trafficking happens in many different ways.