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PROSTITUTION: PROPOSED LEGAL FRAMEWORKS

DID YOU KNOW?

Before 2007, the law stated that only the *selling* of sexual acts was illegal. However, the enactment of the Criminal Law (Sexual Offences and Related Offences) Amendment Act in 2007 saw the introduction of a new provision which criminalises the buyer of sexual acts as a perpetrator.

Currently, South Africa's legislative framework surrounding prostitution declares prostitution illegal.

The SALRC has presented four legal models up for consideration for legal reform of South Africa's legal framework governing prostitution:

- 1) **Total criminalisation** penalises prostitution and all acts relating to prostitution. Examples of this model are rare. The laws against prostitution in the state of Idaho in the United States of America are an example. It may happen in a model of total criminalisation that the sanctions towards the prostitute and solicitor is stricter than those towards the other role players, as is the case in the state of Colorado in the United States of America. The current legal regime in South Africa is also an example of this.
- 2) **Non-criminalisation** refers to the model of removing laws that criminalise adult prostitution and related activities. Under the non-criminalisation model, the supervision of prostitutes, other role players and business establishments typically takes place through general legislation on labour, occupational, health and safety and human rights. Generally, non-criminalisation does not mean the removal of criminal sanctions against abuse, trafficking or forced or under age prostitution
- 3) **Regulation or Legalisation** refers to the removal of general criminal sanctions against prostitution in combination with measures aimed at state regulation and control of the industry. See, for example, the position in Nevada, USA, and the Netherlands. The control measures in a regulated system are based on the prevailing social norms and conditions of the particular jurisdiction. These measures will typically prescribe health checks, registration of prostitutes, licensing of brothels and sometimes the zoning of certain areas in which prostitution is allowed.
- 4) **Partial (de)criminalisation** is enforced in a number of ways. In some instances, activities related to prostitution such as soliciting, brothel-keeping and living off the earnings of prostitution are prohibited, while prostitutes themselves are free from criminal sanction. The UK is an example of this partial criminalisation model. Another version criminalises persons who solicit or facilitate the performance of sexual services of prostitutes *i.e.* the client or pimp, but not the prostituted people. Sweden is an example of this.¹

¹ SALRC Discussion Paper 0001/2009, Project 107: Sexual Offences/Adult Prostitution (2009)