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Submission to: the CEDAW Committee re: General Recommendation on Trafficking in Women & Girls in the context of Global Migration

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**About SWEAT and Sisonke**

The Sex Worker Education and Advocacy Taskforce (‘SWEAT’) is South Africa’s leading sex worker human rights organisation. We are a registered a non- profit organisation that has been providing services to adult sex workers and advocating for sex workers human rights for 20 years. SWEAT’s mission is to support sex workers to access their human rights in a criminalised system whilst simultaneously advocating for the decriminalisation of sex work in South Africa. Our programmes collectively aim to address the structural impediments to achieving a legitimate and respected sex work industry in which informed, empowered and safe sex workers are able to make choices about their working lives, career options, health and are able to claim and enforce their human rights as well as seek recourse where their human rights are violated.

SWEAT also hosts the Sisonke Sex Worker Movement which was launched in 2003. The movement was formed by sex workers to unite them to address stigma and unfair discrimination against sex workers. Since its formation in the Western Cape (Cape Town), Sisonke has set up offices in the Eastern Cape (Easton London); Gauteng (Johannesburg); Kwa-Zulu Natal (Durban); and Limpopo (Polokwane) and has members in all 9 provinces across South Africa. Sisonke is also a member of the African Sex Worker Alliance (ASWA), which unites sex workers throughout Africa as well as the Global Network of Sex Work Projects (NSWP).

SWEAT and Sisonke aim to empower sex workers by encouraging them to explore, and voice, their own actualities, experiences, and protests using a human rights approach. It aims to create spaces in which sex workers can act with self-determination, in a society which does not encourage sex workers to speak out on their own behalf. We also provide a place where we can build on advocacy: to educate, inform and mobilise sex workers and society as a whole, around the issues that sex workers face.

**Claims about trafficking are often overstated or incorrect**

Many organisations, including state governments, use wider meanings of “trafficking”, which often don’t include force. For instance, the Prevention and Combating of Trafficking in Persons Act (2013) in South Africa, adds to the list of abusive methods listed by the United Nations (see above) as follows: “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”. You could argue that this means that someone would be seen as a trafficker if he or she simply paid someone money to do pre-agreed sex work. Many NGOs and media organisations seem to see trafficking as the

same as any kind of sex work, especially when it involves women from other countries. This removes the importance of consent, which is central to any feminist understanding of sexual violence. In addition, many NGOs and media organisations report the extent of trafficking as

if it is the result of solid research. In South Africa, the Salvation Army claims that “30,000 children are being prostituted in South Africa” a figure that is not backed up by any formal research. The number of people who appear in court for human trafficking is generally much lower than the numbers discussed in the media. Research with sex workers also does not show much trafficking is happening. A study of 164 sex workers in Cape Town found that only two had ever been the victims of trafficking under the UN definition and these had generally happened in the past, with the sex workers in question having escaped the situation by themselves. There is often media scandal about trafficking related to sex work surrounding large sporting events, like the 2010 Soccer World Cup. These reports are often based on guesswork and there is in fact no

formal evidence that trafficking increases around these events.

**Reports of trafficking make complex social problems seem too simple**

The common story around “sex trafficking”, as told by many NGOs and the media, often sounds xenophobic. This is because it describes women who come from other countries to do sex work as without power and men who may help women move from other countries as mostly cruel and abusive. Sex work often brings in a lot more money than other choices and many people may feel that moving from their home country to do sex work is the best choice. The same, however, could be said for people in many other jobs, where workers are not thought of as victims without the power to make choices. Sex workers are often treated very badly at work. This can be forgotten in the face of the more serious human trafficking factor. For example, several women in Cape Town, although choosing to work as sex workers, reported that a very large amount of their pay

was being taken as “fees” by brothel managers. An outdoor sex worker questioned in the same study said that she would feel safer working for a “pimp”. Only a small number of street

sex workers in Cape Town have managers or “pimps”, but this remark shows how the dangerous nature of criminalised sex work may make sex workers open to abuse at work. Public statements against trafficking, together with the mistaken belief that trafficking and sex work are the same thing, often lead to widespread police crackdowns on sex workers. These regularly result in human rights abuses.

**Decriminalisation would reduce trafficking and other kinds of abuse**

Under decriminalisation, all laws criminalising the buying and selling of sex, as well as the employment of sex workers, are removed. Sex work is controlled by general labour law. This means that sex workers can organise legally and employers (e.g. brothel managers) must obey

health and safety labour laws. Sex workers are more likely than social workers or the police to

become aware of trafficking, adults or children being forced into selling sex and other abuses. They have a strong interest in stopping these abuses and are often very good at doing so20. Decriminalisation would allow sex workers to organise better to fight abuses, including

by forming unions. Criminalisation means that sex workers fear arrest and illegal abuse

from the police, which makes them scared to deal with them. This may stop them reporting abuse against themselves or other sex workers. Often clients are the only outsiders who will meet someone who is being trafficked or forced into selling sex. Yet under criminalisation

of sex work, clients are often unwilling to report suspected abuse because they are afraid of being arrested. Under criminalisation, sex workers must work in secret due to fear of arrest or abuse by the police. Under decriminalisation there would be more contact between sex workers and service providers, including the police. If this were so, it would be much more obvious if a particular brothel or agency was trying to hide abuse.

**The exploitation of minors**

Under South African and international law, a child is defined as anyone under the age of 18 years. Sex for money involving people younger than 18 is officially seen as the sexual exploitation of

children1, 2. Thus, although the normal age of consent for sex is 16 years in South Africa, only people aged 18 and over are legally seen as adult sex workers (or ‘prostitutes’) if they sell sex.

Under the Sexual Offences Amendment Act of 2007, it is an offence in South Africa to buy sex from a child or to help someone else to do so, whether the child agrees to it or not. It is clearly a problem if children are forced into sex work in South Africa. Little research exists. Much of the information available on children selling sex depends on newspaper articles or interviews

with health care workers or social workers. These articles are, at times, muddled and unreliable. Media figures that say tens of thousands of children in South Africa have been forced into

prostitution through trafficking are not supported by high-quality research. Such incorrect figures are dangerous. Research based on finding specific children who have been trafficked or forced into selling sex usually results in much lower numbers. A nationwide police campaign in 2004 identified 160 children between the ages of 13 and 17 working in brothels, although not all of these were necessarily being forced to do sex work. A thorough survey of the sex industry in Cape Town found only five children selling sex, none of whom were being forced to do so. Children and young adults who sell sex are especially at risk of violence and HIV infection compared to older sex workers, due to their relative lack of physical strength, experience and emotional

development. They also have very little bargaining power with clients because they are hidden away from the public eye.

**Criminalisation harms children forced into sex work**

Criminalisation of adult sex work results in police violence against sex workers of all ages, with many South African sex workers reporting that they have been harassed, robbed, assaulted or raped by police, as well as being arrested unlawfully or asked for bribes. Although under South African law, children selling sex are formally seen as victims rather than criminals, the police still arrest and illegally abuse under-age sex workers. This is partly because the police target sex workers under by-laws around ‘loitering’ and ‘public nuisance’, rather than for actually selling sex. They also sometimes arrest sex workers without any intent to lay a charge. Research from the United States shows that children selling sex are regularly forced into having sex with police officers. Because sex work is criminalised, sex workers, including children, will avoid the police to escape being arrested or illegally abused. This means they may work in out-of-the-way places where they are easily targeted for attack. In South Africa both adult sex workers and children forced into sex work face discrimination from health workers. This can make it difficult to get screening and treatment for HIV and other health conditions. Children selling sex will not use services if they think they will be reported, so healthcare providers should make it very clear they offer a non-judgemental service and protect client confidentiality. In the same way service providers must be guaranteed that they will not be targeted for “promoting child prostitution” if they do provide such services. Even describing children selling sex as ‘victims’ – who need to be

forcibly placed with their families, foster parents or state care homes – can be a problem. Children can suffer violence and abuse in both family homes and care homes. As a result, they may choose to live on the street, join a gang and/or do sex work as better options. While it is true that children may have a more limited emotional and intellectual ability than adults and may face really difficult circumstances, we must also accept that they still make choices and

must consider these when judging what is best for them.

**How to help children who sell sex**

Although children forced to do sex work are not seen as criminals in South Africa, police and other service providers need to be reminded of this, because they sometimes deny these children

services. Sex work for consenting adults must be decriminalised. Decriminalisation means the buying and selling of sex becomes legal. Employment of sex workers is also legal. Sex work would be controlled by general labour law, allowing sex workers to organise legally. It also means that employers (e.g. brothel managers) must obey health and safety labour laws. Force, trafficking and other abusive labour practices would remain illegal. Under decriminalisation, both adult and under-age sex workers would feel more able to report violence to the police, and even

report corrupt police officers themselves, with less fear of arrest or abuse. Sex workers are well placed to spot and help with cases of forced sex work or sexual exploitation, including with

children, and have done so successfully. Decriminalisation would reduce stigma and discrimination against sex work, making people less likely to feel they are right to “punish”

those in the sex industry with violence. Decriminalising consensual adult sex work would make sex work more visible and allow the police to focus more on the small number of cases where the people selling sex are under age and/or forced into sex work. The 2003 Act decriminalising adult sex work in New Zealand also criminalised adults who buy sex – or help people buy sex (e.g. brothel-owners) – from children. These laws have resulted in successful arrests. A survey of sex workers in New Zealand revealed that only 41 out of 772 had entered the sex industry as children after the passage of the Act and expert opinion is generally that there hasn’t been any increase in the number of underage workers. Despite the need to lay charges against people who force children into sex work, the way to deal with children in forced sex work is not to rely only on arrests or using force in other ways. The need to avoid police can drive children at risk to hide away even more, making it hard to provide services to them. It also increases the risk of violence. The emphasis should be on providing services and support to help children who sell sex to make other choices.

**Conclusion**

South Africa is a country with high levels of unemployment and poverty where transactional sex occurs on a daily basis. Often, women exchange sex for a number of rewards such as groceries, school fees for children etc. The policing of consensual adult sex is impractical and ineffective and require resources that would be far better served tackling the high levels of violent crime in the country. The current legal framework is inconsistent with international, regional and domestic laws including South Africa’s supreme Constitution in relation to violence against women and gender equality more broadly. Over and above the impracticality of the Sexual Offences Acts, criminalisation of sex work supports stigma and unfair discrimination against sex workers which create an enabling environment for the abuse of sex workers by law enforcement, clients and the community and poor access to imperative healthcare services. The continued criminalisation of criminalisation of sex work keeps stigma and unfair discrimination against sex workers alive and facilitates the non-observance of sex workers human rights, rights that all persons living in South Africa are entitled to.

SWEAT concludes that the current legal system criminalising of sex work in its entirety is impractical and ineffective. The law needs to be reformed to make it consistent with South Africa’s constitutional obligations from a human rights perspective. The decriminalisation of sex work can reduce sex workers vulnerability to violence at the hands of police, clients and intimate partners and contribute to eliminating stigma that is a barrier to service delivery.