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Attention: The Secretary  
South African Law Reform Commission  
Private Bag X668,  
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0001

Date: 30<sup>th</sup> June 2009

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**RE: Letter from SANAC in support of submissions advocating for the decriminalisation of sex work**

Dear South African Law Reform Commission,

This letter is submitted on behalf of the Human Rights and Access to Justice Technical Task Team (TTT), a standing sub-committee of the Programme Implementation Committee (PIC) of the South African National AIDS Council (SANAC). The TTT provides expert advice to PIC on the human rights and access to justice targets of the NSP.

SANAC is chaired by the Deputy President of the Republic of South Africa and is comprised of high level representatives from seven government departments, led by the Department of Health, and eighteen sectors of civil society. SANAC is charged with responsibility for coordinating the national response to HIV and for advising the Inter-Ministerial Committee on AIDS on national AIDS policy and strategy. It is also responsible for oversight of the implementation of the National Strategic Plan for HIV & AIDS and STI, 2007–2011 (the NSP).

The NSP identifies sex workers as at “higher-risk” of HIV & AIDS and STIs. The NSP also recognises that the unlawful nature of the occupation of sex work renders sex workers at greater vulnerability because it acts as a barrier to their access to HIV and STI prevention and treatment services. For these reasons the National Strategic Plan for HIV & AIDS and STI, agreed to by Cabinet in May 2007, calls for the decriminalisation of sex work.

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## **Comments on Discussion Paper 107**

The comments below are submitted in response to the release of South African Law Reform Commission's (SALRC) discussion paper 0001/2009 (Project 107: Sexual Offences: Adult Prostitution). They are intended to ensure that the recommendations of the SALRC around proposed new legislation are reasonable, based on a rights-based approach and are consistent with the objectives of SANAC: in particular, the nationally agreed-upon targets as set out in the NSP.

The TTT would like to commend the SALRC for making reference in *Discussion Paper 107* to the link between the status of sex workers and the rights of women as well as to the unequal status of women in South African society. The reference that is made to the devastating impact that HIV & AIDS is having on the fabric of South African society is also noteworthy. It is within this context that the TTT request that the contents of this letter are considered.

We ask that the letter also be considered within the following social context:

- a national unemployment rate of 23.5%<sup>1</sup>;
- a youth unemployment rate approximately double the national rate<sup>2</sup>;
- further job losses totalling 179,000 during the first three months of 2009<sup>3</sup>;
- an astonishingly high prevalence of rape and sexual violence within South African Society<sup>4</sup>;
- a documented relationship between violence and sexual risk taking<sup>5</sup>;
- that women who experience violence (of any form) are also more likely to have HIV<sup>6</sup>;
- and that sexual violence is a key driver of the HIV epidemic<sup>7</sup>;

South Africa's high unemployment rate, and the proposition that 50% of school leavers are unlikely to find work during their lifetime, has created a situation where opportunities for formal employment are extremely limited. Discussion paper 107 recognises this and should again be commended for outlining the reality that prostitution is most often engaged in as a result of economic need. The criminalization of sex work has direct (and not wholly measurable) implications for the health and human rights of sex workers.

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1 Statistics SA: Statistical Release P0211: Quarterly Labour Force survey: 1<sup>st</sup> Quarter 2009; [www.statssa.gov.za/PublicationsHTML/p02111stQuarter2009/html/p02111stQuarter2009.html](http://www.statssa.gov.za/PublicationsHTML/p02111stQuarter2009/html/p02111stQuarter2009.html)

2 Financial Mail, Carol Paton & Prakash Naidoo: Finding Work Gets Harder, 9 January 2009.

3 Statistics SA: Statistical Release P0277: Quarterly Employment Statistics, March 2009; [www.statssa.gov.za/Publications/p0277/p0277March2009.pdf](http://www.statssa.gov.za/Publications/p0277/p0277March2009.pdf)

4 Medical Research Council, Jewkes et. al: "Understanding Men's Health and the use of violence: interface of rape and HIV in South Africa"; June 2009.

5 Medical Research Council, Jewkes et. al: "Understanding Men's Health and the use of violence: interface of rape and HIV in South Africa"; June 2009.

6 Kristin Dunkle and Rachel Jewkes: Effective HIV prevention requires gender-transformative work with men; *Journal of Sexually Transmitted Infections* 83:Pg. 173-174; 2007

7 Kristin Dunkle and Rachel Jewkes: Effective HIV prevention requires gender-transformative work with men; *Journal of Sexually Transmitted Infections* 83:Pg. 173-174; 2007

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The health argument contends that criminalisation fuels the AIDS epidemic as sex workers are at higher risk of being infected with HIV. Sexually transmitted infections increase the risk of HIV transmission. The illegal nature of sex work makes it difficult for sex workers to access medical treatment.

Sex workers are also victims of violence, by their clients and by the police. Perpetrators of violence (and not necessarily sexual violence) have been shown to take greater sexual risks<sup>8</sup>. Moreover, women who experience violence (of any form) are also more likely to be HIV positive<sup>9</sup>. The lack of access for sex workers to health, social, police, legal and financial services compounds their vulnerability.

The human rights argument asserts that the criminalisation of sex work violates the human rights of sex workers. The Constitution of the Republic of South Africa<sup>10</sup> provides equal rights for everyone, and this should include sex workers. The right to equality also provides for the right to choose with whom to engage in sexual relations; it provides a right to dignity, a right to non-discrimination, a right not to be harassed, a right of access to health care and a right to bodily integrity. Contrary to the spirit of the Constitution, criminalisation withholds the equal protection and benefit of the law from sex workers.

It is within this context that the TTT of SANAC would like to endorse the submissions calling on the SALRC to pursue non-criminalisation in its recommendations to the Department of Justice. However, as the body responsible for oversight of the implementation of the human rights and access to justice targets of South Africa's NSP (and in particular the protection of vulnerable groups), the TTT would also like to implore the SALRC to extend beyond removing the by-laws with which sex workers are harassed and the legislation that makes sex work a criminal offence by recommending mechanisms that will ensure the protection of those engaged in the occupation of sex work. Sex workers should receive protection through occupational health laws and labour laws and sex work should be expressly recognised as an occupation.

**Yours Sincerely,**

**Nonkosi Khumalo**

**Co-convenor of Human Rights and Access to Justice Technical Task Team  
South African National AIDS Council (SANAC)**

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8 Medical Research Council, Jewkes et. al: "Understanding Men's Health and the use of violence: interface of rape and HIV in South Africa"; June 2009.

9 Kristin Dunkle and Rachel Jewkes: Effective HIV prevention requires gender-transformative work with men; *Journal of Sexually Transmitted Infections* 83:Pg. 173-174; 2007

10Constitution of the Republic of South Africa, Ss 9(1 through 5)

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