



FACULTY OF HUMANITIES, DEVELOPMENT AND HUMAN SCIENCES

PERCEPTIONS OF MASTERS STUDENTS ON DECRIMINALISATION

OF

SEX WORK IN SOUTH AFRICA

By

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Submitted in partial fulfillment of the

Requirements for the degree of

Master of Social Science

At the University of KwaZulu-Natal

Faculty of Humanities, Development and Social Sciences

2016

DECLARATION

I, Ntsika Edward Mlamla (215081279), hereby declare that this dissertation entitled “Perceptives of Masters students on decriminalisation of sex work in South Africa” is my own unaided work, except where otherwise acknowledged in the text, and it has not been submitted in whole or part for any examination or degree at any University or for any purpose.

Signature of candidate.....

On theday of 2017

DEDICATION

This dissertation is dedicated to the sex workers who become victims resulting from legal system that criminalizes sex work across South Africa.

It is also dedicated to my parents, Mr M. and Mrs N. Mlamla, for their sacrifices, perseverance as well as for supporting me on my journey to make this study a reality. Most importantly, the researcher further dedicates this dissertation to grandmother, Mrs N. A. Mlamla; the late grandfather Mr M.A. Mlamla and Nomatheku Mlamla.

ACKNOWLEDGEMENTS

I would firstly like to thank GOD for ensuring my existence and for guiding, protecting and giving me the strength to always make it through every day, despite the challenges that I encountered when conducting this study.

More credits should go to my patient supervisor, Dr Sazelo M. Mkhize, for being the best supervisor one could ever ask for. He has been with me through thick and thin. He has improved me not only academically but also as a person. My writing has improved a lot under his supervision and without him this work would not have been a success.

My appreciation also goes to the South African Safety and Security Sector Education and Training Authority (SASSETA) for the financial assistance, the researcher received towards enrolling for this Masters' Degree in Social Science: Criminology. Without your assistance, this project would not have been possible.

The researcher would like to acknowledge the participants of this study for their unconditional willingness to contribute to this study. Without your participation, this work would not have been possible.

The researcher would like to acknowledge Mrs Ephraim K. Sibanyonis, Mr Khulekani Mhlongo and Eric M. Khuzwayo for their ever willingness to assist whenever help was needed.

It is of greatest importance to also acknowledge Miss Smangele Nosbusiso Ngcobo who has been my source of support. Without you, MaShiyamahle, this work would not have been completed successfully.

I would also like to acknowledge my brothers, Howard College Super Stars and Lotana Real Rovers FC, for their support and motivation and the winning mentality they taught me. Their influence played a huge role in this work.

May God Bless you all!

LIST OF SYMBOLS AND ACRONYMS

ACDP	African Christian Democratic Party
ANCWL	African National Congress Women's League
CBD	Centre for Business District
CCMA	Commission for Conciliation, Mediation and Arbitration
CEEHR	Central and Eastern European Internet Directory for Human Rights
CFSD	Criminology and Forensic Studies Discipline
CGE	Commission for Gender Equality
FGD	Focus Group Discussion
FIFA	<i>Federation International de</i> Football Association
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
IASWST	International Agreement for Suppression of the White Slave Trade
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCRI	International Covenant on Economic, Social and Cultural Rights
ICPR	International Committee for Prostitutes' Rights
ICSWST	International Convention for the Suppression of White Slave Trade
IDI	In-Depth Interviews
ILO	International Labour Organisation
NSWSP	National Sex Work Strategy Plan
NYLN	National Youth Leadership Network
NZ	New Zealand
NZG	New Zealand Government
NZP	New Zealand Police
NZPC	New Zealand Prostitutes Collectives

PLA	Prostitution Licensing Authority
PLRC	Prostitution Law Reform Committee
PRA	Prostitute Reform Act 2003
SALRC	South African Law Reform Commission
SAPS	South African Police Service
SGJ	Sisonke Gender Justice
SSWM	Sisonke Sex Workers Movement
STI	Sexual Transmitted Infections
STD	Sexual Transmitted Disease
SWEAT	Sex Workers' Education Advocacy Taskforce
TLAC	<i>Tshwaranang</i> Legal Advocacy Centre
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UKZN	University of KwaZulu-Natal
UN	United Nations
UNAIDS	United Nations Programme on HIV/AIDS
UP	University of Pretoria
US	United States
WHO	World Health Organisation
WLC	Women's Legal Centre
WSP	Women Support Project

ABSTRACT

Numerous studies (Arnott & Crago, 2008, Miller, 2009, *Asijiki* Fact Sheet, 2015) that have been conducted show that sex work is not only a South African or African phenomenon, but also that it is a matter of global concern (Miller, 2009; Kalwahali, 2009; Tepanon, 2006). Sex work remains a criminal offence in South Africa and is criminalised by the Sexual Offences Act No. 23 of 1957 and the Criminal Law: Sexual Offences and Related Matters Amendment Act No. 32 of 2007, Section (Sec) 20(1)(A). The consulted literature shows that sex workers have been the victims of violence perpetrated against them by police officers, purchasers of sexual services, community members, and public service providers. To this course, on the 11 March 2016, Deputy President Cyril Ramaphosa said, *“Whatever views individuals may hold about sex work, whatever the statutes may say about the legality of sex work, we cannot deny the humanity and inalienable rights of people who engage in sex work”*. A number of organisations such as the Commission for Gender Equality (CGE), the African National Congress Women’s League (ANC WL), and Sex Work Education Advocacy Taskforce (SWAET) are advocating for sex work to be decriminalised on the basis of the human rights violations perpetrated against sex workers.

For this study, two Focus Group Discussions (FGD) and ten In-Depth Interviews (IDI) were conducted with 20 participants comprising 10 students from the Faculty Law and 10 students from Criminology and Forensic Studies Discipline in the University of KwaZulu-Natal (UKZN), Howard College Campus, all enrolling Master’s Degree. The data were collected from August 2016 to mid-October 2016. The study aimed at exploring the perceptions of Master’s degree students on the decriminalisation of sex work in South Africa. This study was prompted by the limited literature that exists to elicit the views of developing academics and other academics on sex work. These selected participants understood the issues regarding the legality and illegality of sex work, they were knowledgeable regarding the issues pertaining to the human rights of sex workers, and they acknowledged that they were conscious of the plight of sex workers because sex work occurs everywhere and is observably on the increase. This study investigated the genuine perceptions of these participants in an attempt to determine which legal model could best be used in South Africa to govern sex work industry.

The Strain Theory and the Economic Theory were used in this study to explain the legal model that could be used in South Africa to govern sex work. Before discussing the complexities of sex work and the legal model that could be used, one needs to have an understanding of the reasons why women involve in sex work. In this context, the participants of this study disclosed their perceptions on the decriminalisation of sex work in South Africa. In essence, these participants suggested that South Africa should legalise sex work and that a legal framework for controlling sex work should be employed. Even though this study focused on non-criminalisation of sex work, it did not disregard other legal models; hence, the participants viewed the legalisation of sex work as preferable to the decriminalisation of sex work. The participants of this study further outlined the reasons for engaging in sex work as economic issues relating to love for the job, drug use, lack of education, and attempts at poverty alleviation. For the recommendations, this study envisaged will assist in designing of a suitable legal model to control sex work in South Africa without infringing on people's human rights and without negatively affecting those engaged in the very active sex work industry.

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CHAPTER ONE: INTRODUCTION AND BACKGROUND TO THE STUDY

1.1. INTRODUCTION

Under existing South African legislation, the Sexual Offences Act (Act No. 23 of 1957) and the Criminal Law: Sexual Offences and Related Matters Amendment Act (No. 32 of 2007) determine that sex work is a criminal offence (Sisonke Gender Equality, 2014). Sex work is commonly referred to as ‘the oldest profession’ and has been employed as a source of income not only in South Africa, but also in Africa and the rest of the world (Miller, 2009; Oppenheimer, 2009). Different states employ different positions regarding sex work (Kalwahali, 2009), and Kalwahali (2009) adds that countries have come to understand the pervasive character of the conduct of sex workers through time and have decided to legalise or regulate sex work. Many states (Hong Kong, Netherlands, Germany, Austria, Greece, Amsterdam) have decided to regulate sex work rather than suffer the negative impact of driving it underground by making sex work a criminal offence (Lai, Leung, Siu & Thadani, 2015). History has shown that sex work has substantiated itself and that it is a practice that is hard, if not impossible, to smother.

Most countries view sex work as a problematic socio-economic issue that needs to be addressed (Tepanon, 2006) by making it illegal. However, the sex work industry is growing daily across South Africa despite the fact that it is still a criminal offence. The tragic result reveals that sex workers are abused and their human rights are violated. The criminalisation of sex work in South Africa exposes sex workers to numerous forms of victimisation Commission for Gender Equality (CGE, 2013). Lowman (2000) contends that the positioning of sex work as ‘disposable’ has a material impact in the context of violence. The CGE (2013:2) states that, “the current legal situation in South Africa involves the criminalisation of sex work with consequences such as the abuse of sex workers’ rights, violence against them, and abusive treatment by the police”. The criminal code that criminalises sex work in South Africa has affected sex workers negatively for a very long time, as it has been a criminal offence to engage in sex work. Moreover, Decker, Wirtz, Moguilnyi, Peryshkina, Ostrovskaya, Nikita and Beyrer (2014) argues that the human rights of sex workers are rarely addressed within human rights declarations. They state that everyone should be afforded basic rights and protection as articulated by the Universal Declaration of Human Rights

[UDHR] (United Nations UN, 1948), the International Covenant on Economic, Social and Cultural Rights [ICESCR] (1966) and the International Covenant on Civil and Political Rights [ICCPR] (1967). However, this is not the case in South Africa as sex work is criminalised which prevents sex workers from gaining access to their human rights as stipulated by various International Conventions. O'Neill, Mansaray and Haaken (2015) argue that criminalising sex work will not provide answers to the current issues pertaining to sex work. Furthermore, they reveal that the criminalisation of sex work is doing more harm than good to the people who are in the sex industry and they argue that it will be more cost effective to manage and supervise this industry rather than to criminalise it.

International organisations such as World Health Organisation (WHO), the International Labour Organisation (ILO) and UN Aids have for many years argued that the decriminalisation of sex work according to a legal model will control and provide efficient administration of sex workers (O'Neill *et al.*, 2015). In Hong Kong, at a special meeting of the Legislative Council Panel on Security, it was suggested that sex work should be decriminalised (Legislative Council, 2008). O'Neill *et al.* (2015:3) state that the model that was proposed would be a “regulatory approach that would provide for greater social justice plus greater health and well-being for sex workers”. They add that this legal model recognises sex work as a legitimate form of labour and business enterprise and that it therefore provides that consensual sex work is parallel to other professions and businesses.

There have been many instances of violence against women and children. South Africa is facing challenges such as high crime rates, health related issues, poverty, challenges in education and unemployment. Giving attention to these issues is always promised in the State of the Nation Address but are never dealt with (Rhoda, 2010). These challenges cannot be separated from sex work, as they are more often than not the reasons why people engage in sex work when the government fails to deliver the promises. It is paramount to have an understanding of the pushing and pulling circumstances impetus women to join sex work industry. Nevertheless, it cannot be disputed that there are people (women) who are uneducated, unemployed but they do not resort to sex work, so these reasons cannot be mainly used as pushing factors into sex work.

There are numerous reasons why women decide to engage in sex work. People's explicit needs and social economic issues (South African Law Review Commission-SALRC, 2009; Rhoda, 2010; Gould & Fick, 2007) predominantly dictates these reasons. Kehler (2001) argues that although social and economic factors within South African communities are complex, it is always women who are excessively affected by poverty. Rhoda (2010) suggests that cognisance should be taken of the reasons why women engage in sex work and that these reasons should form the foundation for determining which legal model should be employed in South Africa in order to control and manage sex work effectively.

The focus of this study was on the perceptions of Master's degree students on the decriminalisation of sex work in South Africa. This study elicited the perceptions of the participants on the way sex work is governed in South Africa and further gathered their views on this subject. This study employed the views of Masters students from the Faculty of Law and Criminology and Forensic Studies Discipline (CFSD) with a belief that they understand the issue of sex work, relating to the way it is governed, and the legal and criminal issues that surround sex industry. This study also solicited the participants' opinions on the reasons why women choose to engage in the sex industry. It is with this study that young academics rarely engaged in discussions of this phenomenon. This study therefore provided the selected participants with an opportunity to voice their perceptions as emerging academics on this pressing matter.

This chapter (One) introduces the reader to the focus of this study and the reasons why it was important to conduct a study of this. Furthermore, the study significance, aim, objectives and research questions that underpinned this study were elucidated.

Before commencing this study, it was important to explain the decision to adopt the following terms sex work and sex workers ahead of prostitution and prostitutes as these words were used interchangeable in this study. Prostitution and sex work are the terms used to describe the exchange of money for women's sexual services. There has been a shift in language as the conventional term prostitution is seen as casting a moral judgment, whereas sex work does not. However, both terms carry different connotations and for the purpose of this study, the term sex work will be used (See 2.2.6 for detailed reasoning for choosing term sex work ahead of prostitution).

1.2. STUDY BACKGROUND

International studies (Abel, 2010; Lai *et al.*, 2015; Pitcher, 2015) have revealed that many states grapple with the problem of governing sex work and that most countries struggle with the legal treatment of prostitution or sex work (CGE, 2013). Rhoda (2010) argues that the current legal model that is used in South Africa is based on the total criminalization of sex work model. Moreover, in this country sex work also has a racial and discriminatory connotation that can be dated back to 1902 with the prohibition of sexual intercourse between a white woman and a black man (Baillache, 2012). Bell (2009) argues that sex work has long been criticized and stigmatized in our respective communities. Bell (2009) adds that even though the general community perceives sex work as immoral and degrading, sex work is fundamentally a form of employment and that it is not necessarily harmful to a woman.

According to Orr (2006), sex workers continue to be the victims of abuse and murder around the world. In the last decade the standardized mortality rate of sex workers has been six times that of the general population and is the highest for any group of women in the United Kingdom (UK) (Goodyear & Cusick, 2007). Various scholars argue that sex workers have rights even though they are in conflict with the law and the fact that they break the law does not change the fact that they are citizens who have to be protected by the state (Orr, 2006; Rhoda, 2010 & Bell, 2009).

In South Africa, sex work is about a contentious issue and people still have conflicting views about this phenomenon (Commission for Gender Equality-CGE, 2013). The former National Police Commissioner (Honorable Jackie Selebi), made a call in 2007 for the legalization of sex work during the 2010 *Fédération Internationale de Football Association* (FIFA) World Cup (Bonhuys, 2012). Rhoda (2010) argues that this decriminalization of sex work was proposed in an effort to administer and manage the selling and buying of sexual services within South Africa for the first time. This placed sex work in the public domain and opened the opportunity for deliberations about the continued criminalization of this 'acknowledged' industry as a form of employment (Bonhuys, 2012). The lawful control of sex work received regular media consideration throughout the 2010 FIFA World Cup (Rhoda, 2010). The SALRC invited public comment on the legal system of sex work that was going to be discussed in Parliament after 2010. The arguments in favour of decriminalisation brought by Sex Workers' Education Advocacy Taskforce (SWEAT) and various other groups were, however, continuously contradicted. However, it is strongly argued that a legal model to

regulate sex work should be considered as a matter of urgency as it will not only target a regulatory system for the selling and buying of sexual services, but it will also address the travesty of human trafficking within South African borders.

On 11 March 2016, at the launch of a historic plan to aid sex workers, Deputy President Cyril Ramaphosa made the following statement: “In launching the plan, we call on all sex workers to recognise the enormous power they have to help our nation in making Aids a thing of the past”. However, sex work remains a criminal offence in South Africa as none of the legislative statutes that govern sex work has been retracted (Sexual Offences Act (Act No. 23 of 1957) and the Criminal Law: Sexual Offences and Related Matters Amendment Act (Act No. 32 of 2007)). South African law renders prostitution itself an offence which means that sex work and associated activities are punishable offences. There are countries that abide by the same approach as South Africa whereas some countries approach sex work differently (CGE, 2013).

The number of sex workers in 2013 was estimated at between 132 000 and 182 000 in South Africa (Konstant, Rangasami & Stewart, 2014). Sex work is deemed to be the main living strategy for many women and men. Moreover, many female sex workers in the sub-Saharan region have dependents such as their mothers, their children and other family members (Scheibe, Richter & Vearey, 2016). Furthermore, it is argued that the majority of sex workers operate as independent contractors as they do not depend on ‘pimps’ and controllers. Gould and Fick (2008) reveal that sex work generates higher earnings in South Africa than many other forms of employment.

Rhoda (2010:22) states that, as a developing nation, “South Africa faces substantial challenges in the areas of crime, poverty, Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (HIV/AIDS) and health, education and service provision”. Numerous plans to deal with these matters have been promised by the government in every state of the nation address by the President and even in the manifestos of political parties, yet these issues remain unstemmed. It also appears that there is no encouragement to abide by important international agreements to address these issues. Rhoda (2010) is of the view that if the government continues to fail to meet international agreements that address the decriminalization of sex work, the problem encountered in this field will be exacerbated. Furthermore, he argues that in South Africa, it is difficult to separate the decriminalisation of sex work from the matters of poverty, HIV/AIDS, and health and education related problems.

1.3. DEFINITION OF TERMS

Brief definitions of and distinctions among the terms legalization, total criminalisation, partial criminalisation and decriminalisation are offered for clarity in this study.

- 1.3.1. **Decriminalisation** of sex work occurs with a repeal of all laws against sex work, or with the removal of provisions that criminalize all aspects of sex work (Hughes, 2009). It is important to note that in a decriminalized system, a distinction is made between (i) voluntary sex work and (ii) sex work that involves either force and coercion or child sex work. The latter forms of sex work remain criminal (Mossman, 2007).
- 1.3.2. **Legalisation** is when sex work is controlled by the government and is legal only under certain state-specified conditions (CGE, 2013). Legalisation is also known as ‘regulation’ of the industry by some authors, for example the Central and Eastern European Harm Reduction Network [CEEHRN] (2005).
- 1.3.3. **Partial criminalisation** of sex work seeks to make some aspects of sex work legal and some illegal. Sweden was the first country that opted for the partial criminalization of sex work which is referred to as the Swedish model (Woodin, 2014). Countries such as Norway, Iceland and most recently France have followed in the footsteps of Sweden in opting for partial criminalization. According to Rhoda (2010), in partial criminalization everyone participating in the sex industry, apart from sex workers, is in conflict with the law.
- 1.3.4. **Total criminalisation** of sex work renders sex work and all the transgression that are connected to the sex industry are deemed illegal. Total criminalisation “seeks to reduce or eliminate the sex industry and is supported by those who are opposed to prostitution on moral, religious or feminist grounds” (Mossman, 2007:11).

With reference to the above terms and distinctions, the current study aimed at investigating the perceptives of Masters Students on the decriminalisation of sex work in South Africa.

1.4 STUDY SIGNIFICANCE

There is a cliché that sex work is one of the oldest professions (Harrington, 2012; Oppenheim, 2014) ; yet the sex work industry as one of the most predominant employment opportunities that has not been taken into consideration by the South African government and the community in a very long time. For the first time, on 11 March 2016, the current Deputy President Cyril Ramaphosa broke the silence on sex work as an industry by saying that sex workers “have the right to be treated with dignity, the right to their bodily integrity and the right to say no”. This statement addresses the issue that the right of sex workers in terms of their bodily integrity, to say no and to dignity has been severely compromised. In this context, CGE (2013) argues that the societal perception of sex work is mostly informed by religious opinions that perceive and label sex workers as sinners and bad people and that society therefore treats sex work as a moral subject.

However, despite the historical tendency of states to criminalise sex work and the more recent drift towards criminalising the purchase of sexual services, sex work continues to exist and flourish (O’Neill et al., 2015). In South Africa, this phenomenon has attracted the attention of various researchers who have spent most of their efforts on ascertaining how sex workers feel and to gain their views on the current legal models regarding sex work (CGE, 2013). These studies mostly focused on sex workers themselves and did not take into account that there are numerous people who live with sex workers who are also affected by the life sex workers live. Moreover, a review of the literature has shown that academics and young academics whose work peripherally touches on sex work as a field of specialisation were rarely, if at all, included in the investigations.

Sex work has been a criminal offence for quite a long time but criminalization has failed to eradicate sex work in South Africa or to reduce it (Sisonke Gender Justice [SGJ], 2014). According to SWEAT, Women’s Legal Centre (WLC), SGJ and Sisonke National Sex Workers’ Movement [SNSWM] (2015) the South African Sexual Offences Act (Act No. 23 of 1957) as it stands is a law that makes it very difficult to prosecute sex workers. Therefore, because sex workers are rarely prosecuted under the criminal law, they are more likely to be arrested, harassed, abused and then released. This means that the criminalization of sex work exposes sex workers to numerous types of victimisations by their clients, police officers and the public (SGJ, 2014). For example, because sex work is a criminal offence, it is hard to report rape and abuse to the authorities because of the criminal code that does not protect the

rights of sex workers (SGJ, 2014). In addition, the WLC (2012) revealed that they had been approached by roughly 70% of known sex workers for legal advice and assistance after the police had abused them.

South African is currently in the process of reviewing the laws that control and administer sex work (SGJ, 2014). Furthermore, after pressure from members of the public, Parliament was provided with recommendations by the SALRC (2009) on how the law has to be improved. The SALRC issued a discussion paper in 2009, which highlighted four legal models that South African legislation could adopt in addressing sex work. These legal models address full criminalisation, partial criminalisation, legalisation and decriminalisation of sex work (SALRC, 2009).

In various countries, legal frameworks to address sex work differ from the South African model. The first country in the world to decriminalise sex work was NZ. This country passed the Prostitution Reform Act [PRA] of 2003 in 2003 (SGJ, 2014). The government of New Zealand found that many women who were engaging in sexual services fared better under PRA. Sex workers and brothels were freed to disclose their occupation and sex workers were able to refuse clients and practices. The consequence of the decriminalisation of sex work was the illumination of the operation of the industry that had been hidden for a long time (New Zealand Government [NZG], 2008).

Rhoda (2010) argues that in decriminalizing sex work, the country does not necessary have to impose new legislation that will cater for sex work only. Rather, sex work will be controlled and managed using an already existing legal framework as sex work will then be considered a legitimate form of work that will be treated like any other business (SALRC, 2009; NZ Minister of Justice, 2007). The decriminalization of sex work has been supported by many people on the basis that this legal model aims at respecting sex workers' human rights by improving health, safety and better working conditions for them (O'Neill et al., 2015; Scheibe, Richter & Vearey, 2016). The decriminalisation of sex work has more gains than keeping it illegal and sex work should be viewed as a job involving consensual sex between adults who can take rational decisions (O'Neill et al., 2015; Day, 2008). Rhoda (2010) provides that the decriminalization of sex work will enable sex workers to decide on the clients they want for consensual sexual services, allowing sex workers to be independent contractors. Decriminalization also gives sex worker a chance to determine the price they are willing to provide their services for (Aronson, 2006).

1.5. PROBLEM STATEMENT

Sex workers have been the victims of violence and abuse which is a worldwide phenomenon that has captivated the attention of many researchers. Sex workers continue to be the victims of sexual assault as well as physical, verbal and emotional abuse. According to Koster (2016), about 45% to 75% of sex workers continue to experience sexual violence worldwide and they face the probability of a 32% to 55% chance of being the victims of sexual molestation in a specific year. She adds that violence against sex workers is more prominent in countries where sex work remains criminalised. In South Africa, sex work is a punishable offence, as it remains criminalised.

Sex workers are seen as transgressors of the law as they are violators of the Constitution of the Republic of South Africa [Act 108 of 1996] (Baillache, 2012); yet, according to Sec 10 of this Act; everyone has inherent dignity and the right to have their dignity respected and protected (South Africa, 1996). This contradiction results in the abuse of many sex workers by police officers, as some police officers use this illegal act to their advantage to demand sexual favours from and even rape sex workers. Many police officers do not respect the dignity of sex workers and they think they can do as they please because sex workers transgress the law and therefore have no legal standing (Sullivan, 2007). Sex workers are therefore particularly vulnerable to sexual assault (Sullivan, 2007).

The sex industry is dominated by female sex workers who are unable to protect themselves against acts of violence such as sexual assault, verbal, emotional and physical abuse (*Asijiki* Fact Sheet, 2015; SWEAT, 2015). In South Africa, it was estimated that there were 130 000 to 180 000 sex workers in 2015. About 90% of all sex workers comprise workers of the female gender and the remaining 10% comprises male and transgender sex workers (SWEAT, 2015). This implies that female sex workers are more likely to be the victims of violence, as they comprise the largest portion of the sex industry. In Cape Town, about 12% of street sex workers revealed that they had been raped by police officers (SWEAT, 2015). The sex work was criminalised to get rid of sex work industry and was seen as a social ill; nonetheless, it continued to exist in spite of the laws put against it. The criminal status of sex work in South Africa forms an opportunity for exploitation, violation against sex workers. Criminalisation of their prostitution exposes sex workers to stigmatisation which leads to a cycle of violence and victimisation.

Nationally and internationally, numerous scholars, organisations and sex workers continue to advocate for the decriminalization of sex work. The Joint United Nations Program on HIV and AIDS (UNAIDS) is of the view that the criminalisation of sex work infringes on the rights of these workers and does not support or protect them as citizens under the Constitution of the Republic of South Africa (SWEAT, 2015). This means that there is a problem with the existing legal model that governs sex work in South Africa.

In 2004, a Medline search and review of 681 prostitution articles was conducted in order to create a global typology of sex work using arbitrary categories. Twenty Five (25) types of sex work were identified in order to create a more systematic understanding of sex work as a whole. Prostitution varies by forms and social contexts including different types of direct prostitution. This study was conducted in order to work towards improving the health and safety of sex workers. There are different types of sex work, direct and indirect (Donovan and Harcourt 2004). The types of sex work include the following but not limited to, street sex work, indoor (escort services, brothel work, massage parlor-related sex work, bar or casino sex work), phone sex operation, strip shows, exotic dancing, lap dancing, webcam nude modeling, pornographic film performing and nude peepshow performing (Donovan & Harcourt, 2004; Bonthuys & Albertyn, 2007). The list is sometime expanded to include activities in sex industry that less directly involve the sexuality of the worker in exchange of sexual performances, services and products such as the producers and directors of adult film, manufacturers and seller of sex toys and managers in exotic dances, escort agents, bouncers, among others.

The New24 reports show that the number of sex workers in KwaZulu-Natal (KZN), Durban has increased (Oellermann, 2014). Durban in KwaZulu Natal is one of the provinces that has high number of sex worker. Oellermann, (2014) revealed that KZN'S courts are no longer prosecuting sex workers for prostitution. This was evident after New24 disclosed that the residents of Durban and Pietermaritzburg are fuming that KZN court are not punishing sex workers. This comes after the increase in the sex work industry in Durban. The spokesperson for the KZN Directorate of Public Prosecutions, Natasha Ramkisson-Kara replied: *"According to our records we hardly ever see such cases* (Oellermann, 2014 on News24); after being asked about the cases of sex work industry (Selling sex, buying sex, soliciting, brothel keeping) that have been successfully prosecuted in the KZN.

This study elicited the perceptions of selected participants on decriminalisation of sex work in South Africa, but it did not disregard other legal models (partial, total criminalisation and

legalisation) that could be used to govern sex work in South Africa. The current debates about legal models of sex work are complex as there are different compelling arguments for legalisation, decriminalisation, criminalisation of sex work. However, some organisations (CGE, SWEAT, Sisonke Gender Justice) are advocating for decriminalisation of sex work. The views of both developing and developed (experienced) academics as well as community member are rarely sought in legislative decisions that govern the lives of this country's citizenry. It was therefore deemed appropriate to address the problem of a legal model that should be employed to govern sex work through the lens of knowledgeable academics in order to elicit their views on the sex work phenomenon and a legal model that may be suitable for South Africa.

1.6. RATIONALE OF THE STUDY

The rationale of the study stems from the following words uttered by the current Deputy President Cyril Ramaphosa: *"Whatever views individuals may hold about sex work, whatever the statutes may say about the legality of sex work, we cannot deny the humanity and inalienable rights of people who engage in sex work"* (Pretorius, 2016).

According to Maxfield and Babbie (2014), exploratory research in criminological studies are usually focused on crime, criminal justice policy issues and when policy change is considered. Therefore, even though this research study did not revolve around policy analysis, it addressed elements of policy as the practice of sex work is heavily embedded in the legislative framework of the South African law, with special reference to the Sexual Offences Act No. 23 of 1957 (South Africa, 1957) and the Criminal Law: Sexual Offences and Related Matters Amendment Act No. 32 of 2007 (South Africa, 2007). Consequently, an analysis of existing relevant policies and legislation is presented in Chapter Two of this study despite its focus on the perceptions of Masters students on the decriminalization of sex work in South Africa.

Regardless of the protection of the rights of all its citizens as entrenched in the Constitution (South Africa, 1996), sex workers (predominantly female sex workers) in South Africa have reportedly been harmed, injured and even killed due to the lack of protection under this country's legal system. Sex workers experience violence, abuse and exploitation because of their working environments in the sex industry. They are increasingly becoming the victims of physical assault, sexual molestation and verbal abuse. Victimization of sex workers is not

only inflicted by their clients, but even by police officers and bystanders in the areas and communities where they work.

There has been limited scholarly disclosure of how the South African community views sex work and the way it is governed. What has been revealed is that the phenomenon of cultural belief and attitude is one tool that is used among communities to suppress sex work, particularly because both the African and inherited European cultures are against the selling of sex and the sex industry as a whole. It was therefore deemed necessary to engage in further in-depth academic discourse on the legality of sex work and the legal system that is employed to prevent it.

Based on the legal framework that underpinned this study, it was therefore deemed appropriate to seek and to explore and describe the perceptions of Masters students in the Faculty of Law and Criminology and Forensic Studies disciplines on the decriminalisation of sex work in South Africa. The participants were selected because of their academic level, even though it does not guarantee their knowledge specifically of the phenomenon but the legality of sex work as crime. The Faculty of Law students might represent sex workers in court, might be involved in legal arguments about sex work, or might be the member of SALRC so their engagement in such discussions is important. While, Criminology and Forensic Discipline student might develop policies for sex work industry.

Above all, the selected participants are the member of their respective communities and they know their communities feel about certain issue, more especially issue like sex work communities are rarely engaged. SALRC (2009) suggested that members of the community should be given a chance to voice out their opinions, attitudes and perceptions on sex work and how it should be governed. Recently, the current Minister of Justice and Correctional Services, Honorable Minister Adv. Michael Masutha, During a media briefing report on Sexual Offences: Adult Prostitution said, *“Many people have different opinions on the issue. Therefore, it is important that we take the initiative to consider public opinion on the legal framework around prostitution and that we mobilise society to contribute in finding a lasting solution...”* (Department of Justice and Constitutional Development, 2017:1). This means community member should engaged in the discussions about sex work and selected participants are the members of the community.

It was important for the researcher to highlight use of decriminalisation ahead of other legal models, it was because many organisations are advocating for this model to address the challenges of sex work in the South African context. In order to attain and report on the views of the participants, the researcher remained neutral on the matter at hand and avoided any bias or prejudice in reporting on the findings and in offering recommendations.

1.7. STUDY AIM

According to Gray (2014:53) and Mills and Birks (2014: 204) the study aim reveals the intentions to the reader of the study and tell them what the researcher wish to achieve with a study. To create new knowledge as suggested by Flicks (2011:89). The aim of this study at hand was to explore the perceptions of the students of University of KwaZulu-Natal (UKZN), enrolling for Masters Degrees in Social Sciences and Law on decriminalisation of sex work in South Africa. This study employed an empirical research approach and design to explore and describe the attitudes, opinions and perceptions of UKZN Master's Degree students on decriminalisation of sex work in South Africa. The researcher considered the viability of sex work decriminalization model in South African context by focusing specifically on the participants' views regarding this model to address the plight of sex industry. However, other models (total criminalisation, partial criminalisation and legalisation models) were not sidelined by the researcher, considerations were also given to them for analysis and clarity (refer to paragraph 1.3 of this study).

1.8. STUDY OBJECTIVES

The aim of this study was to explore the perceptions of Masters students from the Faculty of Law and CFSD at UKZN on decriminalisation of sex work in South Africa.

To achieve the study aim *Supra*, the following objectives were adopted in this study:

- To explore the student's perceptions on decriminalization of sex work in South Africa
- To elicit the participants' views on whether sex work should be decriminalized or not in South Africa;
- To investigate the effects of the current model of the criminalization of sex work on the community as perceived by Faculty of Law and CFSD Masters students; and
- To determine the reasons why, according to the participants, people engage in sex work activities.

1.9. KEY QUESTIONS UNDER INVESTIGATION

According to Creswell (2014), Leedy and Omrod (2013), Punch (2005), Salkind (2012) and Wagner, Kawulich, Garner (2012) the research questions are formulated to organize, delimit, and to uncover new facts and to give directions to a study.

- What are student's perceptions regarding decriminalization of sex work?
- Should sex work be decriminalised or not in South Africa?
- What impact does criminalisation of sex work have on the community?
- Why do people engage in sex work?

1.10. CHAPTERS DEMARCATION

This dissertation comprises six chapters as follows:

Chapter One provides the introduction and delineates the background to this study. The statement of the problem, the aim, the objectives and the critical questions that were addressed are also presented.

Chapter Two of this dissertation presents the review of the literature that was related to the field of study.

Chapter Three illuminates the theoretical framework which comprised the theories that guided the study and that were used in analysing and interpreting the data.

Chapter Four describes the scientific methodology used in this study to achieve the study's objectives. The study was essentially a qualitative research study.

Chapter Five of this dissertation presents the data by analysing and exploring the similarities and differences among the views that had been elicited from the participants. A comprehensive discussion of the data that were obtained is presented. This study essentially employed a thematic data analysis process.

Chapter Six is the last chapter of this dissertation. It focuses on the conclusions that were drawn and it offers recommendations based on the finding of this study as obtained from an analysis and evaluation of the presented data of this study.

1.11. SUMMARY

This chapter (One) provided an overall overview of this study by illuminating the core of the dissertation as expressed through the background, the rationale for the this study and its aim and objectives. The motivation for choosing the topic and the objectives for undertaking this study were therefore outlined. The research problem was presented with brief reference to recent sex work issues experienced both internationally and nationally. The study referred predominantly to sex work issues pertaining to national policies and events as the focus of the study was the decriminalization of the sex work industry in a South African context.

CHAPTER TWO: LITERATURE REVIEW AND LEGISLATIVE FRAMEWORK ON SEX WORK

2.1 INTRODUCTION

This Chapter (Two) presents a review of relevant literature and legislative framework on sex work, local and internationally. One focus of the review is the reasons why people become sex workers as indicated by previous consulted studies that investigated the causes for entry into the sex work industry both internationally and locally. This Chapter (Two) further discusses community perceptions of sex work. Another focus is the legal models that can be used to control and administer sex work, their possible effects, and their applicability or inapplicability to the South African context. International legal systems that may apply to sex work regulation in South Africa are discussed to evaluate and summarize their application and effectiveness abroad. The current legal system that applies to sex work in South Africa is also promulgated in this Chapter (Two).

2.2. CONCEPTUAL ANALYSIS AND LIMITATIONS

This study included the utilisation of broad terms such as sex work, criminalization of sex work, legalization of sex work and the decriminalisation of sex work, these terms are conceptualised to reflect a general overview and analysis of these selected key concept of this study and further demarcates defined concepts regarding the conceptual limitations of this study in line with the study aim, objective and research questions and research topic, problem statement, study significance and the consulted literature in this study.

2.2.1. Sex work

“Sex work is a term that is used to describe a wide range of activities relating to the exchange of money for the provision of sexual services” (Balfour & Allen, 2014:2). Weizter (2010) defines sex work as any altercation of sexual services for material reward even if the contact between a buyers and a seller includes direct physical contact or indirect erotic stimulation. Harcourt and Donovan (2005) assert that direct sex work includes services such as indoor and outdoor sex working as well as escort services. Indirect sex work suggests services such as lap dancing, stripping and virtual sex services. The term sex work instead of prostitution is used to refer to any such activities.

2.2.2. Sex worker

A sex worker is any person who is earning money or goods in exchange for sexual services. “Sex workers are women, men and transgendered people who receive money or goods in exchange for sexual services, and who consciously define those activities as income generating even if they do not consider sex work as their occupation” (Overs, 2002:2).

2.2.3. Criminalisation

According to SALRC (SALRC, 2009:12), “criminalisation punishes all persons involved in prostitution, including the prostitute, the client and any third parties involved”. In South Africa in particular, all sex work (i.e., for money or another means of recompense) is considered unacceptable and all aspects surrounding it are therefore criminalised. CGE (2013) argues that the criminalisation of sex work attempts to diminish or eliminate the sex industry.

2.2.4. Total Criminalisation

Total criminalisation of sex work punishes all the people who are involved sex work industry including sex workers, clients of the sex workers and any third parties involved (SALRC, 2009). Total criminalisation “seeks to reduce or eliminate the sex industry and is supported by those who are opposed to prostitution on moral, religious or feminist grounds” (Mossman, 2007:11). Sex work industry as a whole is considered unacceptable and most if not all aspects of sex work are criminalised. Countries where sex work is illegal: Botswana, Jamaica, Kenya, Lesotho, Swaziland, Saint Lucia, Uganda, United Republic of Tanzania, in 49 of the states in the United State of America and South Africa.

2.2.5 Partial criminalisation

According to SALRC (2009), partial criminalisation of sex work punishes third parties such as pimps, brothel-keepers, traffickers and client however, do not criminalise the transaction between the sex workers and the clients. In this legal model, sex workers are not criminalised because sex workers are viewed as victims (SALRC, 2009). According to Rhoda (2010), in partial criminalization everyone participating in the sex industry, apart from sex workers, is

in conflict with the law. Countries such as Norway, Iceland and most recently France have followed in the footsteps of Sweden in opting for partial criminalisation.

2.2.6. Legalisation

Legalisation is an act of allowing the operation of sex work under certain stipulated legal conditions. Legalisation is also known as regulation. Mossman (2007) and SALRC (2009) states that legalisation permits sex workers to operate but regulates their activities by various control systems such as the registration of a brothel, registration of sex workers, paying tax, identifying zones where sex workers may operate, mandatory health checks, and determining the minimum age for sex workers. According to CGE (2013:4), “legalisation is a term used to refer to jurisdictions where sex work is controlled by government and is legal only under certain legal conditions and constraints.” Even though both definitions revealed by CGE (2013) and Mossman (2007) and SALRC (2009) are the same, this study will use the term legalisation as stated by the Mossman (2007) and SALRC (2009).

2.2.7. Decriminalisation

Decriminalisation is also known as non-criminalization. Decriminalization means the elimination of all laws and bylaws against sex work. SALRC (2009) is off the view that decriminalisation includes an absence of criminal sanction. They further state that sex work is frequently combined with the acceptance of sex work as a lawful form of work and that sex workers are recognised as employees or as self-employed workers. CGE (2013) concurs with SALRC that decriminalization is the repeal of all laws against sex work that criminalize sex work and the evacuation of any provision that criminalizes any part of sex work. However, CGE (2013:5) indicates that decriminalized jurisdiction makes a distinction between voluntary sex work and sexual behaviour or actions that involve either force or coercion or any form of sexual activities involving a child.

2.2.8. Sex work or prostitution predicament

Whether prostitution or sex work or commercial sex are the same is under contention. The terms ‘sex worker’ and ‘sex work’ rather than ‘prostitute’ and ‘prostitution’ are now more frequently used by academics, policy makers and some activists (Campbell & O’Neill, 2013). Prostitution is most often associated with strong moral overtones whereas sex work emphasizes the nature of sex work as an industry or a business (Abel, 2010). Oppenheimer (2014:21) revealed that, “there has been a shift in language as the conventional term prostitution is seen as casting a moral judgment, whereas sex work does not”. To this end, prostitution has a historical context and refers to “shameful acts and carries negative connotations linked to inaccurate information about sex workers and the sex industry” (SWEAT, 2015). In collaboration to this statement, it is a reality that the term prostitution is still used by various scholars and the South African Constitution still refers to sex work as prostitution (South Africa, 1996). Prostitution is the gaining of money or goods through the granting of sexual favours (Giddens, 2003). Hawkes and Scott (2005) and Felicity, Evelina, Olivia and Mamta Ram (2015) state that prostitution still carries a derogatory label. However, this is contentious as SWEAT (2015:2) contends that the term sex workers “avoids moral judgment as it implies the selling and buying of sexual services as a work matter with implications for labour law and occupational health and safety rights”. Sex work is the term that is preferred by some local and international organisations such as SWEAT, *Asijiki* Fact Sheet, WHO and UNAIDS.

This study will use Weizter’s (2010) definition of sex work, which defines as any altercation of sexual services for material reward even if the contact between a buyers and a seller includes direct physical contact or indirect erotic stimulation. This definition is similar to that of prostitution; however, the researcher preferred to use the term sex work as language shift from prostitution to sex work. Some scholars (Abel, 2010 & Rhoda, 2010) are using sex work instead of prostitution, which shows that there is swing in the use of these terms. Nonetheless, prostitution was used in the study interchangeably to sex work when referred by specific scholars or organisation (Constitution of the Republic of South Africa & SALRC).

2.3. The South African Legal Framework

According to the SALRC (2009), sex work is a criminal offence in terms of the South African legal framework and it is dealt with in the context of the total criminalization model. Sex work is criminalized by various pieces of legislation and municipal by laws and as such the requirements of numerous international legal instruments that South Africa is party to are met (Rhoda, 2010).

2.3.1. Sexual Offences Act 23 of 1957

The Sexual Offences Act (Act 23 of 1957) was promulgated on 12 April 1957 to consolidate and amend the laws relating to the establishment of brothels and unlawful carnal intercourse and other acts in relation thereto (Rhoda, 2010). Before 1988 and prior to the introduction of section 20(1)(A) of the Sexual Offences Act 23 of 1957, the so-called Immorality Act, which had been established in terms of the partial criminalization model, was the approach adopted in South African law (Kalwahali, 2009:15). Prostitution was initially criminalised by section 20 (1)(A) of the sexual offences Act 23 of 1957. Sec 20(1)(A) states that “any person 18 years or older who (a) has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward; or (b) in public commits any act of indecency with another person, shall be guilty of an offence.”

The indicated Sec 20(1)(A) Supra made it obvious that having sexual intercourse for reward was deemed a criminal offence. The Act used the term ‘carnal intercourse’ which implies that the crime referred to by section 20 has three distinct elements: carnal intercourse, an act of indecency, and a sexual act for reward. It is essential to include a discussion on the elements of the crime created by section 20(1)(A) because primary criminalization of prostitution was a focus of this study (Rhoda, 2010).

Furthermore, carnal intercourse is defined in this Act as intercourse other than between husband and wife (section 1 of the Sexual Offences Act, No 23 of 1957) (South Africa, 1957). Rhoda (2010) contends that this definition is very limited as it implies that intercourse amongst persons other than husband and wife is unlawful intercourse. Therefore, consensual sexual intercourse between unmarried couples could also be viewed as illegal carnal intercourse. The definition provided by the Act is therefore vague and could lead to certain discrepancies in interpretation. The SALRC (2009) concurs with Rhoda (2010) that this Act

was ambiguous and could lead to inconsistent interpretations of the definition. The SALRC (2009) further provides that the Act did not give a precise definition of the term ‘carnal intercourse’, but Milton and Cowling (2005) explain that the term is commonly understood to mean penetration of the female vagina by a male penis.

It is important to understand that Sec 20(1)(A)(a) does not prohibit sex workers from plying their trade; rather, it criminalises the act of prostitution. It is therefore correct to articulate that being identified as a sex worker is unsatisfactory bases for being arrested, as it has to be linked with the reasonable doubt that a person has or is about to commit an act of sexual intercourse for reward (Rhode, 2010). The purchaser of sex or any indecent sexual act is therefore liable as an offender of this Act.

This Act does not define an act of indecency in the definition section; however, such a definition has been created through statutory elucidation by South African courts (SALRC, 2009). The courts define an act of indecency as something that offends against recognized standards of decency. Appropriate norms are those norms held by the normal, sensible individual from contemporary society. Moreover, in assessing the court’s elucidation of an act of indecency, it is interpreted to mean any sexual demonstration that does not add up to carnal intercourse (Rhoda, 2010).

This Act does not define the term for the intention of receiving a reward; rather, it can mean all types of payment related to a reward or any type of remuneration with a monetary esteem such as garments, sustenance, or settlement of a debt. Rhode (2010) and SALRC (2009) are in collation that this Act created a scope of crimes that are associated with the practice of sex work. Such acts that comprise crimes are “keeping a brothel, procuring someone for sex work, assisting someone to have unlawful carnal intercourse, permitting the use of premises for prostitution, soliciting” (Rhoda, 2010). For the purpose commissioning an immoral act, living off the pays of sex work, public indecency (the commission of unlawful carnal intercourse in public), and receiving remuneration for the commission of an act of indecency.

In terms of Criminal Law: Sexual Offenses Amendment Act determines that it is a criminal offence for a person to commission a person of 18 years and older for monetary or a related reward, support or remuneration with the goal of taking part in a sexual act with that person. Kalwahali (2004) highlights that the point of this Act is to prevent prospective customers from making any overtures for the sale of sexual services.

Sexual Offences Act (Act No 23 of 1957) started to criminalized a person who purchases sex services from a person who is 18 years or above since 2007 (SALRC, 2009; Woodin, 2014). Woodin (2014) adds that before this Sec, there was no stipulated Sec that focused on the client that is buying sexual services. SALRC (2009:66) said that “Sec 11 of this Act criminalises the actions of clients of adult prostitutes by providing that a person who engages the services of a person 18 years or older for financial or other reward, favour or compensation for the purpose of engaging in a sexual act, irrespective of whether the act is committed or not”. The criminalisation of a client and third parties emerged after the case of the *S v Jordan and Others (Sex workers Education and Advocacy Task Force and Others as Amici Curiae)* (CCT31/01)[2002] ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117(9 October 2002)¹.

2.4. The World Charter for Prostitutes’ Rights

The World Charter for Prostitutes' Rights proposes the decriminalization of all aspects of adult prostitution resulting from individual rational decisions (Nyathi-Mokoena & Choma,

¹ Much of the argument in this case, and of the evidence placed before this Court, was directed to the question whether the interests of society would be better served by legalising prostitution than by prohibiting it. In a democracy those are decisions that must be taken by the legislature and the government of the day, and not by courts. Courts are concerned with legality, and in dealing with this matter I have had regard only to the constitutionality of the legislation and not to its desirability. Nothing in this judgment should be understood as expressing any opinion on that issue. I agree with O’Regan and Sachs JJ that the appeal against the finding made by the High Court concerning brothels should be dismissed. However, I conclude that section 20(1) (a) is not unconstitutional. In view of the fact that I also agree with the conclusion reached by my colleagues, that section 20(1) (a) does not violate the right to privacy, freedom and security, and the right to economic activity, it follows that I not only dismiss the appeal, but also decline to confirm the order of invalidity made concerning section 20(1) (a). **Order:** It now remains to consider what the appropriate order should be. The orders made by the High Court were made conditional upon the confirmation of the order of unconstitutionality made by the High Court. As I hold that the impugned provisions are not unconstitutional and therefore decline to confirm the order of unconstitutionality, it follows that the order made by the High Court upholding the appeal by the third appellant cannot stand. In the High Court, and indeed in the Magistrates’ Court, the appellants did not dispute the fact that they had contravened the impugned provisions. They only challenged the constitutionality of these provisions. Nor did the appellants appeal against the sentence. The finding that the impugned provisions are constitutional therefore disposes of the appellants appeal. It follows that the convictions and sentences imposed by the Magistrates’ Court must be reinstated.

In the event, the following order is made:

- (1) The Court declines to confirm the order of the High Court declaring invalid section 20(1) (a) of the Sexual Offences Act 23 of 1957.
- (2) The order made by the High Court is set aside and is replaced by an order dismissing the appeals.
- (3) The appeals by the first and second appellants are dismissed.

2013). The Sex Work Rights Movement also agrees with the World Charter that sex work should be decriminalized (Mgbako & Smith, 2010). This World Charter acknowledges the freedom of choice for people to do what they would like to do and to work for any industry they would like to join. According to Nyathi-Mokoena and Choma (2013), in sex workers' eyes sex work is a profession; a way of making money. It is therefore important to understand that "prostitution is not bad; it's only bad if done against one's will, most women make this decision themselves" (Nyathi-Mokoena & Choma, 2013:234).

The Convent for Suppression of the Traffic in Person and of Exploitation of the Prostitution of Others of 1949- International Covenant on Civil and Political Rights of 1966- International Convention on Economic, Social and Cultural Rights of 1966- Convention on the Elimination of All Forms of Discrimination against Women of 1979- *General Recommendation No 19- Violence against Women- General Recommendation No 24-Woman and health-* Declaration on the Elimination of Violence against Women of 1993- Beijing Declaration, Platform of Action 1995 and Reaffirming Resolution of 2005- The Protocol to Prevent, Suppress and Punish Trafficking in Person, especially women and Children of 2003.

2.5. THE REASONS WHY WOMEN BECOME SEX WORKERS

Each phenomenon has causes and consequences. It is paramount to identify the fundamental reasons for entry into the sex work industry to determine which legal model could best be employed to control and manage sex work in South Africa (SALRC, 2009; Rhoda, 2010). The SALRC (2009) further shows that the effects of each legal model should be evaluated.

There are various voluntary and involuntary reasons that cause people to engage in sex work. Many scholars have outlined different factors that are the pushing and pulling factors for entry into the sex industry. Miller (2009) confirms to voluntary reasons as those reasons that guide a person to engage in sex work by choice. There is no force used to convince or recruit someone to join sex work; rather, people use their own discretion to join the sex work industry, which is what Miller (2009) refers to as voluntary causes or voluntary reasons for sex working. According to Lutt (1984), more mature individuals who are usually 18 to 24 years of age make a well reasonable decision to walk in to the sex work profession due to the financial hardship, a poor job market and scarcity of skills. Sex work becomes their easy way of generating lot of money.

It is not always the case that women become sex workers because of their rational choice or free will. Not everyone who becomes a sex worker does so for monetary reasons. Some persons may be forced to do sex working as it is the only possible way to survive. Miller (2009) refers to this category as involuntary or coerced sex workers. However, Farley, Baral, Kiremire, and Sezgin (1998) and Davidson (2000) are in agreement that sex work is never voluntary given the fact that many sex workers want to exit sex work industry but cannot and that people who engaged in sex work had very limited alternatives even before they entered the sex industry.

The researcher did not dwell much on the voluntary and involuntary reasons for entry into sex work because each person has his/her unique story to tell. Below are the main reasons why women engage in sex work as revealed by the literature the researcher reviewed.

2.5.1. Economic reasons for sex work entry

Economic conditions play a major role in people's decision to engage in the sex industry and to continue with sex work (Campbell & Mzaidume, 2001; SALRC, 2009; O'Neil & Campbell, 2006; Willman-Navarro, 2006; Prostitution Licensing Authority (PLA), 2004). Many scholars agree with Campbell and Mzaidume (2001), O'Neil and Campbell (2006) and Willman-Navarro (2006) that the importance of financial or economic needs often pushes people into sex work (Ministry of Health, 2009; Brents & Sanders, 2010; Cobbina, 2011; Mbonye, Nakamanya, Nalukenge, King, Vandepitte & Seeley, 2013). Saggurti, Verma, Halli, Swain, Singh, Modugu and Jain, (2010) state that about 67.2% of their participants who were female sex workers engaged in sex work chiefly due to economic conditions. Abel (2010) agrees that the majority of sex workers enter the industry in response to poverty, which is associated with community conditions such as unemployment and economic decline which increase the chances of people engaging in the sex industry for a living. Balfour and Allen, (2014) assert that with less generously compensated occupations accessible, welfare benefits too little to meet the perpetually expanding average cost for basic items, more especially for single parent who are frequently minimized from the standard work structur, financial constraints propel to participate heavily in sex work. Sex working meets the needs of those currently not served in traditionally accepted institutions (Miller, 2009:576). One sex worker said:

“I was two months behind with my rent, there was no food in the house and the kids’ school fees were behind, when a friend suggested [prostitution] to me. It took me three weeks to think about it. I had to do it and that was that. I was determined.” (SALRC, 2009:27&28).

Transgender people also engage in the sex industry for identity and most importantly for economic reasons because it is problematic for them to obtain occupation in legitimate mainstream industries as they face discrimination based on their gender identity (Abel, 2010; Worth, 2000). Abel found that male sex workers entered the industry to get money for drugs more so than transgender and female sex workers. Contrary to male sex workers, female sex workers enter the sex industry to support their families, pay their bills and other household expenses, and are often single parents. Studies have reported that sex work is not the job that many females would opt for if they had a wide range of choices (SALRC, 2009).

2.5.2. Drug use and addiction for sex workers

Many scholars believe that drug addiction is the strongest pulling factor for entry into sex work. This occurs in two ways. Women start using drugs and end up not having money to support their drug use as they are unemployed. The sex industry then becomes their only option to obtain money for drugs. The National Sex Work Strategy Plan (NSWSP) (2013) notes that advanced drug and alcohol dependency could lead a person to enter sex work to support their drug addiction. Pitcher (2015) agrees with NSWSP that sex workers are led by drugs and alcohol addiction into the sex industry. Wechsberg, Luseno, Lam, Parry and Morojele (2006) add that drug use by sex workers are used to reduce self-consciousness and that they give sex workers the strength and courage to approach clients.

In a cross-sectional survey of 303 female sex workers which was carried out in Christchurch, NZ in 1999 by Plumridge and Abel, it was found that drugs was the reason people started sex work. Plumridge and Abel (2001) established that most street sex workers used their money to procure drugs. In a study that was conducted in Canada, about 17.5% reported that the decision to engage in the sex industry was precipitated chiefly by their use of drugs (Benoit & Millar, 2001).

2.5.3. Like being sex workers

Not all sex workers who enter into the sex industry do so out of necessity, they do it to support themselves and their families; in fact, there are those who enter into sex work because they like sex and the experience of having sex with different partners. About 40% of the women who participated in the study conducted by (Rossler, Koch, Lauber, Hass, Altwegg, Ajdacic-Gross and Landolt, 2010) declared to like their work. Some scholars (Rossler *et al.*, 2010; Jordan, 2005) believe that people become sex workers because they like to be sex workers. Jordan (2005) also found that although economic reasons drove most people to do sex work, some decided to leave their legitimate jobs that paid well and opted for sex work. A cross-sectional behavioural survey conducted between September 2007 and July 2008 in 22 districts among at least 2 000 female sex workers from four high HIV prevalent states of Southern and Western India was conducted by Saggurti, Verma, Halli, Swain, Singh, Modugu and Jain (2010). This report shows that about 9.4% of the sex workers joined the sex industry by choice and not because of financial constraints. These people admitted that they loved the job.

2.5.4. The likelihood of physical and sexual abuse during sex workers childhood

Some sex workers become sex workers as they are drawn to it because of abuse in their early childhood. Studies conducted among street-based sex workers recorded a relationship between previous physical or sexual abuse during childhood and sex work (Abel, 2010; Pyett & Warr, 1999; Valera, Sawyer & Schiraldi 2001). A study that was conducted by Van Wesenbeeck (2001) revealed a strong link between previous child abuse and institutionalization and entry into the sex industry. However, she acknowledged that her study that was conducted among street based sex workers cannot be representative of the entire sex worker population. Nadon, Koverola and Schludermann, (1998) study among young sex workers as compared with a group of young people who were not sex workers. Workers indicated that the control group was not completely different from the sex work group concerning childhood sexual abuse, as the control group also reported high levels of physical abuse. This finding suggests that although physical abuse during childhood may be a driver for the decision to engage in sex industry later in life, it is not a driver in all circumstances.

2.6. COMMUNITY PERCEPTIONS OF SEX WORK INDUSTRY

The existence of sex work has been the subject of much contestation and persists to this day. People from different communities have different ideas about sex work; some feel sorry for sex workers, some say sex workers are corrupting and damaging the society, others say people who are sex workers need to be expelled from their communities; and some believe they are responsible for crimes in their community. There are various perceptions about sex work from different angles of life and from community members.

2.6.1. Sex work as a means of employment

Felicity, Evelina, Olivia & Mamta Ram (2015) are of the view that some people in the community view sex work as a job. In their study, one of the participants said that because sex workers existed, it meant that there was a need for their services. The author highlights the following in verbatim:

“Remove subjective perception and its one person engaging in physical contact with another for a fee. People will always need or want sexual pleasure, or physical companionship, which they are unable or unwilling to get elsewhere” (Felicity et al. 2015).

Felicity et al. (2015) found that sex work was regarded by professionals such as lawyers and police officers as a job similar to theirs. For example, a participant referred to as Pete who was a lawyer, viewed sex work as “just a job”. Terry, who was a policeman, said the following in verbatim: *“I see prostitution as an occupation that has existed for a long time. It actually is an occupation... I do not see a difference between a layman and sex workers”* (Felicity et al., 2015:46). Carla who was a social worker also felt that prostitution was an occupation but only if the sex workers did not affect other people, like talking provocatively and wearing revealing clothes. Carla felt that such behaviour affected other people’s lives negatively.

Thumboo (2003) conducted interviews in a cross-sectional survey in Chatsworth. One of the participants in this survey (Winston Palla, a legal rights activist) stated the following in verbatim:

“Society should understand that just like doctors and lawyers, sex workers provide their services too and we should accept that. Sex workers take care of the interest of their loved ones” (Thumboo, 2003).

SWEAT (2015) suggests that sex work should be treated and respected just like any other legitimate employment, and urges that it should be recognized as a legitimate occupation.

2.6.2. Sex work as a form of social immorality

Thumboo (2003) states that when he started the survey, he was of the opinion that sex work was immoral, as he had held a conservative view about it like other community members. However, during the data analysis process he realized that there were numerous issues that needed to be considered, as sex work was not steeped in moral issues only. However, he found that some community members still strongly believed that sex work was immoral and that sex workers needed to be removed from the community. For example Janice, one of Thumboo’s participants who was unemployed, said the following verbatim:

“Prostitution is pathetic and disgusting... it demoralizes our women and our community. Parents need to teach their children good values and beliefs... Right now in Chatsworth, there is too much crime; these women will just worsen the community” (Thumboo, 2003).

Another participant, Captain Edmund Singh who was the spokesperson for the South African Police Services (SAPS) in Chatsworth with 16 years of service as a police officer, held the same belief as he felt that sex workers caused many problems within the community and they needed to be eliminated. One of the participants had this to say in verbatim:

“As a person, I believe that prostitution is not acceptable and we need to eradicate the scourge as a community...” (Thumboo, 2003).

These findings suggest that some community members view sex workers as evil and as people who should not be associated with others and who have to be isolated from the entire community. However, some people oppose this view and are against the expulsion of sex workers from society. One participant shared the following in verbatim:

“Society should not say that we should rid these women from the community, because our men pay these women for their services, hence they are still on the street. I believe that behind every sex worker there is a person who is hurt and desperate for love. [They are poor in relationships] and definitely emotionally insecure” (Thumboo, 2003)

This person was of the view that if the community did not feel comfortable with the presence of sex workers within the community, then they should find them a better alternative that will motivate and encourage them to strive for a better life. By implication, this person also argued that sex workers thrive because men (i.e., community members), seek their services. It may therefore be argued that the eradication of sex workers’ services should start by addressing the behaviour of those who seek their services, and not by damning these workers for the service they render.

2.6.3. The nexus of sex work and criminal behaviour

The community perceives sex workers as the ones that expose children to prostitution and that they also play a major role in the increase of criminal activities within their respective communities. Residents often blame people who sell sex for all the negative things that happen within the community and they view them negatively. Conversely, the community members take note of the fact that people who purchase sexual services may be the cause of the problem and that sex workers are the victims. One participant expressed the following in verbatim:

“Prostitution... has increased drastically over the past years, with many of the sex workers working with syndicates that are operating in the area” (Thumboo, 2003).

2.6.4. Associated stigma of sex work

Many sex workers in several studies mentioned the stigma attached to prostitution and the way they are viewed by the community. They are perceived to be dirty, mentally ill, addicted to drugs and alcohol (Östergren, 2006; Thumboo, 2003). Several sex workers admitted that they feared that their activities would be brought to the community's attention and to avoid stigmatization they would hide their involvement from family, neighbours and friends to guarantee their anonymity.

Many people believe that only females become sex workers. This is no longer the case as recent academic studies have shown that males and transgender and transsexual sex workers operate within communities and provide their services to people of both genders and from all walks of life (Kingston, 2014). Kingston (2014) further states that, before the cited study, the author believed that sex workers were females and that males were the clients because of cultural stereotyping, media portrayals, and political discussions that focus on women as sex workers.

2.6.5. Sex workers in need of assistance and help

Some individual within communities believe that sex workers need to be helped and need support as they were forced by poverty and domestic abuse into sex work. Reverend Jacobs, who worked with sex workers in Chatsworth, said that the following:

“We work with these sex workers; we teach them alternative skills and mostly how to protect their rights. We must understand that sex workers’ rights are human rights too” (Thumboo, 2003).

This shows that there are people who still believed that sex workers need to be helped and be advised regarding better ways of dealing with poverty and the reasons that caused them to become sex workers. Embrace Dignity believe that “sex work is exploitative, that it damages sex workers and is a form of violence against women. This organization view sex workers as people who need support and assistance to exit sex work industry.

2.7. Feminism standpoint and sex work

Feminism refers to the belief that men and women deserve equality in all opportunities, treatment, respect, and social rights. In general terms, feminists are people who try to acknowledge social inequality based on gender and stop it from continuing (Hoffman, 2001). Feminists point out that in most cultures throughout history; men have received more opportunities than women have. Women perceive that they have historically been and still are victims of both direct and subtle forms of male oppression. Feminist beliefs vary widely as to the most effective way to end this oppression.

Outshoorn (2005) revealed that from the nineteenth century to the 1980's the wave of the feminist were supporting the criminalisation of sex work industry. Oppenheimer (2014) suggests that the second wave of feminism resulted to the development of two groups of feminist namely: liberal and radical feminist. These two groups are still vibrant even today, even though these groups are fighting for gender equality but they have different opinions on attaining equality. It follows then that there is also a difference of opinion on whether prostitutes are victims and should be protected by eliminating the source of prostitution or should be considered free agents pursuing their legitimate economic interests. Furthermore, Marxist feminists have engagements in the phenomenon of sex work industry.

Liberal Feminists are of the view that men control social structures and these structures need to be changed to equally share the power between men and women (Oppenheimer, 2014). Liberal feminist view sex work as a form of employments and they maintain that law should recognise sex work as occupation. As feminists started to be against criminalisation of sex work, as they referred to it as oppressive to women resulting in the emergence of sexual liberalism. Jeffreys (2009) revealed that sex work and pornography were perceived as freedoms that allowed women to be in control of their own bodies. Liberal feminists argue that the women have got a right to choose to be sex workers and they have a right to choose do whatever about their bodies. The sex work industry is criminalised South Africa which makes women in sex work industry to be in conflict with the law and have to be punished for their choices and are denied to practice sex work. According to Raymond (1998), liberal feminist contend that if women are denied to be sex workers they are denied their human rights. Furthermore, this group of feminists considers sex work as an occupation that is like any other legitimate employment, and they are against the violence, exploitation and abuse in sex work industry. In contra to the latter, Women Support Project (WSP) and radical

feminists do not view prostitution as a choice for women, irrespective of age, and believe that it is contradictory to condemn child prostitution whilst condoning or ignoring adult prostitution. Furthermore, they view sex work as violation and exploitation of women in sex work industry.

Be that as it may, radical feminists view sex work as an oppression and sexual exploitation against women. Barry (1995) explained exploitation as any harmful act that allows one party to benefit at the expense of another person. Radical feminists suggest that sex work is the violation of women's physical and mental integrity as well as human right to dignity and equality (Oppenheimer, 2014). The predominant standpoint of this feminist group is that prostitution is an exploitation of women, and they viewed sex work industry as an institution for women's oppression and inequality. Sex work give men a control and dominance on sexual activities while women are sexual subsidiary. The women in sex work industry provide sexual services to men while belittling their self-worth. Barry (1995) cautions that prostitution is overlooked as a class condition of women, instead prostitution is normalized to solely respect the choice of the individual. Sullivan (2007) provides that sex work is an act that provides sexual and social inequality. "Radical feminists criticize all forms of prostitution and do not distinguish between forced and voluntary prostitution, between child and adult prostitution, between indoor and outdoor prostitution, between the trafficking of persons and prostitution" (Oppenheimer, 2014: 30). In addition the Women Support Project (WSP) view all forms of prostitution as exploitative to the person prostituted, regardless of the context or even if the person consented to prostitution.

Like radical feminism, Marxist feminist suggest that prostitution is the oppression against woman. Marxist feminists argue that the social order of ownership of private property in the society is the result for women oppression (Sloan & Wahab, 2000). The traditional Marxist standpoint in sex work equates labour and commodified sexuality (Marx, 1975). Karl Marx argue that sex work is the result of the capitalist system in which workers become extensions of their machines and hence alienated, less human, and less free to refuse wage labour. This capitalism gives people no choice but to become labour wages, for them to survive. Marxist feminist support the impression that both sex workers and workers are exploited because they are both turned to commodified objects (Loan & Wahab, 2000). The Marxist analysis of sex work was based on an economic framework, putting more emphasis on class and labor. Nonetheless, it leave aside the important factors such as sexism, desire and agency from the understanding of the sex workers.

2.8. The Impact of the Legal System on the Sex Work Industry: comparative analysis

States have different legal systems to govern and control sex work as it is one of the oldest professions in the world and is a worldwide phenomenon (Baillache, 2012; Rhoda, 2010). Policies to govern sex work depend on the fundamental philosophy around the moral tolerability of purchased sex in that particular country (Brants, 1998). However, some countries do not control sex work on the basis of moral acceptability or unacceptability but rather on sexual offence acts (Crofts, Maher, Pickering & Prior, 2012). Mossman (2007) believes that the change of control that have occurred in certain States have granted the sex workers successfully function with their sex trade businesses. The author adds that this transition has changed the way in which commercial sex can be publicised locally and worldwide. Moreover, sex workers in certain countries have been given a voice and are heard because they no longer have to operate their business in secret.

The SALRC (2009) outlines that the international processes regarding prostitution started with a conference in 1895 in Paris, which was followed by other conferences such as the ones in London in 1899 and in Budapest in 1899. According to the SALRC (2009), sex work was not referred to as prostitution in international instruments and was addressed through the concept of white slavery. Later, it was addressed as trafficking under human rights issues and, most recently, it has been addressed under labour laws. International conferences were held to address prostitution such as the International Agreement for Suppression of the White Slave Trade (IASWST) in 1904 and the International Convention for the Suppression of White Slave Trade (ICSWST) in 1910 respectively. International instruments that were drawn up specifically to deal with prostitution did not reflect adequately on the human rights of prostitutes (B. This is because specific prostitution instruments mainly focused on the coercion and exploitation of women for the provision of sexual services and did not protect the rights of persons who operated or worked voluntarily as prostitutes (SALRC, 2002).

South Africa conforms to the international instruments to distinguish between voluntary and coerced sex work and to protect forced sex workers (SALRC, 2009; Baillache, 2012). “One instrument, among others, that South Africa signed in 1957 is the Convention for the Suppression of the Traffic in Persons and of the exploitation of the Prostitution of Others 1949 (the Trafficking Convention)’” (Baillache 2012:33). This instrument predominantly deals with the exploitation of people and human trafficking for sex work. These instruments

suggest that all sex workers should be assisted and rehabilitated and that sex work should end. This implies that sex work should be criminalized which is why, even today, sex work is a criminal offence in South Africa.

According to Baillache (2012), in 1998 South Africa approved the International Covenant on Civil and Political Rights (ICCPR) of 1996 which provides for essential civil and political rights. These rights are also included in the Constitution such as the right to life. However, even though these rights of sex workers are protected, in reality they are not enforced because of the nature of sex work, the stigma attached to this profession, and the way sex work is governed. This implies that the endorsement of the ICCPR becomes ineffective in the context of sex work, given that sex workers are maltreated (SALRC, 2009; Baillache, 2012).

Everyone has the right to fair labour practice and to work in healthy and safe conditions (South Africa, 1996). The International Convention on Economic, Social and Cultural Rights (ICESCR) guarantees human rights similar to those stipulated by the Constitution (Baillache, 2012). These rights include the right to participate in the activities and programs of trade unions, the right to the highest attainable standard of physical and mental health, and the right to form and join a trade union. SALRC supports and encourages the non-criminalisation approach to sex work and also promotes essential human rights such as safety and good working conditions (SALRC, 2009; Baillache, 2012). It is therefore clear that an international call for the decriminalisation of sex work should be heeded to make sure that sex workers' rights are protected.

2.8.1. New Zealand

As previously highlighted in this Chapter (Two-see Paragraph 2.7. f this study), countries have different legal systems regarding sex work. In NZ, sex work per se was not illegal but all the activities around sex work were punishable offences through various Sections and Acts (Sec 26 of Offences Act of 1991 & Sec 147 of the Crimes Act of 1961) (Abel, 2014). For example, Section 26 of the summary of the Offences Act of 1991 states that it is a punishable offence for a sex worker to offer sex for financial gain in a public place. However, the clients of sex workers are not punished as it is not deemed a criminal offence to offer to pay for sexual services (Abel, 2010). Sec 147 of the Crimes Act 1961 made it a punishable offence to keep or manage a brothel. In addition, it was not allowed to live off the earnings of the prostitution of others, which meant that adult children and partners could be charged for

supporting a parent or spouse under the Crimes Act of 1961, Sec 148. Furthermore, it was an offence under Sec 149 of the Crimes Act for any person to procure sexual intercourse for another person. This means that sex work in NZ was controlled by various Acts.

After numerous confrontations, NZ sex workers launched a New Zealand Prostitution Collection (NZPC) campaign to fight for the decriminalization of sex work, exploitation of sex workers, and abuse of power. The NZPC then started working with lawyers, academics and students to draft the Prostitution Reform Bill (2003). The campaign team had Tim Barnett as their representative to introduce the Bill in the New Zealand Parliament [NZP] (Abel, 2010). The Bill had to go through various stages of change and was finally voted into Law on 25 June 2003. This law decriminalized sex work in New Zealand.

2.8.2. Sweden

Sweden is one of the countries that reviewed their legal system regarding sex work. Ostergren (2006) states that a law in Sweden that prohibited the buying of sexual services was introduced in 1999. Sweden was the first country to criminalize the purchase of sexual services although the selling of sex remained legal. Feminists and politicians are satisfied with the system of controlling prostitution in Sweden and they claim that this approach has achieved positive results. The Swedish model was then later adopted by other countries such as Norway, Iceland, Canada and Northern Ireland. This approach is referred to as the partial criminalization of sex work (*Asijiki* Fact Sheet, 2015).

2.9. Legal Models to Control Sex Work: Local and International perspectives

Currently, four legal models can be used to control sex work. Richter (2009) states that in 2002 there were three different legal models provided by the SALRC that could be applied in governing sex work. After they had been given the task to investigate sex work and the law, the South African Law Reform Commission, (2002) provided parliament with suggestions for changes in the law governing sex work. These legal models were criminalization, decriminalization and legalization. SALRC released a further Discussion Paper in 2009 that emphasized four models for possible implementation, namely total criminalisation, partial criminalization, legalization and decriminalization. These models are used in various countries across the world.

2.9.1 Total criminalisation on sex workers

Total criminalisation is the act of banning the receipt and offering of money and goods in exchange for sexual services. This implies that managing sex workers (pimping), advertising sexual services, and owning brothels are all banned in the total criminalisation of sex work model (Peter, 2015). Moreover, sex work becomes punishable by law and even sex workers themselves are in conflict with the law. Total criminalisation of sex work has been implemented in countries such as China, Russia, United States (US) and South Africa. However, various authors have argued that criminalisation of sex work in South Africa is ineffective to the extent that Mgbako, Bass, Bundra and Jamil, (2012) argue that South Africa is wasting millions of state money due to the criminalisation of sex work industry.

Many African countries and countries outside Africa are still criminalising the sex industry. CGE (2013) states that the criminalisation of sex work makes sex workers vulnerable to various crimes while they are also victimised by the laws that prohibit sex work. Mgbako, Bass, Bundra, Jamil, Keys and Melkus (2012) concur with CGE (2013) by stating that sex workers are not protected by South African laws that criminalise sex work and that these laws are in conflict with human rights provisions in the South African Constitution. For example, in the case (*S v Jordan and Others (Sex workers Education and Advocacy Task Force and Others as Amici Curriae* (CCT31/01)[2002] ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117(9 October 2002)) it was highlighted that the rights of sex workers are not taken into consideration because they are in conflict with the law (Baillache, 2012).

Sex workers have rights that are equal to the rights of the general public and have to be protected by the state. According to CGE (2013), sex workers have the right to be protected in light of Sec 10 (“everyone has inherent dignity and the right to have their dignity respected”). Furthermore, Sec 12 (which protects the freedom and security of a person), and Sec 22 (which protects the right to freedom of trade, occupation and profession) of the South African Constitution (South Africa, 1996). These rights were also raised in the case of the (*S v Jordan and Others (Sex workers Education and Advocacy Task Force and Others as Amici Curriae* (CCT31/01)[2002] ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117(9 October 2002)) (Baillache, 2012).

Numerous examples of the infringement of the right to dignity and protection of sex workers can be quoted. For example, 12 % of the sex workers that execute their services on the streets reported that police officers had raped them, this was found in a study that was conducted in Cape Town (Gould & Fick, 2008). Research on sex work during the 2010 World Cup showed that 5% of sex workers reported being raped and physically assaulted by police officers in one month (Richter, Chersich, Scorgie, Luchters, Temmerman & Steen, 2010). Farley (2004) (in Heiberg, 2011) alleges that prostituted women are at risk of physical, social and psychological abuse. Therefore, because sex workers enjoy no recourse to the law, many scholars agree that the criminalisation of sex work rather results in the violation of their rights than prevents sex work.

Some people perceive sex workers as sinners and sex work as a sin (CGE, 2011). Outshoorn (2001:475) (in CGE, 2013:2) argues that the “moral discourses of the 1890s and 1900s defined prostitution as immoral based on biblical interpretations, and therefore the abolition of prostitution was seen as the only solution”. However, Raymond (2006) argues that it is wrong to include moral issues in the debates about sex work. Goodyear and Cusick (2007) support Raymond, claiming that morality is not the law’s business. The CGE (2013) concluded that the existing legal framework of criminalisation of sex work has neglected sex workers in South Africa, this conclusion came after a consultative discussion on legislative reform. Various authors such as Mgbako *et al.*, (2012) and CGE (2013) provides that sex work should be decriminalised in South Africa.

Nevertheless, some commentators in the SALRC (2009) discussion paper support criminalisation of sex work. These groups opposed sex work on moral and religious grounds (total criminalisation) and those opposed sex work of human rights and (some) feminist grounds (partial criminalisation). SALRC (2009) reveal that both of these groups depend upon the willing or unwilling exploitation of certain group and class of persons for another’s personal gain and proposed the solution is to criminalisation sex work or some aspects. Radical feminists argue that sex work is a form of sexual exploitation against women and they view sex workers as victims even if some sex workers insist they enjoy the work (Beran, 2012).

Many organisations and religious groups and some of the hotel owners on the submission of the SALRC (2009) discussion paper have opposed to sex work industry and support full criminalisation of sex work in South Africa. Embrace Dignity is a non-profit organisation that is advocating for legal reform to end prostitution, sex trafficking and offering services and support for women seeking exit in sex industry. This organisation is against sex work and there is in support of criminalisation of sex work so to eradicate sex worker industry. Embrace Dignity view sex work as a form violence perpetrated against women that causes physical, emotional, psychological and spiritual harm (Oppenheimer, 2014).

2.9.1.1. The effects of total criminalisation

2.9.1.1.1. Police brutality towards sex workers

Criminalisation of sex work is the tool that is used to manage the reduction in the supply and demand of sex work in South Africa and throughout the world (Mgbako et al., 2012). However, the total criminalization of sex work has various effects on sex workers and society. *Asijiki* Fact Sheet (2015) is of the view that sex workers are the victims of police abuse because of the criminalization of the sex industry. Sex workers fear arrest and detention and are exposed to economic, sexual and physical abuse by the police and society (Mgbako et al., 2012; *Asijiki* Fact Sheet, 2015). SWEAT (2015) also state that sex workers frequently treated badly and also verbally abused by the policemen. The illegality of sex work causes sex workers to fear retribution by police officers if they report or complain about police brutality. Moreover, many scholars agree that some police officers are taking advantage of the current South African legal framework of sex work by demanding sexual services in exchange for not arresting or releasing sex workers from jail. Mgbako et al. (2012) state that sex workers are also economically abused by the police, because they are fined by police officers who then keep the money for themselves. They also have to pay bribes to avoid arrest (Richter et al., 2012; Gould & Fick, 2008). Sex workers hide from the police to avoid this abuse and end up going to dangerous places where their safety is under even more threat (Scorgie, Chersich, Ntaganira, Gerbase, Lule, & Lo, 2012).

2.9.1.1.2. Stigmatisation and discrimination on sex work

Sex workers generally are faced with stigmatisation and discrimination that come from their respective communities and families (Wiley, 2006). Sanders (2007) and Balfour and Allen (2014) support Wiley's argument that stigmatisation and discrimination occur everywhere in the lives of sex workers as these attitudes are exuded by their clients, healthcare givers and other service providers including police officers. Stigmatisation achieves high levels in countries where sex work is a criminal offence. Mgbako *et al.* (2012:1426) are of the view that "the law plays an important role in influencing societal attitudes". They therefore postulate that criminalisation labels sex workers as law violating citizens, which paints a poor picture of sex workers in society. The fact that sex working is a criminal offence motivates society to abuse sex workers as many people think that violence and abuse against sex workers are justified. In many instances, sex workers are the breadwinners of their families and they take care of their children, yet their children also face stigmatization due to their mothers' low status as prostitutes. One sex worker mentioned the following in verbatim:

"The neighbours yell [at us] that we sell our bodies and taunt our children that their mothers sell sex. Sometimes, the neighbours fight us. We are too afraid that it will get worse if we report the case" (Mgbako *et al.*, 2012).

The study conducted by Scorgie, Vasey, Harper, Richter, Nare, Maseko and Chersich (2013) in four countries Kenya, South Africa, Uganda and Zimbabwe, it was found that sex workers in Uganda were excluded from social activities, even if they committed good deeds and cared for others in the community. This is what one Ugandan sex worker said to express her feelings about the stigmatisation and discrimination she and her family had to face this in verbatim:

"I still have a challenge with the people in the community. People we live with, they don't want to associate with us. If you give them all you can, they only keep on saying, 'You are a prostitute!' no matter what good things you do for them. My whole family depends on me alone. Even when a person in my family dies, I have to meet all the expenses. Yet people still call me a prostitute" (Scorgie *et al.*, 2013).

Arnott and Crago (2009) state that sex workers are also discriminated against by service providers such as health officials, the police, educators and bank staff. Many authors emphasize that life is even harder for a sex worker who is also gay, because of double stigma. Benoit (2015) added that Sex workers are often also cold shouldered even by religious leaders.

2.9.1.1.3. Lack of access to health services for sex workers

The criminalisation of the sex industry is also believed to contribute to the inability of sex workers to access health services (Asijiki, 2015; Mgbako et al., 2012; Gable, Gostin, and Hodge, 2008). Mgbako et al. (2012) postulate that 19.8% of new HIV infections in South Africa comprises sex workers, the clients of sex workers, and the families of sex workers. This shows that the criminalization of sex work hinders health intervention practices, particularly in cases of HIV/AIDS and Sexual Transmitted Infections (STI). Baillache (2012) insists that, in terms of the National Healthcare Act (Act 61 of 2003), health providers may not deny any individual medical treatment. However, although they should be protected by stipulations in the National Health Act (Act 61 of 2003), several sex workers are dismissed in reality because of the work they are engaged in. Gable *et al.* (2008) concur, arguing that sex workers do not access healthcare services due to the fear of discrimination, stigmatization and prosecution. Baillache (2012) supports Gable *et al.*, (2008), by arguing that the majority of sex workers do not approach healthcare centres because of the apprehension of being hated. Furthermore, the criminalization of sex work deters sex workers from engaging in initiatives that will improve health policy decisions that involve sex work (Mgbako *et al.*, 2012).

2.9.1.1.4. Violence against sex workers

Some scholars blame the violence against sex workers on the criminalisation of sex work. Even sex workers are blaming the legal system in South Africa for their victimization. Male, transgender and female sex workers are vulnerable to acts of violence as they are abused by their clients, police officers, school officials and the general public (Arnot & Crago, 2008; Scorgie et al., 2013). In a study that was conducted by Arnott and Crago (2008) in Botswana, Namibia, and South Africa, it was found that the criminalisation of sex work left sex workers vulnerable to physical, sexual, verbal, economical and emotional abuse. SALRC (2009) and Scorgie et al. (2013) emphasize that the criminalised nature of sex work in South Africa and

other countries causes sex workers to be taken advantage of by police officers, clients, and by the general public. Police are often reported to offer not to arrest sex workers if they provide sexual services for free and clients are often reported not paying for sexual services but raping sex workers instead. Arnott and Crago (2009) report violence by police officers that involve rubber bullets, sexual violence, beating, and spraying sex workers' genitals with pepper spray. According to Arnott and Crago (2009:2), Priscilla and Pinki from Rustenburg, South Africa, had this to say in verbatim:

"The police come to your shack in the van. They take your money and sleep with you with no condoms. It is a rape because they force us. We are scared to report the rape because we are sex workers, so we are illegal" (Arnott & Crago, 2009).

Many studies (Arnott & Crago, 2009; SALRC, 2009) have shown that some authorities and the public exploit the criminalised status of sex workers to abuse, harass and brutalise them (SALRC, 2009; Arnott & Crago, 2009; Scorgie *et al.*, 2013).

2.9.1.1.5. Lack of justice for sex workers

One of the challenges caused by the criminalisation of sex work is the lack of justice that sex workers suffer. According to Mgbako *et al.* (2012), the low status of sex work often prevents sex workers from accessing and claiming their rights and bringing a case of abuse to justice. Some police officers think that sex workers cannot be raped due to the nature of their work and they tend not to take the cases reported by sex workers seriously (Asijiki Fact Sheet, 2015). Scorgie *et al.* (2013) reveals the following response by a sex worker in verbatim:

"The day I was raped I went to report [it] to the police, but the harassment I got there almost made me faint. The police wanted me to explain every detail, from the rape to the screams that I uttered. Another officer asked how a prostitute like me could be raped as I was used to all sizes. He told me in fact that the man really spared me. He could have tested my ass too. He ended asking me if my ass is already opened. Never will I again go to report a case. I would rather die."
(32- year-old female, Mombasa) (Scorgie *et al.*, 2013).

SALRC (2009) points out that many crimes that are committed against sex workers are not recorded and are not investigated. This shows that sex workers are afforded no justice because the violence and abuse committed against them are not taken seriously. Asijiki Fact

Sheet (2015) suggests that the police (SAPS members) are generally not willing to open a case even when a sex worker reported a crime or complained about abuse. This means that sex workers are denied the right to justice, which is against Sec 34 of the Constitution (South Africa, 1996).

“At the end of 2006 the Commission for Conciliation, Mediation and Arbitration (CCMA) heard the case of Kylie.²¹ (as the sex worker was dubbed) wherein Kylie, a sex worker who was fired from her employment at a brothel in Cape Town, took her case to the CCMA, arguing that she was unfairly dismissed. The CCMA said it did not have jurisdiction over the case, because the work Kylie was doing – sex work – was illegal in South Africa. And it was held that she could not be protected from unfair dismissal under the Labour Relations Act (Act No. 66 of 1995) Sec 22 and that the CCMA therefore had no jurisdiction to hear the case against Kylie’s employer” (Mokoena & Choma, 2013:35).

2.9.1.2. The efficiency in managing criminalisation of sex work

Many scholars have voiced their ideas on the criminalisation of sex work. Rhoda (2010) suggests that the criminalisation of sex work has not succeeded in controlling and managing sex work in South Africa; therefore, this country is in need of a new legal model that will govern sex work. However, Albertyn (2016) revealed that moral conservatives call for the status quo to remain as it is. Mgbako and Smith (2011) argue that African women that are involved in sex work experience serious social stigmatisation and discrimination that negatively affect their ability to stand up and fight for their human rights. Furthermore, African communities support the negative stigma that is attached to sex workers by frequently casting them as the vectors of diseases. Rhoda (2010) states that sex workers in Africa are the victims of physical and sexual abuse and that they seldom get protection from the state as victims. Mgbako and Smith (2010) articulate that the criminal code of sex work throughout Africa increases African sex workers’ vulnerability.

2.9.2. Partial criminalisation of sex work

Partial criminalisation of sex work seeks to make some aspect of sex work legal and some aspects illegal. Sweden was the first country that opted for partial criminalisation of sex work, which was referred to as the Swedish model (Woodin, 2014). Other countries namely; Sweden, Norway, and France among others opted to criminalise sex work partially. In Sweden, it was made a criminal offence to buy sex. The aim of employing this legal framework in Sweden was to operate as a deterrent to decrease the number of purchasers of sex. Moreover, partial criminalisation also aimed decreasing number of people who are engaged in the sex industry in particular those that are operating on the streets, and the number of people who are newly recruited into sex work (*Asijiki* Fact Sheet, 2014; Woodin, 2014). Rhoda (2010) explains that in the partial criminalisation model, everyone participating in the sex industry, apart from the sex workers, is in conflict with the law. Sex work per se is therefore decriminalised in these countries, meaning that selling sex is accepted, but the activities surrounding sex work are illegal. Other countries opted to criminalise buying sex and to accept activities related to sex work (Peters, 2015). Sonke Gender Justice (SGJ) (2014) state that the selling of sex by prostitutes is allowed but buying sex is a punishable offence in Sweden. In countries such as the United Kingdom (UK), France, Canada and India, soliciting and also activities such as receiving money that a person earned through sex work, brothel keeping, and managing sex workers are criminalised. The primary aim of the partial criminalisation of sex work is the cessation of or a reduction in the demand and purchase of sex work (Mgbako et al., 2012).

2.9.2.1. Effects of partial criminalisation on sex work

Every legal model has impacts on the country and its community either positively or negatively, and partial criminalisation of sex work is no exception.

Ten years after the Act to partially criminalise sex work had been written into law, the Swedish government released a statement assessing the legal framework of the sex industry and the impact it had during that period (Woodin, 2014). The general finding of this report was that the enactment had achieved its expected goal as it had been a critical instrument in avoiding and battling sex working and human trafficking for sexual reasons. Women who had

been in the sex industry and who wanted to leave, allegedly bolstered the law as it granted them a genuine motivating force to look for the help needed to leave the sex business.

The police and social workers disclosed that there had been a reduced demand for sexual services and that the clients of sex workers were more cautious. Moreover, street sex work had been halved since the enactment (Woodin, 2014). It was also found that there was no evidence of an escalation of indoor sex work as a result of the reduction in street sex work activities, while Levy and Jakobsson (2014) states that no available data suggested a decrease in the levels of indoor or online sex work in Sweden. People involved in sex work, more especially clients, were reluctant to disclose their involvement in sex work activities to their families and friends. In general, the results suggested that partial criminalisation of sex work had a positive effect on reducing sex work activities (Levy & Jakobsson. 2014). Woodin (2014) further suggests that if the same outcomes were possible for Sweden, the Swedish legal model of partially criminalisation of sex work could be the favoured framework for South Africa.

However, the reports by police and social workers in Sweden on the decrease of street sex work and indoor sex work was deemed unreliable. Levy and Jakobsson (2014) argue that street sex work is simpler to quantify than indoor sex work, as the latter is practised underground by default. They therefore emphasise that estimates of the extent of sex work in Sweden as a whole cannot be accurate and are unreliable as a large group of sex workers is hidden, marginalised, stigmatised and criminalised. Estimates are therefore not a true reflection of the actual population of sex workers. It is difficult to measure the number of sex workers who operate within the partial criminalisation model as it involves both street and indoor/online sex workers, and it is extremely difficult to pin down any number of indoor sex workers accurately. In addition, street sex workers are not always on the street at the same time so it is difficult to rely on estimates of this category of sex workers as well.

However, *Asijiki* Fact Sheet (2015) holds different ideas about the partial criminalisation model for sex work in South Africa. By stating that this legal framework of governing sex work will have different outcomes in South Africa. For example, maintaining soliciting as a criminal offence will prompt the police to harass defenseless outdoor sex workers (Taylor & Townsend, 2014). In the event that either sex workers or their customers are criminalised, they will attempt to maintain a strategic distance from identification by the police. This implies that sex workers will not have enough time to evaluate and negotiate with their

clients well enough to identify dangerous clients before they engage in sex work and it will also limit their capacity to arrange for safer sex (Levy, 2015). Jakobsson (2009) adds that sex workers are the victims of harassment by police officers, which ensures that they will not report the crimes committed against them.

The purchasers of sexual services are the same people who can assist to identify the people who are forced into sex work; however, if their involvement is criminalised it implies that they will be reluctant to report any crimes committed against sex workers. This view is supported by Eve (2009) and *Asijiki* Fact Sheet (2014), who both argue that trafficked sex workers can be rescued by clients, but if they are criminalised, they will be reluctant to report the abuse against sex workers because they are afraid of being arrested themselves.

The stigma attached to sex work is likely to escalate when the sex work is partially criminalised which, in turn, will lead to sex workers being denied access to services such as health care. *Asijiki* Fact Sheet (2015) is of the view that all criminalisation of sex work increases the stigma attached to sex work which is the eventual cause of violence against sex workers. In collaboration, Jordan (2012), suggests that in countries, such as (Sweden, Norway, France) that employed the partial criminalisation model experience an increase in violence against sex workers.

2.9.2.2. The effectiveness of partial criminalisation in South Africa?

Scholars outlining which model they think is suitable for South Africa have characterized the discourse on the control of sex work in South Africa. If sex work should be governed by the partial criminalisation model for sex work, then the strategy should include quantifying the number of workers who are involved in the sex industry as service providers of both street sex and indoor sex work. Levy (2014) argues that it is difficult to measure the number of people who are street and indoor sex workers in Sweden, which is one of the weaknesses of the partial criminalisation model as employed by Sweden to control sex work and to reduce the levels of sex work. In 2012, the Swedish National Police Board (2012) reveals that even though the primary aim of the Swedish model was to reduce sex work, there was very little evidence indicating that sex work decreased. It is difficult for Sweden to clearly indicate whether sex work increased or decreased because they do not have evidence of the

adaptations sex workers employed to adjust from the criminalisation model to the partial criminalisation model. They can only provide estimated figures, which are unreliable (Woodin, 2014; Levy & Jakobsson, 2014).

Asijiki Fact Sheet (2015) suggests that partial criminalisation of sex work cannot apply in South Africa because it does not acknowledge sex work as an employment just like any other job. That means that sex workers will not benefit from labour laws which will still expose them to victimisation and abuse by sex purchasers, police officers and managers. In fact, if sex work is not acknowledged as a legitimate job, then sex workers will remain stigmatised and will be viewed as people who do not have morals and they will be regarded as potential victims. According to Oppenheimer (2014) radical feminist view sex work as sexual victimisation and exploitation against sex workers. However, SWEAT (2015) shows that sex workers are viewed as victims under the Swedish model but that, in reality, they are not victims at all. Another problem that SWEAT identifies with the Swedish model is that legislation of partial criminalisation of sex work was enacted without eliciting the views of sex workers themselves.

Be that as it may, under the partial criminalisation model the sex industry will still operate as a practice that will be regarded as a sin by many, which will prohibit sex workers from seeking health care and other services. Sex workers will still be at risk of assault and violence as they will have to ensure that their clients are safe from arrest by the police. SWEAT (2015) argues that the implementation of the Swedish model escalated the levels of vulnerability and stigma, which compounded the savagery against sex workers in Sweden. Levy (2015) concurs with SWEAT (2015) that sex workers have to protect the purchasers of their sexual services from police officials to avoid possible prosecution and adds that this will force sex workers to operate underground so that their clients would not be identified. Ultimately, this will affect negotiations for safer sexual consent and sex workers will be left more vulnerable to victimisation than before.

2.9.3. Legalisation of sex work

Legalisation of sex work is an act of allowing the operation of sex work under certain stipulated legal conditions. Legalisation of sex work is not a legal option for reducing harm to sex workers; rather, it is an attempt to control the sex industry by keeping it limited to some areas where it will not disturb or affect the entire population (Abel, 2010). Some states go for legalisation as a means of diminishing crimes related to sex work (Rhoda, 2010; Mgbako *et al.*, 2012). SGJ (2014) agrees with Abel (2010) that sex work will be restricted to identifiable geographical regions and sex workers will be required to do mandatory health tests. However, such checks will only cause the further stigmatisation of sex workers (Mgbako *et al.*, 2012).

The legalisation approach prescribes conditions and controls of sex work as specified by the state. This means registration as a sex worker, the licensing of brothels, mandatory health checks, and having specific areas where sex work will be allowed. Outside those areas sex work becomes a criminal offence (Jordan, 2005; Mossman, 2007; Abel, 2010; Rhoda, 2010; Mgbako *et al.*, 2012; Felicity *et al.*, 2015). Licenses are rarely issued and are usually managed by police officers, the judiciary, elected local authorities, or there could be a special independent board that will deal with the controls and conditions of legalization and will impose penalties on those who work without the necessary permits (Mossman, 2007; CGE, 2012). Some countries such as the Netherlands, areas in Australia such as Victoria, Queensland, Western and South Australia, and Germany have legalised sex work. Abel (2010) is of the view that municipalities should have the jurisdiction over granting or refusing licenses as well as the number of brothels and sex workers that will operate and that will be given permission to operate. However, sex workers may decide to work illegally instead of registering as sex workers because of the stigma attached to registering as a sex worker (Mgbako *et al.*, 2012) and possibly also because of taxation.

Liberal feminist have argued for legalization as a way to safe guard and protect women's rights in prostitution as working professionals (Post, 2011; Oppenheimer, 2014). In contrast, radical feminists argue that legalization does not dignify women but rather dignifies the sex industry (Oppenheimer, 2014).

2.9.3.1. The effects of legalisation of sex work

The legalisation of sex work has brought some changes to the countries that have already opted for this model. One negative effect of the legalisation of sex work is that it is accompanied by punishment for illegal sex work, more especially for those sex workers who do not want to comply with the conditions and controls of legalisation (Jordan, 2005). According to NYLN Youth Leader (2015) this model would encourage human trafficking, especially of children, is rampant in some parts of the world and even within a country itself. With poverty driving some parents to sell their kids to sexual predators is alarming and if prostitution will be legal, more children will be coerced to be sex workers.

The legalisation of sex work is reportedly increases the revenue for governments because sex workers are subject to taxation (Farley, 2003; Felicity et al., 2015). According to Farley et al., (2003) “governments that legalise prostitution as sex work will have a huge economic stake in the sex industry” (Farley et al., 2003:11). Felicity et al. (2015) report that the Netherlands’ central Bureau of Statistics estimates that the sex industry generates approximately £550 m (R8207510965.50 m) per year as every prostitute is obliged to pay tax of 33% on the money that they get from sex work.

Conversely, the mandatory health checks and registrations that sex workers are expected to go through in the legalised framework perpetuate negative stigma and discrimination against sex workers (Mgbako et al., 2012; Barnett & Casavant, 2011). The Victoria government in Australia acknowledged in 2010 that people engaged in the sex industry were continuously faced with stigmatisation and discrimination regardless of the legalisation of sex work. Dorr (s.a) is of the view that legalisation has failed to change or reduce the stigma attached to sex workers in Germany.

Furthermore, sex workers are faced with clients who demand unprotected sex because they know that sex workers are undergoing health checks (Farley, 2004). Farley (2004) found in her study that 73% of the men were even willing to pay more money for sex without condoms. Some scholars are of the view that mandatory health checks infringe on the rights of sex workers. Raymond (2001) argues that the sex industry has rules that, among others, oblige clients to wear condoms, whereas men may prefer to engage in unprotected sex. The clients then are forced to wear condom or they will be in conflict with law and may lead to

the arrest of the clients for not complying with the regulations put in place to control sex work industry.

In Victoria, the legalisation approach to sex work has led to some questions in light of the potential links to organised crime and the uncontrollable expansion of illegal sex work operations (Barnett & Casavant, 2011). In addition, the illegal brothels that operate within the state of Victoria were estimated at 400. In Germany, the legalisation of sex work has resulted in the establishment of brothels in towns on the border with France (Dorr, n.a.). For example, there is a six-storey 15,000 square foot building in the city of Saarbrücken which was designed to attract customers from Germany and from across the French border, which may cloud German-French relations as France does not support the legalization of the sex industry.

Another negative effect of the legalisation of sex work is the increase of incidences of human trafficking and child sex work (Rhoda, 2010). In the Netherlands, it has been noticed that the number of children and foreign women who engage in the sex industry has increased because of the legalisation approach. This has created an attractive destination for trafficked children and foreign women for sexual exploitation (Rhoda, 2010; Barnett & Casavant, 2011). In Germany, the Chief Officer of Police recently reported that human trafficking for sexual exploitation had increased by 11% from 2015 and by 70% over a five-year period (Dorr, s.a). Radical Feminist and Women Support Project revealed that sex work is the exploitation of women in sex work. Dorr (n.a.) also agrees with Rhoda (2010) and Barnett and Casavant (2011) that once sex work has been legalised, a country becomes an attractive destination for human trafficking, as it has been the case in Germany. Furthermore, a police report in Germany made it clear that many African women are forced to be sex workers. The sex industry in Germany has become the source of exploitation not only of foreign women, but even German women are also victims (Dorr, n.a.).

2.9.3.2. The effectiveness of legalisation of sex in South Africa?

Political parties in South Africa have different views on the legalisation of sex work in South Africa. Donald and Nell (2016) reported in *Perdeby* (a newspaper) that the current African National Congress Women's League (ANC WL), Treasurer and Economic Development Deputy Minister Hlengiwe Mkhize said that the ANC WL supported the legalisation of sex work and they had proposed a resolution that they hoped Parliament would approve.

However, the African Christian Democratic Party (ACDP) and other parties do not support this resolution. Nigel Bougard from the Department of Social Work and Criminology at the University of Pretoria (UP) (in *Perdeby*, 2016) is of the view that if the laws against sex work are not changed, then, crimes that are committed against sex workers and the spread of sexual transmitted disease and infections on sex workers will increase which will ultimately affect the purchasers of sexual services.

2.9.4. Decriminalisation of sex work

Some scholars argue that the decriminalisation of sex work would be the best solution for South Africa for various reasons. The study *An Easy Guide to Sex Work Law Reform* by Sisonke Sex Workers Movement (SSWM), Women's Legal Centre (WLC); SWEAT and Tshwaranang Legal Advocacy Centre (TLAC) (2016) postulates that the decriminalisation of sex work will be right for South Africa because “...it is human rights focused, it is proven, it is built on a public health model (harm minimization. It also moves the relationship between sex workers and the state from a conflict-based relationship with the police (as enforcers of criminalization) to links through to a wide range of government agencies responsible for promoting welfare, guarding health and safety and protecting labour rights, all of which reinforce the fundamental rights of citizenship.”

In light of the above Mgbako *et al.* (2011) agree that the decriminalisation of sex work would be suitable for South Africa as it will not affect South Africa's laws against forced labour and the commercial sexual exploitation of children. Harcourt O'Connor, Egger, Fairley, Wand, Chen and Donovan (2010) showed that, five years after sex work had been decriminalised in NZ and parts of the city of Sydney in Australia, there was no reason to fear the increase of trafficking and other crimes such as exploitation because of decriminalisation.

The official stance of the CGE pertaining to sex work was enlightened by research conducted in NZ and parts of Sydney after sex work had been decriminalised (CGE, 2013). The Commission reveals that sex work should be treated like any other ordinary work and that it should also be governed by labour and business laws to protect the sex worker from unsafe working conditions, exploitation and unfair business practices. Decriminalisation of sex work outweighs the gains of keeping sex work illegal and views sex work as an agreement between two consenting adults (Jordan, 2005). According to Kathleen (1995) whether women engage sex work willingly or unwillingly, but it remains a form of sexual exploitation and sexual

violence. Nonetheless, decriminalising the sex industry will require regulatory measures because the industry will then use the same controls and regulations as those that govern the operation of other businesses. Abel, Fitzgerald, and Brunton (2009) decriminalising sex work the primary step in establishing environment that support improvement of health and safety of sex workers.

The decriminalisation of sex work imply sex work will be administered the same laws that control other legitimate businesses (Mossman, 2007; Jordan, 2005). In this way, pertinent tax, zoning and business laws and also occupational wellbeing and security principles will apply to sex workers and sex work foundations. Not at all like legalisation, a decriminalised framework does not have extraordinary laws pointed exclusively at sex workers or sex business related exercises. This model is employed by New Zealand (NZ), parts of Australia, the Netherlands and Germany (Ditmore, 2006). Nonetheless, radical feminist do not view sex work as employment (Oppenheimer, 2014). They view sex industry as exploitation of women in sex industry.

The purpose of non-criminalisation is quite different from that of legalisation on their prominence. Though the protection of social order is also appropriate to legalisation, the major emphasis in decriminalization is on respecting the human rights of sex workers while at the same time it better the health, safety working conditions of the sex workers. “Decriminalisation is also recognised as a way of avoiding the two-tier reality of legal and illegal operations, with the latter operating underground” (Jordan, 2005:13).

2.9.4.1. The effects of decriminalisation of sex work

South Africa is still criminalising sex work; however, the possible effects of decriminalizing sex work will be briefly explored in light of the effects some countries have experienced by applying this model.

SGJ (2014) is of the view that if sex work were to be decriminalised in South Africa, it would benefit sex workers because they would access the necessary police services for their protection. *Asijiki* Fact Sheet (2015) agrees with Sisonke, arguing that sex workers will then be able to report crimes to the police and access health services without fear of being harassed and discriminated against. Furthermore, sex workers will be able to work in any area where they feel comfortable, rather than working in less public places where they need to avoid the police and where they are exposed to danger and the probability of victimisation.

In NZ, after the decriminalisation of sex work, the Prostitution Law Reform Committee (PLRC) (2008) disclosed that sex workers were able to practice safe sex because they could negotiate for safe sex with their clients. The NYLN Youth Leader (2015) argued that even with the decriminalisation of prostitution, women and even children could still suffer from violence and physical abuse. People who are into this profession are prone to rape. The mortality of sex workers are higher as opposed people who have other jobs.

Moreover, the stigma attached to sex work and the discrimination against sex workers will be reduced (*Asijiki* Fact Sheet, 2015). Sex workers will no longer have issues with health service providers and the police. However, the researcher is of the view that even if sex work were to be decriminalized, sex workers will still face stigmatization and discrimination because the fact that sex work may be decriminalized will not mean that communities will accept sex workers and the work they do. Mossman (2007) supports this argument, by stating that even if sex work were decriminalised, it would be difficult to remove the stigma attached to sex workers.

Decriminalisation of sex work is setting sex workers free from exploitation and the abuse of brothel managers and landlords. Under this model they can choose who they consent to serve. Dudding (2014) argues that the decriminalisation of sex work provides a better balance of power so that sex workers are less vulnerable to the exploitation of the landlords, brothel owners and brothel managers and they are also able to refuse services to clients. Moreover, according to Dudding (2014), sex workers who work in brothels or who are working for agencies would at least be able to demand their rights through labour laws.

Asijiki Fact Sheet (2015) found that sexual violence decreased in NZ after the decriminalisation of sex work, chiefly because law enforcers started to acknowledge sex workers as people whom they have to protect just like any other employees and any other citizen. *Asijiki* Fact Sheet (2015) further concurs with Cunningham and Shah (2014) that decriminalisation could reduce the rate of rape among sex workers through improving the negotiating position of sex workers relative to clients. The decriminalisation of sex work would give sex workers a chance to organize and unionize to fight for their rights and to advocate for their demands and needs within the communities (*Asijiki* Fact Sheet, 2015).

An increase of participants in the sex work industry is always a matter of public concern when it comes to the decriminalisation of sex work. It has been estimated that the number of sex workers in NZ has increased post-decriminalisation; however, in 2009 Abel (2009)

admitted that their research could not confirm this but that it revealed that sex work remained stable and consistent in NZ. However, in 2010, Abel and Fitzgerald (2010) confirmed in NZ there was no increase in the number of sex workers in the sex industry after the sex industry was decriminalised.

2.9.4.2. The Effectiveness of adopting decriminalisation

Numerous organisations and some studies have suggested that the decriminalisation of sex work would be an appropriate legal model for South Africa in the attempt to control the sex work industry. For example, the *Asijiki* Fact Sheet (2015) revealed that the decriminalization model would be appropriate for South Africa as its main focus is on human rights. WHO (2012) made a call to all nations to start working on decriminalising sex work to remove all unfair regulations against sex workers. The SWEAT Position Paper on Sex Work in South Africa (2015) agrees with *Asijiki* Fact Sheet (2015) that the decriminalization of sex work is the best legislative framework for South Africa. Furthermore, the UNAIDS Advisory Group on HIV/AIDS and Sex Work recommends that countries should do away with the criminalisation of sex work in favour of the decriminalization of sex work model.

Asijiki Fact Sheet (2015) argues that the decriminalisation of sex work would work in South Africa in support of a public health model and that it will permit sex workers and police officers to establish a close relationship to fight against violence committed against sex workers. SWEAT (2015) concurs that the decriminalisation of sex work can reduce the vulnerability of sex workers to acts of violence inflicted upon them by clients and the general public. SWEAT (2015) also adds that the decriminalisation of sex work will aid in the elimination of the stigma that is attached to sex workers. Other scholars also argue that the decriminalisation of sex work may work in South Africa as it will assist sex workers in gaining dignity and respect. *Asijiki* Fact Sheet (2015) posits that acknowledging the dignity of sex workers is important for women who dominate the sex work industry. Moreover, SWEAT (2015) argues that the decriminalization of sex work will bestow respect in terms of human rights on the sex workers in South Africa.

2.10 SUMMARY

In this Chapter (Two) various terms and definition that were employed were defined to give a clear understanding of their application in the context of this study. It was clarified that the term 'sex work' was preferred over the term 'prostitution' because of the negative connotation of prostitution as a term that labels sex workers as immoral people. The legal framework of sex work in South Africa was outlined and the current legal status of sex work legislation was discussed. The application of a legal framework in a study that investigates measures to control sex work can only be successful if the reasons why women engage in sex work are discussed. Therefore, the reasons why women engage in sex work were discussed with reference to various scholars' findings. It was clear that women who engage in sex work have various reasons for engaging in this industry.

This chapter (Two) presented a discussion of the various legal models that apply to sex work internationally and their application in some countries that have employed them was elucidated. The effects these models have had after they were put into practice and their relevance to South Africa if they were to be applied in this country were also discussed. The perception of the community towards sex work was revealed to show how community members respond to sex work. The literature revealed that the legal model employed by a country and local authorities affects the perceptions of community members either negatively or positively.

CHAPTER THREE: THEORETICAL FRAMEWORK ON SEX WORK

3.1. INTRODUCTION

This chapter (Three) focuses on the theories that were employed in this research study. These theories were used to explain the legal models of sex work in South Africa as shared by the selected Masters Students (Faculty of Law and CFSD) of UKZN. The Strain Theory by Merton (1938) and the Economic Theory by Becker (1968) theories guided this study.

3.2 The Strain Theory

One theory of significance to this study was Merton's strain theory. Robert Merton adopted the theory from Emile Durkheim's theory of anomie. Glick (2005) is of the view that strain theorists perceive crime as a result of anomie and the frustration that people feel because of their incompetence to accomplish their desired dreams. According to Crossman (2016:1), the strain theory "explains deviant behaviour as an inevitable outcome of the strain an individual experiences when society does not provide adequate and approved means to achieve culturally valued goals". Merton agreed with Durkheim that deviance is a necessary part of a successful society, and he expanded on Durkheim's ideas by developing the Strain Theory.

Merton divides society into two structures, which are the cultural structure and the social structure. Crossman (2016) is of the view that in terms of the strain theory, all communities constitute cultural structure and social structure. Cultural structure deals with society's goals or dreams and what members of the society value and strive to attain. This implies that community members have desires which they try to achieve. Social structure deals with the institutionalised means by which the goals are supposed to be achieved. This structure focuses on how the goals will be attained. In a well-balanced society, these two structures are integrated so that all members know the goals established by society and have the appropriate institutional means to achieve these goals. Strain is produced in those who realise that they cannot achieve their goals through prescribed institutional means. This causes a huge frustration for sex worker because they reject the advocated means of laws, rules, values, norms and beliefs. The strain is the result of the imbalance between cultural goals and structurally available means, which leads to deviance which is often a criminal offence (Crossman, 2016).

Merton's work focused on individuals in the social structure rather than on personal characteristics. "The primary aim lies in discovering how some social structures exert a definite pressure upon certain persons in the society to engage in non-conformist conduct" (Merton, 1938:672). Merton presents that where there is an equal emphasis on both aspects, society will remain stable, but when the emphasis becomes uneven, society becomes unsettled resulting in a strain to anomie (Clubb, 2001). This theory posits that the emphasis for societal goals should be the same as that of the distributed means of attaining the goals. However, some societies put more emphasis on the goals than on the means of attaining their goals and this imbalance cause's strain within people and results in delinquent behaviour and even crime.

Merton argues that community members are motivated to endeavour to attain the cultural goal of economic success, but that social structures often limit access to this goal using socially accepted means which include tertiary education, corporate employment and family connections (Lilly, Cullen & Ball, 2011; Jang & Agnew, 2015). Crossman (2016) echoes that societies emphasize economic success more than the means of attaining this success such as through education and work. Moreover, access to legitimate means is often not equally distributed. For example race, gender, sexuality and class heavily disturb access to legitimate means of accomplishing goals. The consulted literature indicates that not only lower class people are faced with the strain, but that transgender sex workers also experience problems in obtaining legitimate work to attain their economic goal of success. For this reason, sex work becomes the solution (means) for achieving their social goals. Poverty stricken people are also burdened because of their parents' do not have sufficient money to take them tertiary institution or set them in business.

"As a consequence, lower class individuals more often than not experience strain, with this strain being a function of the disjunction between their goals and the legitimate means for achieving them" (Jang & Agnew, 2015:495). Glick (2005) articulates that people who are limited or who are deprived access to the use of legitimate means usually become anomic or alienated from society; hence, they have a greater propensity to engage in numerous types of criminal behaviours and deviancies. However, not only lower class people engage in criminal behaviour (sex work), even the middle and the upper class people engage in sex work.

This disjunction causes people to devise coping strategies beyond the norms, as they cannot attain economic success through legitimate means. According to Merton (1938) (in Jang & Agnew, 2015), people devise mechanisms to cope with strain that sometimes encompass crime. Merton (1963) also alludes that people may attempt to achieve societal goals that are mostly focused on monetary success through illegitimate means such as drug dealing, prostitution (sex work), and theft. Merton (1963) notes that most strained individuals live with their strain through acts of crime. Various factors influence the likelihood of coping through criminal behaviour, such as the extent to which individuals are socialized to condemn crime. Nonetheless, whatever might have happened for the not to be able to achieved the goals, criminal acts have never been applaud solutions. Once there is crime

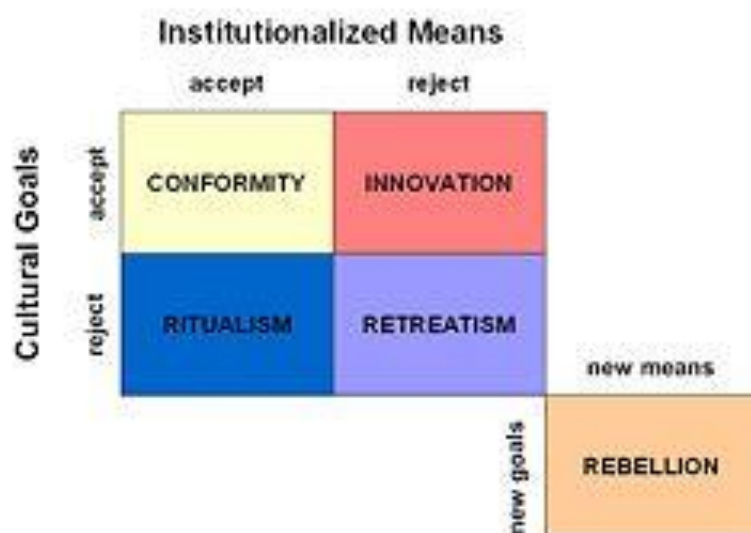
In this regard, sex industry becomes an attempt (means) for women to achieve the institutional goals. Women opt for sex work than theft, hijacking and drug dealing because of their femininity. However, this does not mean there are no women involving in other crimes (violent crimes) but they are more in sex work, as sex work is easy to access for them (Oppenheimer, 2014). Parsons (19640) and Sutherland & Cressey, (1924) revealed that boys internalised masculinity at young ages are and taught to be rough and tough which led them to more delinquent and violent behaviour than girls. Not all the women who are in sex industry are there on their choice; therefore, these are the important aspect to be considered before deciding on the legal models of governing sex work in South Africa.

The consulted literature indicates that the majority of the people who engage in sex work have the responsibility to take care of their families. The SALRC (2009) reveals that people under strain also have to take care of their children, parents and their siblings. They are generally from poor families and their parents could not afford to send them to school so they view sex work as their last hope. Nonetheless, there are other means of supporting the family that can be devised without being in conflict with the law, because sex work as things stand is a criminal offence.

Merton (1938) proposes five adaptations that could occur when people are not in a position to legitimately attain internalised social goals. These adaptations are conformity, retreatism, ritualism, innovation, and rebellion. According to Glick (2005), Merton argues that four of these adaptations entail criminal or deviant behaviour when the institutional means are blocked. Three of Merton's adaptations will be discussed to show that not everyone in society has the means of attaining their goals and to explain sex work. The adaptations that will be

discussed are innovation, retreatism and rebellion because they are explaining criminal behaviour (sex work) within communities; while the other two do not explain sex work.

Robert K. Merton's Deviance Typology



Source: Merton (1938)

3.2.1 Innovation

Innovators accept the goals of society but reject the means to attain these goals (Akers & Sellers, 2013). People in this adaptation adopt the goals of society, but the means that they employ to attain them are illegitimate, which means that 'normal' society rejects them. Lilly Cullen & Ball (2011) state that this adaptation materialises mostly among people of the lower class who cannot afford socially approved means of attaining their goals. Faced with the "absence of realistic opportunities for advancement", the disadvantaged are especially vulnerable to the promises of power and high income from organised vice racket and crime (Merton, 1968 as cited by Lilly *et al.*, 2011). The literature reveals that the majority of women who are engaged in the sex industry are from the lower class whose parents did not have the means to get them a proper education so that they will be able to attain economic success through socially accepted means. Decriminalisation or legalisation of sex work would enable the women from the lower class to attain the goals and sex work industry would not be further regarded as illegal means of achieving the goals. They reject the means because they were not given equal opportunities to the means of attaining the goals, and take sex work as their option.

Nonetheless, there are always other means to survive without engaging in criminal activities. Unequal distribution of means cannot be used as a justification to decriminalise sex work because within the same communities, there are people who are having the same social status like the sex workers but never decided to engage in any form of criminal behaviour. There are government initiative to support people from the lower class (poor background) like not paying school fees and when they get to University there are government loans are paid when the student is working and there are also bursaries.

3.2.2 Retreatism

Another adaptation that applied to this study is retreatism. Retreatists reject both goals and the means of achieving these goals (Featherstone & Deflem, 2003). According to Merton (1968), these people exist in society but do not conform to the goals and the means of accomplishing these goals. Some women who are retreatists escape society's requirements through various deviant means like prostitution. Thumboo (2003) revealed that members of the community have labeled prostitutes as disgusting and pathetic. This already excludes the sex workers from the community, because they know how the community feels about them and their actions (sex work). Street sex workers are good example retreatists; these sex workers are rendering sexual services on the streets at cheap price. They have no intentions of generating economic wealth through sex work, rather they are engaging in sex work to survive. Adopting decriminalisation or legalisation would help sex worker from the stigma of the community, and be (sex workers) regarded as employees and any other members of the community. The community member's voice reveal that sex work is not accepted in their communities and therefore it should remain illegal as a criminal offence.

3.2.3 Rebellion

Another deviant alternative is the relatively uncommon adaptation referred to as rebellion. This adaptation is the rejection and active substitution of both the goals and the means of achieving the goals (Lilly et al., 2011). This means that rebellious citizens do not just reject the system, but also wish to change it. They propose to substitute the goals and means with a new set of goals and the means to achieve them (Featherstone & Deflem, 2003). According to CGE (2013), criminalisation of sex work has caused the prostitutes to be in conflict with law and therefore they suggest decriminalisation of sex work. The fact that sex work is criminalised, for women to be a sex workers they have to reject the norms, and values of the

society as well as institutionalised means and be a sex worker. *Asijiki* Fact Sheet (2015), CGE (2013), & SWEAT (2015), revealed that decriminalisation of sex work would change the way general public view sex workers. Furthermore, that would eventually change the way sex workers view societal means and goals. The sex workers are supporting decriminalisation of sex work (*Asijiki* Fact Sheet, 2015; CGE, 2013), which means they rejected the goals and means set by the society and are now advocating for substituting and changing the systems that are governing sex work in South Africa. Be that as it may, sex work is still a criminal offense in South Africa, some organisation, scholars and sex worker are advocating for the change of legal systems for sex work. The changing of system governing sex work would affect the country either positively or negatively. These are the current debates taking on in South Africa about the suitable legal model of controlling sex work. Hence, this study gave an opportunity the selected participants to engage in discussing their perceptions on the legal models of controlling sex work.

3.3 Economic Theory

The work and the ideas of Becker (1967) can be traced back to the earlier writers Cesare Beccaria in 1767 and Jeremy Bentham in 1789 (Shepherd & Rubin, 2006). Even though these early scholars were not economists, they developed numerous concepts that were later associated with the economic theory of criminal behaviour.

Economic Theory was used to explain crimes, actions and behaviours that calculate the gain and benefits that will be accrued from participating in a particular task (Lutya & Lanier, 2012; Witt & Witt, 2000). Sex work is a criminal act in South Africa that is punishable by law, so women who are sex workers get their benefits, (which are usually monetary) as they are without paying tax. Becker's (1967) economic theory suggests that criminal actions are chosen and preferred when the benefits envisaged from committing a crime surpass the costs, including the expense of any legal alternatives. Robson (2014) states that the price that criminals face is determined by the penalty they expect. The likelihood of being punished is one of Becker's pioneering thoughtful perceptions. Shepherd and Rubin (2006) suggest that the gains and losses involved in the economic model are usually meant to represent all forms of benefits and costs that have an effect on people's decisions. Vold and Bernard (1986) agree with Becker (1967) in indicating that this theory is based on the assumption that people choose to commit crime. This theory suggests that people take decisions in consideration of the gains and losses associated with a particular activity.

In this study, this theory was used to refer to the practice where sex workers decide to engage in sex work for economic reasons or personal gain after having calculated the benefits of sex work in relation to the losses they may experience.

Economists see criminal activities as being similar to paid employment in that such activities require time and produce income (Witte & Witt, 2000). People commit criminal offences according to a gain and loss analysis. Committing crime is not a coincident, people evaluate before engaging in a criminal action. In the reviewed literature, sex workers have revealed that they were working (employed) in legally accepted employment before joining sex work. They said they left because the money they were earning was too petty to cover their needs. This means they calculated and evaluated before being sex workers, hence the punishment for sex workers has to be harsher.

According to Rhode (2010), there is inconsistency with the interpretation of Sec 20(1)(aA) of the Constitution of Republic of South Africa Act (Act No. 108 of 1996), which makes it difficult to prosecute sex workers as there are various interpretations of the Sec which criminalises sex work in South Africa. Moreover, if sex work industry were generating income for people to survive with no victimisation and harm, the decriminalisation or legalisation models of governing sex work would be appropriate.

In South Africa, sex work is in essence an economic crime, as women become sex workers because of economic reasons. Economics have been understood to play a key role in the entry to the sex industry and in explanations of reasons for continuing in this industry (O'Neill & Campbell, 2006; Willman-Navarro, 2006). Even though economics are believed to be the driving factors to sex work, sex work remains a criminal offence and should be punished by law. There other forms of generating money without engaging in any criminal activity that women can devise without committing crime.

The types of gains achieved for criminal activity fluctuate according to the type and nature of the crimes that are committed (Shepherd & Rubin, 2006). Some benefits are financial rewards, drugs, gifts that are gained from robbery, sex work, insurance fraud and drug dealing. The literature suggests that women get into sex work for numerous reasons, one of which is economic reward. When people live in poverty, welfare benefits are too low to meet their needs and the ever-increasing costs of living, especially for single parents and child-headed households, make life one hard battle (Brants & Sanders, 2010). Unemployment is referred to in criminometric studies as a lack of legal income opportunities and thus

unemployment makes crime the alluring alternative to living in poverty (Eide, 1999). This suggests that people decide which crimes they choose to commit to generate more income for a living. Women engage more in sex work than any other crimes because of femininity, boys are taught and trained to be tough during their socialization (early young age) (Sutherland and Cressey, 1924; Parsons, 1964). Each legal model has got effect within the community, the women in sex work industry are complaining of victimisation by their clients and the general public and therefore want sex work to be decriminalised. On the other hand communities are against sex work as they label it to be immoral and disgusting and they say its should remain criminalised.

Scholars reveal that sex work is an economic crime, because women engage in sex industry for benefits. Economists suggest that women make a choice to join sex work for their own reasons. However, no matter what are their reasons to be sex workers, does not change that sex work is a criminal offense and they should be punished. Women have got the various choices and various ways of generating income, they could go to school and choose career option that will generate them money.

3.4 SUMMARY

This chapter (Three) focused on the theories that this study employed. The theoretical framework on sex work were applied with a view to framing this study within the existing body of knowledge of the sex work industry. The selected theories (the Strain and Economic Theories) underpinned the findings and were of great importance as they illuminated the sex work phenomenon and formed the foundation from which the data could be analysed and explained (see Chapter Five of this study).

CHAPTER FOUR: RESEARCH DESIGN AND METHODOLOGY

4.1. INTRODUCTION

This Chapter (Four) focuses on the research design and methodology as adopted by the researcher in this study to assist the researcher in achieving the aim, objectives, research question of this study on the subject of decriminalisation of sex work in South Africa. This Chapter (Four) seeks to summarize how the data was collected. What sampling techniques were used? And how the data was collected and which analysis techniques were used. A description of the location of the study, the study population and sample, and the methods of data collection and analysis were presented in this Chapter (Four).

4.2. STUDY NATURE

This study adopted qualitative research approach of acquiring and analysing the collected data. The qualitative research is intended to uncover a target audience's scope of insights that drive it with reference to particular points or issues. This approach endeavors to develop or deepen our understanding of how and why is the social world we live in the way it is (Hancock, Ockleford & Windridge, 2007). This approach employs a flexible, emergent but systematic research process. Royse (1999) alleges that qualitative research allows field researchers to know what to ask and can change the style of questioning depending on the selected participants. It is therefore a naturalistic research approach. Qualitative research "involves an interpretive, natural approach to the subject matter that it attempts to make sense of, or to interpret phenomena in terms of the meaning people bring to them" (Denzin & Lincoln, 2003:15). This approach permits the principal investigator to interpret the findings of the study based on the reaction and the voices of the selected participants and as a result, it provides the researcher with advance knowledge of the populations world view on the subject matter. This makes research easier, especially in under-researched areas (Creswell, 2003).

Qualitative research approach employs different data collection methods; this study made use of semi-structured interviews and two focus group discussions to acquire information from the Masters students (Faculty of Law and CFSD) selected at the University of KwaZulu-Natal (Howard College Campus). The findings of this study were discussed in-depth in Chapter Five.

This study-elicited information from Twenty (20) participants with the use of In-Depth Interviews (IDI) and two Focus Group Discussions (FGDs). A small sample was used and therefore the findings of the study cannot be generalized to the larger population. However, it is envisaged that these results can be transferred to other locations facing similar problem under investigation.

4.3 LOCATION OF THE STUDY

By the time of conducting this study, UKZN was the biggest research-focused University in South Africa amongst others. The unification amongst the University of Durban-Westville and the University of Natal resulted in the formation of UKZN which took place in 2004. UKZN has five campuses: Pietermaritzburg, Westville, Edgewood, Medical School, and Howard College campuses; with the number of students estimated at 43,000 in total. With this total of 43,000 students, approximately 20% of the students were pursuing their postgraduate studies. This amalgamated institution has the following four colleges, namely: the College of Agriculture, Engineering and Science; the College of Health Sciences; the College of Humanities; and the College of Law and Management Studies. The top-management team of the University is formed by the two University-wide Deputy Vice-Chancellors of Research and of Teaching and Learning.

This study was confined to UKZN, Howard College Campus that is located in the South-Western part of Durban Central, which is known as Ward 101 under the *eThekwin*i Municipality, Durban Metropolitan. The position of the Howard College campus is on the Berea with remarkable view of the Durban harbour. This Campus was opened in 1931 after bighearted donation by Mr Thomas Benjamin Davis whose son was, Howard Davis, who was killed at the time of Battle of the Somme in World War I (UKZN, 2015). The campus is located in a successful environment conservancy and lush gardens of the University reflect a commitment to indigenous flora and Fauna. “Currently the Howard College campus offers degree options in the fields of Engineering, Law, Humanities (including Music) and Social Sciences (including Social Work), Nursing, and Architecture (UKZN, 2015).

This Campus has large, impressive and foreign buildings. The Howard College Campus is featured as fragment of a tour of the town conducted by local tourist companies because of its impressiveness. It is comparatively private and when the students and staff leave in the evening it becomes very quiet. Most of the students (notably the white and Indian ones) live

in the Durban area and commute to and from Howard College Campus every day (Pattman, 2007). There are residences nearby the campus and majority of the students in the residences are black African and quite few students from the United State (US) and other countries who are on exchange visits. This is in contrast to the general area in which Howard College Campus is located which is predominantly white with relatively expensive houses and flats, and road names like King George V, Queen Elizabeth II, and Elizabeth Bowes Lyon, which all celebrate the British monarchy. Pattman (2007) added that regardless of the fact that Howard College had bigger numbers of Indian and African Students who attended it but it was built as a white institution. African and Indian students who were interviewed took courses that had recently been transferred to Howard College Campus from Westville Campus because of the merger. “They characterised Howard College Campus as ‘less friendly’ than Westville, attributing this to it being ‘white’, and spoke about the large imposing buildings on the Howard College site (compared with the much more functional looking buildings at Westville) not in a positive sense but as reinforcing their sense of Otherness as black African and Indian students” (Pattman, 2007).

4.4. SAMPLING TECHNIQUES AND PROCEDURES

Sampling is the process of selecting units from a population of interest so that by studying the sample we may fairly generalize our results back to the population from which they were chosen (Trochim, 2006; Venter & Strydom, 2002). Sampling is important as it helps in making generalizations about particular populations irrespective of their size. Using a sample is advantageous as it helps the researcher to save time, and it is cost effective in money and effort in producing an accurate study. Mkhize, Gopal, Collings, (2012) feels that the larger the population, the more difficult it is to analyze the data, hence it makes sense to use a sample as it enables the researcher to utilize resources better. The study involved 20 participants and the data were collected by means of a non-probability sampling method. The students who participated in this study were from two schools, namely the School of Applied Human Science and the School of Law. The participants were all studying towards their Master’s Degrees in the Faculty of Law and CFSD, comprised males and females of various race groups (African, Indian and White). The participants were selected using the purposive or judgmental sampling technique with the help of administrators. The purposive sampling technique, which is also known as judgment sampling, is the deliberate choice of a participant due to the qualities the participant possesses that will contribute meaningfully to the study

(Tongco, 2007). The purposive sampling technique is used in special situations where it is appropriate to utilise the judgment of the researcher or expert to select the sample (Neuman, 2000). There are various circumstances where the researcher could deliberately use purposive sampling, for example when the researcher settles on what needs to be known and sets out to find participants who can and are eager to provide the information by virtue of their knowledge and experience (Tongco, 2007). The other circumstance would be when the information the subject can provide is relevant to the study (Mkhize *et al.*, 2012).

4.4.1. The selected participants characteristics of the participants

This study was conducted with the participation of a sample size of 20 participants comprising Black, Indian and White; males and females. The African participants represented both *IsiZulu* and *IsiXhosa* speaking students. All the participants taking part in this study were above the age of 21 years. This study consisted of Ten (10) CFSD students who were doing their Master's Degree and Ten (10) students from the Faculty of Law who were enrolling for their Master's Degree. All the participants were registered students of the UKZN, Howard College Campus. The gender division was eight (8) male and twelve (12) female students.

Based on the legal framework that underpinned this study, it was therefore deemed appropriate to seek and to explore and describe the perceptions of Masters students in the Faculty of Law and Criminology and Forensic Studies disciplines on the decriminalisation of sex work in South Africa. The participants were selected because of their academic level, even though it does not guarantee their knowledge specifically of the phenomenon but the legality of sex work as crime. The Faculty of Law students might represent sex workers in court in the future; they might be involved in legal arguments about sex work, or might be the member of SALRC so their engagement in such discussions is important. While, Criminology and Forensic Discipline student might develop policies for sex work industry.

4.5 RESEARCH INSTRUMENTS

This study employed two research instruments, namely: IDI and FGDs. The FGDs allowed the participants to provide more in-depth perceptions, opinions and detailed information about their insights into the world of sex work industry in South Africa and the way this industry is controlled, with specific reference to their academic teaching and learning in the

Faculty of Law and CFSD as well as their views as members of the community. The interviews were all semi-structured and the researcher used open-ended questions to permit the participants to lead the interviews.

4.5.1 Administration of the interview schedule

Interviews are conversations between two or more people. Such interviews are planned with a purpose, which should begin with some willingness of the interviewee to participate in a conversation in which one is asking questions and the other is answering the questions on a specified topic or theme (Bingham & Moore, 1931; Mkhize et al., 2012). The reliability or unreliability of the findings based on an interview may be due to the interviewer, the interviewee or their relation (Bingham & Moore, 1931). As a data gathering tool, Carpecken (1996) (in Mkhize, 2012:68) advocates that interviews should take the opportunity to:

- Generate content about an event from an insider perspective;
- Check the honesty, the certainty and the exact meaning of the subject's reply in a face-to-face interview;
- Access a person's definitions and understandings of concepts and processes that are of interest to the researcher;
- Analyze both verbal and non-verbal responses;
- Give immediate clarity if the interviewee was uncertain in his or her reply;
- Ask follow-up questions to provide detailed and/or more specific answers; and
- Tap into beliefs, values, worldviews and the like on the part of the interviewee.

In this study, interviews were conducted with male and female participating students of UKZN, Howard College during September 2016. To obtain rich information from the perceptions of the selected participants on the decriminalisation of sex work in South Africa, semi-structured interviews were employed by the researcher. The rationale behind the use of semi-structured interview was to elicit in-depth responses from the selected participants without disrupting and intimidating them with various other formal procedures.

The purpose of conducting these interviews was to comprehend the views of appropriately advanced students in Faculty of Law and CFSD to determine their interpretation of the phenomenon of sex work in South Africa and the meaning they attached to the terms and

concepts associated with sex work and sex workers. The interviews were conducted by the researcher.

The Interview Schedule Guide (see attached Appendix Four) was written in English. There was no need for the translation of the schedule into other languages as the participants were academically advanced and their academic language of communication was English. However, those who wanted to code switch to *IsiZulu* were allowed to add information in or to code switch to *isiZulu*, as this was a language in which many were comfortable. This ensured that the participants contributed rich information and expressed their attitudes, understanding, views and experiences frankly and openly. Code switching also proved to be very effective as it allowed the researcher to better access the participant's perceptions on sex industry and its effect in their respective communities.

The researcher communicated the time for the participation with the participants prior to the interviews. This guaranteed to some extent that the interviews were scheduled at a convenient time for the participants. A venue for the interviews was booked. This venue was a boardroom which was comfortable and accessible and where the participants were made to feel at ease. Furthermore, the safety of the participants was guaranteed in the interview venue and the environment was conducive for open and frank interviews as it was non-threatening.

4.5.2 Focus Group Discussions

According to Payne and Payne (2009:103), "FGDs are a special type of discussion with a narrowly focused topic discussed by group members of equal status who do not know one another". Powell and Single, (1996:499) define a FGDs as a "group of individuals selected and assembled by researchers to discuss and comment on, from personal experience, the topic that is the subject of the research." FGDs take place in the presence of the researcher who serves as a facilitator to keep the discussion focused on a specific targeted topic. Through the use of FGDs, the researcher's goal is to get closer to participants' understanding of the topic the researcher is investigating (Hammersley & Atkinson, 2007). FGDs provide participants space to raise issues and allow a variety of responses and openness on views that will not be reviewed in any other way (Fraser, 2004). The selection of participants for FGD is done either randomly to ensure representation of segments of a society, or non-randomly in order to elicit specific data (Morgan, 1997; Breakwell, Hammond, Fife-Schaw and Smith, 2006).

Denzin and Lincoln (1994), Gibbs (1997), Mkhize *et al.*, (2012) and Villard (2003) identify common uses of the FGD, which include the following:

- Obtaining several perspectives about the same topic;
- Invigorating new ideas and creative concepts;
- Diagnosing the potential for problems with a new programme, service or product;
- Generating impressions of products, programs, services, institutions, or other objects of interest;
- Learning how respondents talk about the phenomenon of interest which may facilitate quantitative research tools.

In general, FGDs comprise between 6 to 12 participants. However, Merton, Fiske and Kendall (1990) (in Mkhize *et al.*, 2012:70) suggest that "the size of the group should manifestly be governed by two considerations: it should not be so large (not above 12) as to be unwieldy or to preclude adequate participation by most members, nor should it be so small (below 4) that it fails to provide substantially greater coverage than that of an interview with one individual". In this study at hand, each FGD involved five participants. This study made use of two distinct FGDs; one entailed CFSD Masters students (both males and females) and the other comprised of Masters students from the Faculty of Law (also males and females). When participants that are selected for a study have no problem sharing their perceptions on a particular subject, then a small group of people is preferred (Gibbs, 1997). Mkhize *et al.*, (2012) concurs with Gibbs (1997), adding that a small group of people is more easily manageable compared to large group, more especially when a topic that requires in-depth views is addressed.

Many scholars concur that one FGD may not be sufficient as the researcher has to learn and observe the reactions and perceptions of the group in a limited space of time (Gibbs, 1997; Burgess, 1996; Merton, Fiske & Kendall, 1990). According to Gibbs (1997), some studies meet the same group numerous times. Therefore, two FGDs were conducted purposively with 10 selected participants (5 participants in each FGD). The questions asked in the FGD were open-ended with the intention of affording the participants the opportunity to tackle the questions from a wide range of dimensions.

Powell and Single (1996) suggest that neutral venues for the focus group discussion can be useful for avoiding any undesirable or positive association with a particular site or building. Gibbs (1997) is of the view that FGDs can be held in different venues such as people's home,

in rented facilities, and in venues where people usually have their meetings. The focus group discussions for this study at hand were conducted in a boardroom at UKZN, Howard College as it was more neutral for both groups. Furthermore, the safety of the participants was guaranteed in the selected venue and the environment was conducive for free and open discussions as it was non-threatening and familiar to the participants.

4.5.3 Conducting Focus Group Discussion

For FGDs to be fruitful and informative, a good relationship among the participants is required. It is therefore paramount for the researcher to achieve rapport with the participants. Stewart and Shamdasani (1990) provides that it is a good idea to have group members introduce themselves and tell a little about themselves. This procedure assists to break the ice'. Mkhize *et al.*, (2012) suggests that the preferred way of making introductions in a focus group discussion entails welcoming the participants, over viewing the topic, and grounding rules. The researcher made use of this method in this study as it encouraged participation from the respondents. After they had introduced themselves, they felt as if they now knew one another.

4.6 DATA COLLECTION

The IDI and FGD were recorded with the use of a voice recorder, this is important because recordings facilitate accurate summaries of discussions. In this manner all the responses captured during the interview as well as the comments by the researcher are saved for reference (Kalpesh, 2013). Furthermore, recordings can be used for transcription of the responses, which is essential for including relevant quotes by the respondents in the project report. However, one drawback is that a recorder can pick up background noises and can fail to function properly (Mkhize *et al.*, 2012; Kalpesh, 2013). Mkhize *et al.*, (2012) urges that audio equipment and microphones must be tested before the interview or FGD commence and this instrument should be made visible to the selected participants. It is quite clear that double checking the recorder, checking that the batteries are fully functioning, and checking whether the disc has enough space on it prior to an interview are important.

The principal of this study who functioned as the moderator of the conducted IDI and FGDs encouraged the participants to speak one at a time to avoid perverting the voice recording. These participants ought to indicate themselves by raising a hand before they can speak in a

recorded procedures (Howe & Lewis, 1993; Mkhize *et al.*, 2012). This study collected data by employing this method; however, regardless of having been told that they should speak one at a time, the participants at times forgot and spoke contemporaneously.

4.7 DATA ANALYSIS

Thematic analysis was used to analyse the collected data. This refers a process of analysing data using themes that emerge from the data (King, 2003). It is a method used for “identifying, analysing, and reporting patterns or themes within the data” (Braun & Clarke, 2006). It does so by “minimally organizing and describing the data set in rich detail and may go as far as interpreting various aspects of the research topic” (Boyatzis, 1998, in Braun & Clarke, 2006:79). Various scholars such as Braun and Clarke (2006) are of the view that thematic analysis is an important method of analysing qualitative data.

In this study, the qualitative data were transcribed and analysed using the themes that emerged from the data. For example, one theme was the reasons for entry into sex work and the various answers to this theme were listed. Subsequently, all data that related to the already classified patterns were identified. The classified patterns were then clarified and all the discussion that fitted under a particular pattern recognized and set with corresponding pattern. The following step was to consolidate and catalogue the patterns into sub-themes. The themes stemming from the selected participant’s responses were later pieced together to form a complete picture of their collective experiences. The researcher continuously referred to the literature to link it with the findings of this study.

4.8 ETHICAL CONSIDERATIONS

Ethical issues pertaining to this study were taken into consideration before the commencement of this study. The applied ethical considerations of this study are discussed in the proceeding paragraphs.

4.8.1. The considerations of ethical principles in conducting research

Ethical issues are considered to be issues of decision making concerning what is right or wrong (Fouka & Mantzorou, 2011). Mkhize (2012) concurs that ethical issues are related to issues of rightness and justifiability, particularly if they concern relations with or consequences for others. The researcher should be able to act responsibly at all times. The

researcher should also be able to interact with other people using an approach that will not exploit or bring harm to others. This encompasses respect for self and others, due consideration for social justice, and adherence to human rights and norms. Where conflict arises between different traditions, norms and values, the researcher should strive to balance these. These conflicts are natural in ethical considerations; therefore, instead of viewing them as a restriction, the researcher ought to handle such conflicts as they direct the researcher towards a search for some resolution in the research process (Sanjari, Bahramnezhad, Fomani, Shoghi & Cheraghi, 2014).

In this study, ethical matters needed to be taken into account as the study involved students who might have been directly or indirectly involved with the sensitive topic at hand. The researcher received permission from the Registrar of UKZN to proceed with the study. Moreover, each participant signed an informed consent form before the focus group discussions and the interviews started. Most importantly, it was arranged that a counselor be available should any participant experience trauma during the interviews or the focus group discussions.

4.8.2 Procedures followed in this study

The most important step in planning any academic research is to obtain access to the study site and participants (Mkhize *et al.*, 2012; Simons & Usher, 2000). Obtaining access was not a challenge because the researcher was a registered student of the university at the time of the study. To obtain access, an email was sent to the Registrar explaining what the research would entail, how it was going to be conducted, and offering assurance that the safety of the participants would be ensured. The researcher also explained the sampling strategy and requested for permission to conduct the study. The Registrar granted permission for the study to proceed with no restrictions.

The selected participants of this study voluntarily took part, after the study aim, objectives and research questions in relation to the subject under investigation were explained to them. The consent letter was read and signed and the declaration form was completed. The FGDs and the semi-structured interviews were conducted at the University from the middle of September 2016 to the middle of October 2016. The FGDs and the IDIs were conducted in English as all the participants were proficient in this language. However, in the individual interviews some of the participants used *IsiZulu* to emphasise certain points which were

translated into English. During the FGDs, the participants used English only as there were people from other ethnic groups who did not understand IsiZulu.

4.8.3. Responsiveness to the study participants

According to Simons and Usher (2000), responsiveness refers to relationship between the researcher and the study participants.

The researcher's role, as well as, the selected study participants, allowed the former to deal with various sidelined and sensitive issues that are generally not taken into consideration or regarded as serious by other academics in this study.

4.8.4 Informed consent

Escobedo, Guerrero, Lujan, Ramirez and Serrano (2007) advise that informed consent is a very important step in any research project. Informed consent is when a participant consents to partake in a research project after having been informed about the procedures, potential risks, and benefits that may impact participation in conducted study (Shahnazarian, 2013; Escobedo *et al.*, 2007). It is therefore important to ensure that the participants are fully aware of what the study is about, the nature of the data collection method that will be employed, and the intended outcomes of the research project.

Informed consent needs to be obtained for all types of human subjects involved prior conducting a study, including social, behavioural and interventional studies and for research done domestically or abroad (Simons & Usher, 2000; Escobedo, 2007; Shahnazarian, 2013). The purpose of informed consent is to provide adequate information so that the participants will be able to make an informed decision whether or not to partake in the research project or to continue participating (Shahnazarian, 2013). Furthermore, the participants should be made aware of their right to withdraw any time if they want to and the participants must participate without any coercion. Many misunderstandings can occur between the researcher and the participants that may be caused by some barriers. Such barriers may be related to gender identity issues, and cultural aspects such as language differences and religious dogma. Most importantly, the process of informed consent was designed to protect and respect the participants.

All the selected participants in this study were informed about the purpose of the study. The data collection procedure was introduced to the participants to familiarize them with it. This included notifying them of the tools and instruments to be used in the data collection process. The participants were given the opportunity to voice their concerns and to ask questions. They were informed of their rights with regards to the process to be followed in this study and the researcher assured them of their confidentiality and anonymity in the data collection process as well as in the analysis and reporting of the findings of the study. They were assured that their contribution would not be disclosed or discussed with anyone without their authorization. Additionally, they were assured that they would not be identified by anyone as they would be allocated pseudonyms and that all recordings would be stored securely where no one could access them. The participants were also encouraged to be transparent about withdrawing their participation if they did not feel comfortable to continue with the study for any reason and that they would not suffer any consequences for withdrawing. It was emphasized that their participation in this study was voluntary so they should feel free to express their concern if they did not feel comfortable.

4.9. CREDIBILITY AND TRANSFERABILITY

Triangulation is a process of verification that increases validity by incorporating several viewpoints and methods (Yeasmin & Rahman, 2012). In the social sciences research, it refers to the combination of two or more theories, data sources, methods or investigators in one study of a single phenomenon to converge on a single construct, and can be employed in both quantitative (validation) and qualitative (inquiry) studies (Olsen, 2004; Yeasmin & Rahman, 2012). This study have employed two type of data collection methods namely: In Depth Interviews (IDI) and Focus Group Discussions (FGD). Hammersley and Atkinson (2007), confirms that the use of multi data collection methods raise reliability and confidence in the study.

The credibility criteria involves establishing that the results of qualitative research are credible or believable from the perspective of the participant in the research (Trochim, 2006). Since from this perspective, the purpose of qualitative research is to describe or understand the phenomena of interest from the participant's eyes, the participants are the only ones who can legitimately judge the credibility of the results.

Transferability refers to the degree to which the results of qualitative research can be generalized or transferred to other contexts or settings (Trochim, 2006). From a qualitative perspective transferability is primarily the responsibility of the one doing the generalizing. The qualitative researcher can enhance transferability by doing a thorough job of describing the research context and the assumptions that were central to the research. The person who wishes to "transfer" the results to a different context is then responsible for making the judgment of how sensible the transfer is.

4.10. STUDY LIMITATIONS

There were limitations and obvious challenges that influenced this study, but these were vigilantly monitored so as not to compromise the validity and reliability of the study.

4.10.1. Sensitivity of the subject under investigation

Initially the researcher wanted to interview sex workers but the issue was that it was going to be very difficult to be granted permission to interview sex workers. This topic is very sensitive, especially when dealing with sex workers who are a vulnerable group of people. The researcher was particularly cautious after being informed that sex workers were antagonistic to people who did not want to buy their services but who questioned them about their activities.

4.10.2. Student strike (Fees Must Fall)

The research project was delayed by the 'student fees must fall' protests during which the Law Library was set alight. Some students were not able to come to campus as they felt that their safety was compromised due to the violent protests on campus. Consequently, the researcher had to wait until the strike was over in order to ensure the safety of the participants.

4.10.3. The conceptualization and perceptions of selected participants on sex work in South Africa

The fact that the participants were not sex workers, were not directly affected by sex work, had no family member who was a sex worker, and came from communities where sex work was uncommon resulted in the fact that some questions could not be clearly answered. Because very few participants had been exposed to sex workers thus limited the knowledge

of what sex workers experienced in their daily lives. The answers were thus gained from what had been learnt from articles, journals, the news, and newspapers.

4.10.4. The generalization of study findings

The size of the sample of this study consisted of 20 participants and the findings of this sample cannot be generalised to a larger population as there were not representative of the communities and developing academics of this Country on how sex work should be governed. However, the findings of this study can be transferred to any setting across South Africa facing similar study problem.

4.10.5. Tight schedule of selected study participants

After abandoning this idea, it was very difficult to get hold of Faculty of Law and CFSD Masters students to participate in this study, as many of them had very tight schedules. Moreover, the students had been in protest so many were still trying to recover from the time lost.

4.11. SUMMARY

This Chapter (Four) presented a detailed deliberation of the research design and methodology as employed in this study. It also depicted the rationale for using a qualitative method of acquiring data. This Chapter (Four) was concluded by highlighting the ethical issues and the challenges that were faced as well as the encountered study limitations of the study in this study.

CHAPTER FIVE: DATA PRESENTATION, ANALYSIS AND DISCUSSION

5.1 INTRODUCTION

In this Chapter (Five) the collected data are presented and the findings are analysed and discussed. Data were collected to ascertain the perceptions of Master's Degree students (Faculty of Law & CFSD) on the decriminalisation of sex work in South Africa. The data were obtained by means of semi-structured individual interviews and two focus group discussions. During the transcription of the individual interviews and the focus group discussions, key points that emerged from the perceptions of the participants were identified. All the data that related to the already identified patterns of perceptions and experiences were then classified. The identified patterns were grouped according to the specific patterns and themes that emerged. Subsequently, the related patterns were combined and classified into sub-themes. The themes that emerged from the participants' perceptions and stories were then pieced together to form a comprehensive picture of their understanding of the sex work phenomenon. The researcher constantly reflected on the literature in order to link it with the findings. The names used in the discussion are not the real names of the participants.

5.2 Background Information of the Participants

Table 5.1: Biographical Data of In-Depth Interview Participants: Criminology and Forensic Studies Discipline Students

Participants	Age	Education level	Race	Gender
Participant 1	49	Masters	African	Male
Participant 2	22	Masters	White	Female
Participant 3	25	Masters	African	Female
Participant 4	23	Masters	African	Male
Participant 5	22	Masters	Indian	Female

Researcher's illustration (2016)

Table 5.2: Biographical Data of Focus Group Participants: Criminology and Forensic Studies Discipline Students

Participants	Age	Education Level	Race	Sex
Participant 1	23	Masters	African	Female
Participant 2	24	Masters	African	Male
Participant 3	25	Masters	Indian	Female
Participant 4	26	Masters	African	Male
Participant 5	23	Masters	African	Female

Researcher's illustration (2016)

Table 5.3: Biographical Data of In-Depth Interview Participants: Faculty of Law Students

Participants	Age	Education Level	Race	Sex
Participant 1	26	Masters	African	Male
Participant 2	24	Masters	African	Female
Participant 3	26	Masters	African	Male
Participant 4	24	Masters	African	Female
Participant 5	25	Masters	African	Male

Researcher's illustration (2016)

Table 5.4: Biographical Data of Focus Group Participants: Faculty of Law Students

Participants	Age	Education Level	Race	Sex
Participant 1	23	Masters	Indian	Female
Participant 2	26	Masters	African	Male
Participant 3	24	Masters	African	Female
Participant 4	24	Masters	Indian	Female
Participant 5	25	Masters	African	Female

Researcher's illustration (2016)

For the sake of authenticity, the participants' comments are presented in verbatim. Any linguistic inaccuracies therefore remained unedited.

5.3. The distinction Between Prostitution and sex work

The findings of this study showed that the two terms (prostitution and sex work) were understood interchangeably by the selected participants. Even though the researcher opted to use the term ‘sex worker’ and sex work during the IDI and FGD, the terms ‘prostitutes’ and ‘prostitution’ were consistently used by the selected participants. Participants of this study understand sex work as the same as prostitution. For example, Ashly said the following in verbatim:

“Ehm, sex work is commonly known as prostitution, but it’s basically just getting or engaging in any form of sexual intercourse with a member of the public for money... eh... but it’s not a profession. I am going to say it’s a profession that you don’t study for or qualify for; [they are] not registered with any agents, [it is] non-taxable, it’s a private form of work.”

The participants show their understanding about the terms as having the same meaning. The latter participant shows that even though the researcher has opted to use sex work, but she is familiar with the term prostitution. Prostitution is the term that is commonly used by some scholars, organisation and even the Constitution of the Republic of South Africa is using the term prostitution, for that reason it make sense for the participants to keep using prostitution. However, there are some organisations and scholars that are using the term sex work. Majority of the organisations that are using sex work are the organisation that are against the criminalisation model of governing sex work. The term sex work has been used in the study because of the language change, the transition from prostitution to sex work. Many of recent scholars are using sex work even though there are those that are still using prostitution. Bonthusys and Albertyn (2007) revealed that feminists do not have consensus as to the appropriate term between prostitution and sex work.

5.4. The reason women engage in sex work in South Africa

According to the participants, people engage in sex work for numerous reasons. Some of the mentioned reasons may directly cause people to become sex workers, and some may indirectly affect this decision. In this context, the participants felt that some people engaged in behaviour that they never knew might lead them to become sex workers. They highlighted that no one grows up with the dream of being a sex worker, but later in life, various factors

prompt them to become sex workers even though it was not their primary wish. Sindi highlighted the following in verbatim:

“...I think no baby girl grows up thinking ukuthi (meaning that), ‘Look, I want to be a sex worker’ ...”.

Below are the reasons why women become sex workers as identified by the selected participants:

5.4.1. The relationship between poverty and sex work

Most of the respondents revealed that poverty was one of the pushing and pulling factors into sex work industry. They said that people who were from poor family backgrounds ended up as sex workers. Sindi said:

“In Africa, for most people poverty is the reason. Poverty, because basically if you are a girl and you can stand that’s it; if you have the genitals to do it you can provide the service and I think no baby girl grows up thinking ‘ukuthi’ (meaning that) ‘Look, I want to be a sex worker’, but if you can’t finish school and you need to put food on the table and this is a child-headed household and there’s no way out, ngalesoskhathi (meaning at that time) for you the best way is to sell this type of service and I do not think ukuthi (meaning that) it starts as: ‘You know what, I am gonna (meaning going to) work emgaqweni’ (meaning on the street).”

According to Monroe (2005:70), poverty is “a breeding ground for many negative and highly stigmatized behaviors, including street level prostitution”. The findings of this study support Monroe’s (2005) view that poverty is one pulling factor into sex work as women engage in sex work to support their families. They indicate that some sex workers who are from single parent households have to make sure that their children do not go to bed with an empty stomach. Others are from child-headed household where there is no one who is willing to help the children. These girls then have one option, which is to sell sexual services. The consulted literature and selected participants concurred that poverty is one of the reasons for women to be sex workers. According to Witte & Witt, (2000) economists see criminal activities as being similar to paid employment in that such activities require time and produce

income. As revealed by the participants sex work becomes their way to provide for the family.

In contra with the above, Sandile, one participant said that even if you are poor, living in poverty you can still abide with the rules and laws of the community. He further said, it depends on one's morality to engage in sex work. This means no matter how strained the women might be, sex work or any criminal behaviour is not an option more especially when they have strong moral. Sandile said the following in verbatim:

"... morality because as much as you can be so poor, but your morality is weak also. We can include that these women who are engaging in sex work they say they are poor they cannot afford paying their bills, but they can use other form of making means to survive."

The above suggest that criminal behavior is not always the only way to survive as there are other community members that have the same socio-economic status with sex workers but do not decide to be sex workers or any criminal act.

5.4.2. The linkage between human trafficking and sex work

The participants of this study suggested that human and child trafficking is one of the reasons people engage in sex work. Luvo stated the following in verbatim:

"People could be forced to go and do sex work, and people could be trafficked from one country to the other and they could be forced to work [as sex workers]."

Jodie agreed with the above sentiment by sharing the following in verbatim:

"I think some people ...ehm... are forced from a young age. They are kidnapped for child trafficking and they do not know any difference and they do believe it's wrong what they are going through, but it's the only thing they know and they carry on in the career, if you can put it that way."

The participants argued that some people do not choose to be sex workers, but are forced into it through trafficking. People are being trafficked to other countries where they become sex workers. When they get to the foreign country, they do not have any choice and they have to comply with the demands of their traffickers. The money generated by their sex work will go into the pockets of the traffickers. Adelson (2008) is of the view that men, women and

children are used for labour and commercial sexual exploitation through coercion, fraud and force, which is a view that was supported by the findings of this study. The SALRC (2009) reports that in 2009 there were about 12.3 million trafficked adults and children who had been forced into commercial sexual servitude worldwide.

According to SALRC (2009) and CGE (2013), people are trafficked for economic gain. The participants revealed that traffickers take sex workers to other countries and are forced to engage in sex work. According to Merton's theory, the traffickers are using sex workers as their means to attain the goals of the society which is economic success. Becker's (1967) economic theory suggests that criminal actions are chosen and preferred when the benefits envisaged from committing a crime surpass the costs, including the expense of any legal alternatives. The traffickers are aware that when they are trafficking people to other countries there is less probability of being arrested because they do not know any person from those countries of destination. The participants also revealed that the traffickers make connection on the borders of country to reduce the chances of being arrested.

5.4.3. The combination of drugs abuse and sex work

The findings of this study suggest that drug abuse is a powerful driver of sex work. The participants highlighted that people (women) start by using drugs and many then end up working in the sex industry because they are unable to support their drug addiction in any other way. When the addiction becomes severe, drug dealers offer the addicts drugs for which they will have to pay later. This practice is more predominant in the case of girls. When the girl can no longer pay, the drug dealer demands that the girl provides sexual services for which he will provide more drugs as 'payment'.

The tragedy of this practice is that such men quickly become tired of the girl they 'support' and soon abandon her to her fate. This is what Sindi said in verbatim:

"Drugs. If you start going on a sleepless loop, nje ngamanje qede unqo, ubese uxube nentsangu, unqo (meaning just now you finish uqo, then you mix with dagga), then it is not enough, and you add cocaine. Your drug dealer is probably gonna say (meaning going to) 'Look, if you give it to me I can supply and you are already hooked, so qale kanjalo (meaning start like that) and you like ... you know what? My other friend

was probably gonna (meaning going to) do it twice and then I'm gonna (meaning going to) give you some supply."

This comment implies that some sex workers may not start with the intention of becoming sex workers, but as they become increasingly addicted, the only way to support their drug habit is to become sex workers. This concurs with a finding by the National Sex Work Strategic Plan (NSWSP) (2013) and Pitcher (2015), who argue that drug dependency can drive a person to be a sex worker to support drug addiction. The findings thus concur with the literature that women get into sex work because they want to support their drug addiction. The findings also support Plumridge and Abel (2001) who state that sex workers use their money to buy drugs and, when the money has run out, they are addicted and still in need of drugs and they then end up rendering sexual services to their drug dealers and other exploiters.

5.4.4. The economic issues and sex work

Financial difficulties have been named quite numerous times by the selected participants to be one of the reasons women engage in sex industry. All the selected participants who were interviewed and the participants of both FGDs indicated that they think economic need is the why women engage in sex work.

Nandipha revealed the following in verbatim

"I think the reasons vary. It could be a lack of work so you need money, you need certain things but you can't, you can't support yourself so therefore you find that there should be easy means of doing it..."

The perceptions of the selected participants on economic factors as the reasons women engage in sex work are similar to what various authors such as Campbell and Mzaidume (2001), SALRC (2009), O'Neil and Campbell (2006), Willman-Navarro (2006); and the Prostitution Licensing Authority (2004) say about the reasons for engaging in sex work. All these authors argue that economics play a most important role in people becoming sex workers. Abel (2010) contends that people enter into the sex industry because of the rising rates of unemployment and poverty, which is a fact that compels them to engage in sex work for a living. Monroe (2005) adds that it has long been recognized that financial drives are the main reason why several women resort to prostitution.

Merton's Strain Theory suggests that people in communities are encouraged to strive for the goal of achieving economic success, but that the social structure limits access to the goals of success through legitimate means such as college education, corporate employment, and family connection (Lilly, Cullen & Ball, 2011; Jang & Agnew, 2015). People enter into the sex industry to fulfill society's desire for economic wealth, and sex work is an easy way to economic success. Remember, there are approved means of attaining economic success and the means to achieve these goal are mentioned latter. Sex work is not one of the legitimate means of attaining economic success; this means that the goal which is economic success is accepted but that the legitimate means to attain the goal are rejected. Merton calls these people 'innovators' in his adaptations. Lilly et al. (2011) are of the view that this occurs among people of the lower classes who cannot afford legitimate means of work and who thus opt for an easy way to accomplish society's goals.

Becker's Economic Theory (1967) suggests that people analyse their chances of gaining or losing before they participate in an activity. In this study, the participants thus agreed that women become sex workers because of financial constraints and that sex work is their easy option. Shepherd and Rubin (2006) suggest that the gains and losses involved in the economic model are usually meant to represent all forms of benefits and costs that have an effect on people's decisions.

However, the participants argued that economic reasons pushed women into sex work, they were also of the view that the decision to be a sex worker was catalysed by peer pressure. Lwazi commented as follows in verbatim:

"...financial constraints, but I have heard that for some people it's not only because of financial constraints, but also peer pressure..."

Therefore, apart from financial constraints, the perception existed that other factors were also drivers of sex work engagement. For example, the participants named peer pressure and the single parent status of sex workers who had to support themselves and their families as reasons for engaging in the sex industry. The latter reason for engaging in sex work can be explained by the economic theory because the benefits of being a sex worker are high. Once they are sex workers, women are able to support themselves and their families. They are able to send their children to school, pay their bills, and afford extra luxuries that they could not afford before.

One of the participants added that some sex workers did not engage in sex work because they needed the money for important things like taking care of their families; rather, they wanted to buy luxury items without which they could not survive. Lwazi shared the following perception in verbatim:

“... for some, it’s also not because of financial strain, but because they want expensive things that they cannot afford; not because they really need that money, but because they want Apple phones, expensive clothes... you know, they want expensive takeaways: Nandos, Debonairs for breakfast, lunch and dinner.”

This means that not all sex workers were perceived to be in desperate financial crisis or trying to rescue their families. This concurs with Abel’s (2010) findings as he states that some sex workers do not engage in the sex industry only for the most basic needs.

5.4.5. The enjoyment of sexual intercourse with various partners

Not all sex workers engage in sex work because they are coerced into the industry; some enter because they like having sex. The respondents suggested that there were people who became sex workers because they like the job of being a sex worker and not because they were pushed by economic struggles. They liked the experience of having sex with different partners. Nandipha highlighted the following in verbatim:

“I do feel like other females like the experience, and they do sex work because it is fun and not a job for them.”

Sipho echoed the above statement by stating the following in verbatim:

“Some people become sex workers because it’s in their blood. They like having sex, that’s what I think, so they sleep with everyone, you know. It can be for that reason.”

Rossler, Koch, Lauber, Hass, Altwegg, Ajdacic-Gross, & Landolt, (2010) argues that some women simply like being sex workers. About 40% of the women in the study by Rossler *et al.* (2010) disclose that they liked being sex workers. Jordan (2005) also supports the insight of the selected participants that some people leave their legitimate jobs that are paying well and decide to be sex workers. This means that some sex workers love the experience of having sex and do not become sex workers merely for financial reasons.

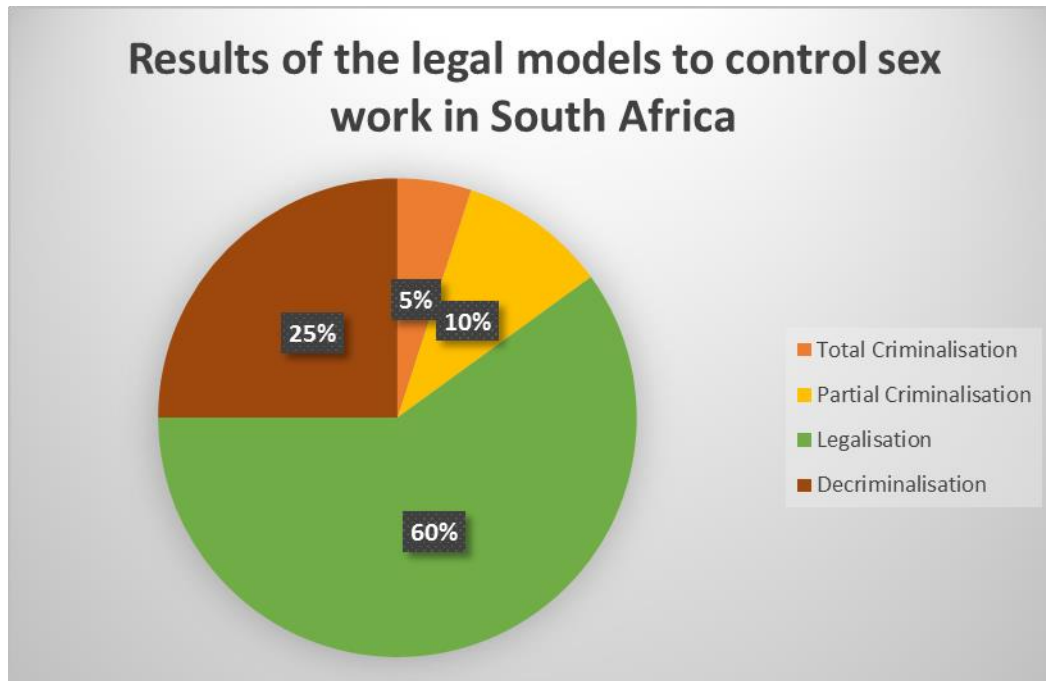
5.4.6. Education and sex work industry

A lack of education was one of the reasons that the participants offered for women becoming sex workers. Many people cannot find jobs because they do not have the required education level and they need success which is monetary in numerous cases. This is when they resort to sex work as they also have responsibilities. Some girls are from child-headed homes. They leave school in the hope of getting employment, but they do not get a job because they are not suitably educated and then they become sex workers. Anele said the following in verbatim:

“Well, in South Africa we can say it’s because of the lack of money and education. The reason I am saying it’s because of education is because if you are not educated there is no other way one could get money; this results in prostitution.”

According to the Strain Theory (Merton, 1938), communities are encouraged to attain the cultural goal of economic success, but the social structure limits access to the goal of success through legitimate means like college education, corporate employment, and family connection. Lilly, Cullen and Ball (2011) add that some people from lower class families and some from child-headed households lack the financial means to send their children to school. These children end up being uneducated with the added pressure of the ‘golden dream’ of achieving economic success even though they did not have money to go to school. Many individuals from the lower class experience strain (Jang & Agnew, 2015), and their coping strategies often include criminal activities. Merton (1938) argues that poverty-stricken people try to accomplish societal goals through unconventional and non-conformist means such as sex work. Therefore, it is suggested that being uneducated is one of the reasons people engage in sex work. It is however, important to note that criminal acts are never a solution to any problem. If people are uneducated they can start their own business that are legitimate to accomplish their goals. Above all, the government is doing the best to afford everyone a change go to school. The school fees has been dropped in high school so that everyone can afford to go to school and there are government programs to assist those learners from the lower class. There is catering at school to help those who are coming from poor families. At the university there government loans, bursaries to assist students.

5.5 The available legal system and sex work



Researcher's illustration, 2016.

The pie chart above present the results of this study on the legal model that selected participants think is appropriate to govern and control sex work industry in South Africa. According to the participants, the legalisation of sex work is the model that should be applied in South Africa to control sex work industry. About 60% of the participants were off the view that sex work should be legalised, 25% of the participants suggested that it should be decriminalised, 5% suggest that it should be total criminalised and 10% revealed that it should be partially criminalised. Sindi stated the following in verbatim:

“Because it escalated to this point [short pause], maybe the legal system should take one for the team, legalize sex work for women that are capable of understanding the nature of the work, that are capable of consenting to the nature of the work and submit them to a system or maybe a data base that can regulate what happens if they wanna (meaning want to) enlist themselves as sex workers.”

This above statement by the Sindi concurs with Abel (2010), who argues that legalisation of sex work would control the sex industry by keeping it limited to areas where it will not disturb the entire population and where not everyone will ‘just wake up and be a sex worker’. Rather, those who understand the work should be allowed to consent. Luvo shared the view

that legalising sex work will help to control the influx of people who engage in sex work. Luvo revealed the following in verbatim:

“I would first talk about the requirement how to enter the profession. I think that consent is one thing, informed consent. The person needs to consent and for a person to consent ... we need to verify certain things (short pause). The first thing in my mind would be the age, the age of consent. You know, we can’t have small kids deciding to enter the profession.”

Some participants of this study supported the control of the sex industry. The participant indicated that not everyone should be allowed to decide to be a sex worker and get into sex work, as there will be requirements that have to be met. According to this findings under the legalisation model, people who want to be sex workers should be people who are able to consent to be sex workers. This would prevent children under the age of 18 from becoming sex workers, as they are not mature enough to make rational decisions about their future. Legalisation seeks to protect those that have been coerced into sex work and to rescue children from making misinformed decisions because they are still young. This model, which was supported by the participants with a Law and Criminology background, also protects children and adults from exploitation.

The participants added what regulations should be taken if sex work is to be legalised. Nomthandazo revealed the following in verbatim:

“I think sex workers should go for periodic health checks to check for STI’s and HIV/AIDS, they also have to be registered as sex workers so they can pay tax; that’s what I think”.

Luvo echoed the following in verbatim:

“The second requirement would be capacity for me, does the person have the sufficient capacity, is the person informed about the nature of the business, you know. The third one would be screening, screening of the person as to be healthy enough physically, physically able to carry out the job of the sex work. I would also introduce tax regulations, there’s income then there should be taxed as well. I would also require that people be sufficiently educated to a certain level before can take up sex work, doesn’t have to be a formal qualification but needs to be someone who at their

very least knows that there's a certain amount of risks associated with the business of sex work".

The views of scholars such as Jordan (2005), Mossman (2007), Abel (2012), Rhoda (2010), Mgbako et al. (2012) and Felicity et al. (2015) who provide that the legalisation approach allows controls and conditions that could be used by the state such as mandatory health checks, registration as a sex worker, and the licensing of brothels, were suggested by the participants of this study. The data from this study showed that there should be scope for the regulation of sex work before a person can become a sex worker. Every aspect of the industry should be covered in the scope such as health checks, visits to qualified psychologists, an age restriction (e.g., 21 years of age and above), abstinence from drugs, and sex workers should be physical fit.

However, Mgbako *et al.* (2012) argue that mandatory health checks will cause further stigmatisation to sex workers. For example, when sex workers visit health care centers at stipulated times, everyone would know that they are sex workers and they may be ill-treated even by health care givers. The researcher hold a different view to the latter view, as it may be argued that sex workers will not be maltreated by health care givers because their work will be legalized and any act that discriminates against a worker is punishable by law. Sex workers will be protected by the Constitution of the Republic of South Africa (Act 108 of 1996) and they will be able to report discrimination against them by health care givers to the authorities. Under the legalisation model, if sex workers are denied free access to health facilities, it will be regarded as a criminal offense. Baillache (2012) is of the view that, in terms the National Health Care Act (Act No 61 of 2003), health providers may not deny an individual medical treatment regardless of their status or employment.

The selected participants of this study suggest that legalisation of sex work would protect sex workers against any form of discrimination and violence from police officials, the community, health care givers and clients. To the question whether sex workers are treated unfairly, Thandeka replied the following in verbatim:

"Yes, most definitely, because some of the videos that I've seen, like the way the police actually treat sex workers is just not appropriate. They treat them as if they don't deserve to be treated as humans when they catch them in these brothels or whatsoever. They harass them or assault them. Because they also have rights, they deserve to be treated accordingly."

Farley (2003) claims that sex workers are faced with clients who demand unprotected sex because they know that sex work is illegal and that the women could therefore not report any abuse. A study conducted in 2008 by Arnott and Crago in Botswana, Namibia and South Africa to investigate the criminalisation of sex work found that sex workers were left vulnerable to physical, sexual, economical and emotional abuse by police officers, health care workers, clients and the community. The findings of this study sought to address all these victimisations that are suffered by sex workers. Beran (2012) argues that liberal feminist support legalisation as a legal model that serves the needs of the women in sex work industry. Therefore, should sex work be legalised, sex workers will enjoy the protection of the law.

5.6 The impact of sex work on communal setting

This study showed that sex work affects communities in various ways. The participants highlighted the impact that sex work had on their respective communities where they resided. However, they had diverse perceptions about the impact that sex work had on their communities. It was clear that perceptions differed because communities tend to hold different views about sex work and deal with it in different ways. For example, the way sex work is perceived in townships differs from the views people have about it in rural areas. Anele said the following in verbatim:

“It depends on the area they are in. Let’s say in Gauteng, Johannesburg, Randburg, Centurion and Pretoria they don’t really entertain sex workers, but when you go to the Central Business District (CBD) of Johannesburg or to the townships, they look at them differently”.

Luvo and Anele agreed, stating the following in verbatim:

“Well, it depends on the communities that we have. South Africa has a variety of communities but ... eeh... I am trying to think about my specific community.”

Luvo said he was coming from a township that is more like a village where people still have solidarity. Where sex work is viewed as a taboo behaviour and is frowned upon. This study therefore suggests that the way communities view sex work, the way the community treats sex workers and the impact of sex work on the community differ from one community to another.

Sindi, who had resided in three different communities, also supported Luvo and Anele sentiment that the way sex work was viewed differed among communities. She highlighted the following in Verbatim:

“I don’t think I really thought about it, but I think it depends on the community. Talking about the community of Russell Street, those people are living fast life, no one cares who their neighbour is because three months down the line they are probably not going to be there so those people don’t care if you provide this type of service or not...”

This perception illustrates that people in town are living their own lives. Nobody cares who is doing what, whereas in townships where the communities are more close-knit it is a different story. The participants agreed that people from townships care more about one another and about what is happening around them. If something is wrong, they will not keep quiet; they take it as their responsibility to address it. Sindi added the following in verbatim:

“...but if you consider a township, those people are close-knit for wrong or right reasons and if you are exposed trust me people are not going to be okay with it and they will voice their concerns.”

Sindi also illustrated that rural areas differ from townships by the following in verbatim:

“And then you have rural areas. In some of them you will get burnt! For example, I am from Mzinto, in Mqangqala and ngasekhaya (meaning at home). If you fall pregnant your family has to pay a fine to the chief because you have embarrassed us as a community of girls... in rural areas those people take everything seriously and you are not just a child yakini uyingane yethu Sonke (meaning you not a child of your own home but of the entire community) so if you do something that will embarrass your family it’s not just that, but you embarrass isigodi Sonke (meaning the whole village).”

This statement suggests the way sex work is perceived in a townships and in the city is totally different from the way it is viewed in rural areas. In rural areas people are still having what Emile Durkheim (1893) calls ‘mechanical solidarity’.

The above comments suggest that many communities regard sex work as immoral, as it is against the values of communities. The participants believed that their communities maintained high moral values and therefore sex work was regarded as immoral. This is suggested by the following statement by Thandeka in verbatim:

“As I mentioned just now, the stigma obviously around people judge you and yhaa all of that because they believe it is not good, it is not of good moral and values because you know in each and every community people have those standards that they expect from individuals, so once you go against them it’s a problem”

She was supported by Siyanda from the CFSD FGDs who referred to the following sentence in verbatim: “...degeneration of the moral code”.

After careful analysis of the data, the evidence indicated that most of the participants mentioned morals and values; they were in agreement that sex work was immoral and diverted from the morals and values of their communities. This finding concurs with Thumboo (2003), who also revealed that sex work was viewed as immoral. However, Zama from the CFSD FGDs contradicted this perception on the issue of morality, as he believed that morals should be individualized. This participant said the following in verbatim:

“Why should the society be included in my morals? If I am the one who lives in poverty, will society give me food to eat?”

This statement suggests that not everyone conforms to the generally accepted morals and values of society; rather, they have their own individual morals. Zama’s argument was support Raymond (2006), claims that the debate about moral issues in sex work is inappropriate. Goodyear and Cusick (2007) also support Raymond’s claim that morality is not the law's business.

It is reasonable to argue that the majority of the participants said that sex work brought criminality into the community and that it had a negative influence on growing children. The participants were of the view that sex work was connected to other criminal activities; so if there was sex work in the community then criminal activities would increase. Lwazi mentioned the following in verbatim:

“I think, somehow, that sex work promotes rape in societies. There are sex workers who get raped while they are on duty, you know, and it promotes violence.”

Luvo concurred by stating the following in verbatim:

“Sex work can also introduce some other factors such as taking drugs... sex work can have a negative influence on the kids growing up...”

These explanations suggest that the perception exists that sex work is always accompanied by other criminal activities such as drug abuse, rape and human trafficking. This study findings support those of Thumboo (2003), who states that sex work plays a most important role in the increase in crime rates within communities. Furthermore, Thumboo (2003) suggests that sex work also exposes children to prostitution and child trafficking to such an extent that it would be hard for parents to raise their children in communities where sex workers operate. This is further emphasized by Sindi in the following statement in verbatim:

“They probably would not like their kids around you because of the moral impact that it has. It’s very frowned upon.”

However, Zama held the contrary perception that sex work might have some positive impact within the community. He said sentiment in verbatim:

“If we decriminalise sex work, it will decrease some other forms of crime within the society; therefore if sex work is decriminalised, it would mean less sexual abuse of people, less sexual violence, children will be free, no people will rape them because they will go and buy sexual services.”

It was clear that the participants had conflicting perceptions on the impact that sex work had in the community. But majority of the selected participants view sex work as having many negative effects in the community than the positive.

Data from this study revealed that the stigma attached to sex work is caused by the type of work that they do. Most of the participants concurred that sex work was taboo and immoral, and therefore sex workers were stigmatized. Thandeka said the following in verbatim:

“Mmm! Obviously there is still stigma, because sex [outside marriage] is a taboo and it is even worse when you are selling sex.”

This finding the finding by Kingston (2014) and Thumboo (2003) that sex workers are viewed by the community as dirty, mentally ill, and addicted to drugs and alcohol. It was suggested by the respondents that even health care workers had a negative attitude towards sex workers and that they judged them as immoral. However, some participants felt that the way sex workers were viewed would change if sex work were legalized, even though it might take time. This idea is contradicted by Mossman (2007), who argues that even if sex work is legalized, it will be difficult to remove the stigma attached to the sex industry. The participants even referred to same sex marriages, arguing that it was not acceptable. They

commented on the negative perceptions that the community had about homosexual marriages, but also admitted people were getting used to it.

The data showed that sex work had a negative impact on the community as it caused division and conflict. Nandipha said:

“Because I said its taboo, it’s sort of negative. The impact itself is negative, as the person who engages in that is no longer seen as part of the community. They are seen as immoral in the community and they can’t be part of it any more. So it separates the community and people turn against each other.”

Ashly also echoed the same sentiment in verbatim:

“I think it segregates the community as well ...ehm.. because those people engage in something antisocial, illegal”

Sindi also supported this idea in verbatim:

“So it probably divides the community. There is a lot of ...ehm...(short pause) shame that is attributed to it and I think a bit of victimisation of the people who engage in this type of... you know, commodity exchange...”

The above statements suggest that sex work has a negative impact on the community and that it divides the community. From their legal and criminology backgrounds, the participants emphasized that sex work is and remains a criminal offense and implied that it will remain so until the legal model is changed.

According to Merton’s (1968) Strain Theory, the selected participants of this study indicate that the sex workers become retreatist and rebellious citizens, which are the adaptation that were proposed by Merton. As the participants have indicated that sex work divides the society that means the sex workers reject the goals set by the society and the institutionalised means, which make the sex workers the retreatist citizens. Furthermore, when the sex workers do not just reject the goals and the means but they try to change the systems governing sex work to favour their act, Merton names these people as rebellious citizens, trying to change the way sex work is controlled in South Africa with the assistance of other people.

5.7. Perceptions on the decriminalisation of sex work

The results of this study indicated that the participants had different perceptions regarding the decriminalisation of sex work. Some participants suggested that sex work should be legalised instead of being decriminalised even though there were those who wanted sex work to remain a criminal offence. Ashly said the following in verbatim:

“I think decriminalisation could do quite a number of positive things, as anything that is forbidden makes people want to do it more and they would go to extreme levels to make sure they do so. I think by decriminalising sex work a lot of trafficking will stop because people will not be kidnapped; they will still be kidnapped but the amount will decrease.”

This view is also expressed by Abel et al. (2009), who believe that decriminalisation of sex work would be a step to help, support, and improve the health and safety of communities while it would also protect sex workers. Some of the selected participants felt that the decriminalisation of sex work would outweigh the gains of keeping sex work as a criminal offence. However, some participants felt that the decriminalisation of sex work would increase the number of sex workers and that such an increase would result in exacerbating other issues attached to sex work. Some participants thought that decriminalisation of sex work industry would do more harm than good to the country and only sex workers would benefit. For example, the one participant provided that it would increase the number of HIV infections because there will be high competition amongst sex workers and they would be forced to render unprotected sex by demand. Lwazi stated the following in verbatim:

“First of all, lots of people will get sick under decriminalisation of sex work. Already HIV is at its peak in South Africa, so it would not play the country a favour. There wouldn't be a positive outcome as sex work demand would increase and sex work industry would also increase”.

Gable et al. (2008) argue that sex workers do not access health care services due to the fear of discrimination and stigma from the community and health care workers. The selected participant's perceptions that the decriminalization of sex work will increase HIV/AIDS, STIs and Sexual Transmitted Diseases (STD) therefore supported this view.

The participants also indicated the increase in the demand of sex work and the increase of the sex work industry if the legal model of controlling sex work would change. Oppenheimer (2014) revealed that 25% of the women engaging in street sex work in New Zealand reported to have entered sex work industry because of the change in the legislation.

5.8. Should sex work be accepted and treated like any other employment?

It is reasonable to argue that some of the participants did not think that sex work should be accepted and be treated like other employment; some thought that it should be accepted and others were not sure what to say as they looked both at the sensitivity of sex work and the current state of the industry in South Africa. The selected participants had knowledge and understood what it would mean if sex work were to be treated like any other employment. Luvo highlighted the following in verbatim:

“But I definitely think that it should be treated as a, you know, as an acceptable form of employment so that it can be monitored, specifically monitored to see why people do this, how is it done and it could even be taxed, you know”.

Thandeka concurred by saying the following in verbatim:

“Yhhaaah, under legislation, I would say they are afforded that protection; there is this case that I have read, Kyle vs CCMA 2010 case 31 LJ 1600 in the labour appeal court...”

These responses from the participants suggested that they believed that sex work should be treated like any other employments so that sex workers could be protected by law under the protection of the employment Act. Thandeka referred to the case *Kyle v CCMA*, which was about the unfair dismissal of a sex worker by a brothel manager. The CCMA said that they had no jurisdiction over the case, as prostitution is illegal. The matter was taken to the labour appeal court, which ruled the case on the basic conditions of the Employment Act (Act No 75 of 1997) under section 83(A). The participant indicated that if sex work had been treated like any other occupation under labour laws, the matter would have been resolved by the CCMA. This suggests that treating sex work like any other employment would protect sex workers from exploitation and violence. Based on their knowledge of the law and their perceptions that people's basic human rights are protected by law, the participants suggested that sex work should be legalised so that it could be treated like any other employment. If sex work would be treated like any other employment that would mean sex work is the legitimate

means of attaining the goal. According to Merton sex workers would be conformist as sex work would no longer be regarded as criminal activity

Sipho offered the following comment in verbatim:

“In those countries where it’s legalised, sex workers must also be treated like any other employment and have the benefits of workers. There must be pension and they must be unionized once it’s legal and then it might be accepted [by society]”.

This view of the participants supported and encouraged the non-criminalisation approach to sex work and also acknowledged essential human rights such as the safety of and better working conditions for all citizens, as proposed by the SALRC (2009) and Baillache (2012).

However, the participants also acknowledged that the acceptance of sex work could only change if the legal model that governs it was amended. This view was clearly expressed by Sipho as follows in verbatim:

“At the moment that question is a little bit tricky, you can’t at the moment, like here in South Africa, you can’t accept it as a work because it’s illegal, it is an illegal activity.”

This comment reveals that sex work should not be accepted as employments in South Africa because it is criminal offence. Whatever the reasons may be for women to be sex workers it should not be recognised as a legitimate work because of its criminal code. Majority of the participants revealed that sex work should not be treated like other employment because it is a criminal offence and is against the moral of the country. Nandipha said the following in verbatim:

“No, no because of my religious aspect aaahhh, I would say no. I don’t think it should be treated as any other profession, no I don’t think so...”

Prisha echoed that sex work should not be treated like other occupations, as follows in verbatim:

“No sex work should not be treated like employment because it is not an employment rather it is a criminal offense, unless the sex work can be legalised then regarding it as employment would make sense...”

Even though majority selected participants were off the view that sex work should not be accepted but some were not sure whether it should be accepted or it should not. Ashly said the following in verbatim:

“Am not too sure, I do not know the ins and outs about what it requires of who people to do it, like the actual sex workers all the people on the public would go engage in sex work...”

Ashly, indicated both negative and positives aspects if sex work would be accepted as occupation. She said that many people would join sex industry if sex work would be acceptable and that would lead to the increase in STI and HIV/AIDS because of the competition. According to Economic Theory, many women would join, as there will be no longer much risks associated with sex work. Furthermore, she added that it would add safety and security measures for sex workers. The latter reason is not feasible because sex work is a criminal offence in South Africa so it would not be regarded as occupation. The participants of this study suggest that sex work should not be regarded as a form of occupation.

The

5.9 The criminalisation of sex work in South Africa

The research showed that there are human rights that are violated by the criminalisation of sex work. The CGE (2013) points out that the criminalisation of sex work infringes on human rights as it does not allow sex workers to engage in employment of choice. The CGE highlights the violation of the following rights by criminalization: human dignity; freedom of trade, occupation and profession; and freedom and security of a person. Thandeka stated in verbatim:

“Yeah, they are. Like the right to freedom of occupation and fair labour practices and dignity as well. Because dignity is something very important, it actually relates to one’s own self-worth, what you think about yourself, not what others think”.

Sindi echoed the above sentiment by indicating the following in verbatim:

“Yes, it goes without saying everyone has a right to section 22 freedom of trade, occupation and profession. Every citizen has a right to choose their trade, occupation and profession freely.”

The majority of the selected participants implied that human rights are violated by the criminalisation of sex work. However, some of the participants were of the view that criminalisation did not violate any human rights; rather, it limited such rights. For example, Sandile revealed the following in verbatim:

“I would say not...it is not illegal to infringe someone’s rights because the Constitution allows that. I think section 36 where basic rights can be limited... all the rights are limited within the law because it is in terms of law of general application.”

Even though majority of the participants did not think criminalisation of sex work is a not a good legal model to govern sex work in South Africa based on the human rights violation and exploitation against sex worker, some thought it should remain a criminal offense because every right has a limitation.

5.10. The likely gender of Sex Workers

This study showed that sex work and sex workers were still being stereotyped as it was still believed that only females engaged in sex work. About 90% of the participants referred to sex workers as females and never mentioned males and transgender sex workers. The clients also were referred to as males, not females. For example, Sphelele said the following in verbatim:

“She goes to the streets but you can see that she is not educated, she has got nothing...”

Mbali revealed the following in verbatim:

“The gender that is most likely to engage in sex work are females. Males do engage in sex work, but they constitute a very small number, and there are transgender sex workers... Females are dominating the industry because they are usually the one who have the burden to look after the family if they breakup with their men, or their husbands die, then they have to pay the bills, they have to take care of the entire family”.

Although advanced students with a Law and Criminology background clearly still believed that only females engaged in sex work, the literature is clear that males and transgender people engage in sex work as well. Panday (n.d.) and Stacey, Konstant, Rangasami, Stewart and Mans (2013) argue that male sex workers are often disregarded in South Africa because

they constitute a small proportion of the sex work population. SGJ (2015) estimates that about 90% of sex workers are females and that about 10% are male and transgender sex workers. This might be the reason why people turn a blind eye on male and transgender sex work. The transgender sex worker are changing to the side of women, which makes the ratio of men, and women in sex industry to be more skewed to women. The selected participants of the study suggest the female sex workers dominate the sex industry.

5.11. The legalisation of sex work and societal transformation

The participants were ambivalent about how the legalisation of sex work would contribute to the country at large. For example, Andile indicated that she feared its negative impact on conservative societies by highlighting the following in verbatim:

“Depending on the people and the country which we are looking at, it might have a negative impact more especially in conservative countries... Many people will come to the country to have sex with children”.

Lwazi concurred, implying that the negative impacts will outweigh the positives by revealing the following in verbatim:

“The sex workers will be proud. They will wake up in the morning knowing that they have a stable income, [but] also they will contribute to the further spread of HIV and making women look and be perceived as objects. The demand for sex would increase and that will see many women engaging in sex industry...”

However, although some participants had contradictory perceptions of the contributions of the legalisation and the decriminalisation of sex work to the country, some participants view legalisation of sex work as it would increase the number of people engaging in sex work. The participants also indicated that even the demand sexual services would increase. Oppenheimer (2014) revealed that in 2012 the legalisation of sex work in Germany had radically increased the number of sex workers, resulting the country being one of the top, if not the top marketplace for sexual labor in Europe.

The majority of the participants believed that sex work would have a positive impact on the country, communities as well as sex workers. The majority therefore implied that the legalisation of sex industry would contribute positively to society. Taslynn regarded the

financial income this industry will bring to the country as a positive result of legalising sex work by stating the following in verbatim:

“Taxes, it will definitely bring money to the country”.

This statement suggests that the legalisation of sex work will boost the economy of the country. Bell (2013) suggests that legalizing sex work will not only afford sex workers with labour protection and labour rights, but will also contribute to the economy of the country. Bell (2013) adds that the economic contributions any industry can make are most important as there is a global economic crisis resulting in poverty and unemployment.

The participants also believed that the legalisation of sex work would help reduce human trafficking as the people who were trafficked may have the courage to report their plight to the authorities. They will thus know and understand that they are supposed to consent to sex work and will come forward to report cases of human trafficking and exploitation to the police (SAPS). To this course, Sindi said in verbatim:

“...So that is why I say if you regulate it you open up the system that you can get the drug dealers so that you can get the pimps, so that you can get the rapists, so that you can get human traffickers because people are gonna (meaning going to) be more willing to say, ‘Look, when I left home they took me saying I will work in a restaurant and that is not what is happening to me’.”

The participants suggested that human trafficking, rape, illegal pimping and drug dealing will be reduced because sex workers will work with law enforcers to bring those who are against the law to justice.

The respondents also felt that the legalisation of sex work will reduce the stigma associated with sex work and people will start looking at sex work as a profession that provides legal employment. Luvo revealed the following in verbatim:

“Well, number one, it will bring exposure. It means that there will be no stigma associated to sex work. If it’s a profession it will come to light as a profession that is legal.”

Sipho concurred with the above by sharing the following in verbatim:

“So, even maybe it can bring benefits to the economy, because you found out there are people all over the world who will come here just to buy sex, because they know it's legal ... it will generate the economy of the country, and also I am sure the working conditions will improve ... because there will be inspectors who will be checking on those areas, and it will be sort of a permanent employment, and the government will get [an income] because the sex work industry will be able to pay tax. At the moment they don't pay tax, the government is using a lot of money”.

These statements suggest that the participants of this study felt that the legalisation of sex work would make positive contributions more than negative to the country, communities and sex workers as well. This suggests that properly regulated sex work would benefit the country.

5.12. Summary

The data were presented, discussed and analyzed using thematic analysis. Various themes were identified with reference to key topics that emerged from the data. Through analysis and discussion, the perceptions of advanced Faculty of Law and CFSD students were elicited on the decriminalization of sex work. The participants expressed mixed feelings about the decriminalization of sex work. It emerged that the majority of the participants thought that legalization would be the most suitable model to govern and control sex work. Even though the study focused on the decriminalization of sex work, the participants viewed legalization as the preferred legal model to control sex work in South Africa. The findings of this study suggest that sex work should be treated like any other employment and should be made acceptable by society through an appropriate legal framework.

The above illustrations by the researcher imply that strict regulations should be employed to protect sex workers, as their job is currently extremely risky. However, it was also clearly revealed that advanced students who were representative of their communities still held strong moral codes and values. This fact, coupled with their knowledge of the benefits for sex workers under a legal model that will recognise all human rights, created conflicting perceptions about the criminalisation, legalisation or the decriminalisation of sex work.

However, based on their academic background, the majority of the participants concluded that the legalisation model might result in the most positive contributions of the sex work industry to the country, its communities and sex workers themselves. Thus the participants, who had been given the opportunity to express their views on the decriminalisation of sex work in South Africa, rejected this model in favour of the legalisation model.

CHAPTER SIX: CONCLUSIONS AND RECOMMENDATIONS

6.1 INTRODUCTION

This study was conducted to explore the perceptions of Master's degree students on decriminalisation of sex work in South Africa. The themes that emerged from the data that were be discussed in the previous chapter will be presented in relation to the aims and objectives and research questions of this study. This Chapter (Six) further presented a summary of the research design and methodology and study significance that were employed in conducting this study. The main conclusions will be illuminated and appropriate recommendations will be offered.

6.2 THE MAIN FINDINGS TELATING TO THE STUDY SIGNIFICANCE

The study endeavored to ascertain the perceptions of Master's Degree students with a Law and Criminology background on the decriminalisation of sex work in South Africa. The study objectives were as follows:

- To explore Masters students' perceptions on the decriminalisation of sex work in South Africa;
- To explore if sex work should be decriminalised in South Africa or not;
- To investigate the perceived effects of the criminalisation of sex work on communities;
- To determine the reasons why people engage in sex work.

6.3 THEORETICAL FRAMEWORK

This study was inform by the Strain Theory (Merton, 1938) and the Economic Theory (Becker, 1967). This study used the former theory to understand sex work and legal model that can be used to control sex work in South Africa. The later to explain the pulling and pushing factors that affect sex work. These theories covered two of these object which are objective 3 to investigate the perceived effects of the criminalisation of sex work on the communities and objective four (4), To determine the reasons why people engage in sex work.

6.4 TERMINOLOGY QUESTION: PROSTITUTION OR SEX WORK?

This study made use of the term ‘sex work’ in preference to the term ‘prostitution’ because prostitution is often viewed as a derogatory label and is also most often linked to strong negative moral overtones, while ‘sex work’ emphasizes the nature of sex work as an employment opportunity. The findings showed that even though the term ‘sex work’ was employed, the participants consistently used these terms interchangeably. The participants understood the terms to be having the same meaning hence they used the terms interchangeably.

6.5 PERCEPTIONS ON THE DECRIMINALISATION OF SEX WORK

This study found that the participants had contradictory feelings about the decriminalisation of sex work. Few of the participants perceived the decriminalisation of sex work as the better legal model to govern sex work in South Africa. The majority of the selected participants suggested that sex work should be legalised. However, the participants were unanimous that the decriminalisation of sex work outweighed the criminalisation of this industry and that decriminalisation will result in a number of positive outcomes for the country, communities and sex workers themselves. They suggested that positive outcomes that would be contributed by the decriminalisation model would be the protection of sex workers against their abusers and a decrease in the rate of human trafficking. However, they believed that the benefits of the legalisation model would outweigh the contributions of both the criminalisation and decriminalisation models in the South African context. Therefore, the selected participants perceived legalisation of sex work as the legal model that could be considered to govern sex work industry in South Africa.

Even though the study set out to investigate the decriminalization of sex work, it did not disregard the other legal models (Criminalisation [partial & total] and legalisation), to control sex work. It is therefore acknowledged that the legalisation of sex work is a legal system that is suggested to be employed by South Africa to control and govern sex work has significant merits.

6.6 THE LEGAL SYSTEM ON SEX WORK

The study found that the legalisation of sex work was the preferred model suggested by the participants above the criminalization and decriminalisation models. The results therefore suggest that, from a Faculty of Law and CFSD students perceptions, the legalisation model may be the appropriate legal model to control and administer sex work in South Africa. Possible ways of legalising sex work as suggested by the participants are: registration of sex works, health and physical check-ups to make sure a person is fit enough for the job; psychological counseling before entering the sex work industry; mandatory health checks on a regular basis; designated area/s for sex work; choice in terms of operating as independent contractors or being employed by a licensed and registered brothel; age restrictions (e.g., sex workers should be 21 or older); and the voluntary nature of participation. If a person fails to comply with any of these regulations, then it should become a criminal offence to operate in sex work.

6.7 REASONS WOMEN ENGAGEMENT IN SEX WORK

The participants of this study identified economic constraint as one of the reasons why women engage in sex work. Although none of the participants had actual experience of the sex work industry, their knowledge and academic background supported their view that the economic issue is amongst the reason why people engage in sex work. This implies that poverty is a strong driver for sex work. The participants were aware that many people, particularly single parent women and girls who are heads of their households, carry the burden of caring for their families and siblings. In this context, sex work becomes their option because many of these women and girls did not complete school and have no skills or qualifications to enter the job market. Human trafficking was offered as another cause for people to engage in sex work. The plight of trafficked sex workers is that they are from foreign countries and they do not know anyone except their traffickers, so they have to do whatever their traffickers tell them to do. Children are also trafficked and forced to be sex workers when they get to the countries of destination. This means that there are people who become victims of the sex industry because they are forced into sex work not by certain compelling external factors, but by ruthless people.

The selected participants of his study perceived drugs as one the causes for people to become sex workers. The selected participants suggested that people start taking drugs and become sex workers because they later fail to support their drug addiction and have to supply sexual services in exchange for drugs. This study also revealed that some people engage in sex work simply because they love having sex. It was believed that many women get into sex work because they enjoy sex and that the majority of these people do not have any financial constraints. Rather, they just like the experience of having sex with different men and enjoy the fruits of their work by living in relative luxury. Furthermore, lack of education has been named as one of the causes for women to engage in sex work. Everyone needs to get a job and take responsibly at some point. However, if the person is not educated or qualified, employment becomes scarce.

6.8 THE IMPACT OF SEX WORK ON COMMUNITIES

The study revealed that sex work has a negative impact on society and specifically on some communities. It was argued that the impact of sex work differs among communities. This is so because of the way in which sex work is viewed in different areas (urban, township and rural areas). The findings suggest that urban citizens do not care what is happening in their neighbourhoods where people mind their own business. However, in the townships it is a different case as township residents live in close-knit communities and do not hesitate to voice their concerns. It was found that in rural areas people still live in solidarity and they still respect the word of authority (i.e., the Chief & Headman). When a person goes against the word the chief, she/he will be rejected by the community and are expelled from the community.

This study further found that sex work is perceived as immoral by society at large as it is against the morals and values of many communities. However, some participants were of the view that moral judgment cannot be reflected on sex work, as it is a form of employment. Therefore, because the participants had conflicting views regarding this issue, it cannot be concluded that the moral issue should impact the decision about which legal model should be applied as a framework for the sex industry.

However, this research found that sex work increases criminal activities in communities because it is always accompanied by additional criminal action such as drug trafficking, rape and human trafficking, and for this reason, the criminal focus should be a strong driver in determining the legal framework that addresses the sex work industry.

This study revealed that criminalisation divides the community because sex workers are viewed as people who are immoral and who are not good role models for their younger sisters and brothers. The families of sex workers protect their family members because of the money or goods that she or he procures to help the family. There is also lot of stigma attached to sex work and sex workers as well as the families of sex workers, more specifically the children of sex workers. The respondents also exposed that people engage in sex work because they are trafficked from one country to another where they are exploited as sex workers. Furthermore, the research found that some people are prompted to engage in sex work because of drugs. They fail to support their drug addiction by regular employment and end up rendering sexual services to others and their drug dealers in exchange for money or drugs.

6.9 FEMALE AND MALE SEX WORKERS: GENDER SUPERIORITY

The selected participants of this study argued that stereotyping in communities negatively affects females who are sex workers, and their responses revealed their perception that this phenomenon predominantly affects female sex workers as they failed to address the issue of male sex workers. However, this does not mean that only females become sex workers, as there are also male and transgender sex workers, as revealed by the literature. Nonetheless, transgender sex workers are changing from men to females, which make the ratio to be more skewed to women.

6.10 STUDY SIGNIFICANCE

As advanced academic students working towards their Masters degrees and as members of various communities in society, the participants were sensitive to the hardships that sex workers experience. Their non-judgmental approach to sex workers implies that there is an urgent need for an effective legal intervention model to rescue those many sex workers who are rendered vulnerable by the criminalization of the sex work industry. Therefore, giving Faculty of Law and CFSD Master's degree students the opportunity to voice their perceptions regarding the sex work industry from the basis of their academic understanding of the legal

issues that impact of sex work, the findings of the study may significantly impact decisions regarding which legal model would be most appropriate in addressing the human rights of women and men who choose a particular career for them and their families' survival. Moreover, by addressing the plight of sex workers in an equitable and effective legal framework, real criminals will be brought to justice and communities and the rights of working citizens will be protected. Furthermore, women who no longer want to be sex workers would be easily rescued out of sex work industry.

6.11 OVERALL STUDY RECOMMENDATIONS

After considering the findings of this study, the following recommendations are offered for considerations by the relevant stakeholders addressing decriminalisation of sex work in South Africa:

- There is a need for further research that will focus on sex workers. Their perceptions on the legal system (criminalisation [partial & total], legalisation and decriminalisation) that should be employed in South Africa to govern sex industry without affecting society negatively should be elicited. Sex workers know what challenges they face on a daily basis so their views and input in this matter are paramount.
- There is also a need for more research for the phenomenon on communities. The communities should be engaged in the discussion on the legal model that could be used to govern sex work in South Africa. In every phenomenon, community perceptions are always important to obtain.
- Based on the findings of this study, sex work should be legalised in South Africa. Regulations that various countries apply effectively in legalising sex work can be adopted. Brothels should be licensed as exemplified by NZ and Austria and periodic health checks, an age restriction, and taxation should be introduced to protect people who are coerced into sex work by extraneous factors and to boost this country's waning economy. Sex workers should enjoy rights that are equal to those of other employees.
- There is a need to secure the borders of the country to avoid the entry of people who are trafficked from other countries for sex work. There should be a thorough screening and verification of people who enter the country to make sure that trafficking for sex work, sexual exploitation is eradicated.

- Appropriate legislation should remove the stigma associated with sex work. Workshops and campaigns can then be conducted to educate communities and to diminish the rate of sex work.

6.12 CONCLUSION

The study focused on the perceptions of Master's Degree students on the decriminalisation of sex work in South Africa. However, based on their Law and Criminology background and their experiences as community members, the selected participants suggested that sex work industry should be legalised in South Africa. As advanced academics, some participants were cognizant of the legal challenges that will be faced, and they suggested a process of change by which sex work will first be decriminalised, then regulated and then legalised. Yet, all agreed that sex work should be legalised instead of being criminalized. This study revealed that the legalisation of sex work will contribute to the economy of the country as sex workers will be taxed. Moreover, the sex industry will then be governed by strict regulations that will protect the health and safety of sex workers and benefit the country as well.

The perceptions of Faculty of Law and CFSD students regarding sex work were critical of current legislation as they agreed that the rights of sex workers are not protected by the government. Many acts of violence are committed against sex workers but they are not taken seriously because sex work is illegal and therefore they are not protected by law. There is therefore a need to change the legal model that is governing the sex industry in South Africa so as to protect sex workers at the same time not negatively affect the country. The sex industry is growing and people are still engaging sex work industry with concomitant challenges and societal problems that are not addressed under the current of criminalization legal framework. Prostitution is known as 'the oldest profession' and it will not be easily eradicated; therefore it should be well-regulated so that it can be controlled properly.

Sex workers engage in sex work for different reasons. Some are forced into this profession by circumstances beyond their control while others engage in sex work by choice. Whatever the reasons are, by virtue of any worker's right to human dignity and protection, government should intervene to rescue those who are coerced into sex work and to protect the many children of sex workers and those who are trafficked and coerced into sex work. Only when the sex industry is governed by an appropriate legal framework will those who survive by

engaging in this industry be assured of a positive and bright future under the protection of the Constitution of the Republic of South Africa.

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APPENDIX ONE: INFORMED CONSENT USED DURING DATA COLLECTION

PROJECT TITLE:

RESEARCHER

Full Name: Ntsika Mlamla

School: Applied Human Science

College: Humanities

Campus: Howard College

Proposed Qualification: Masters in Social Science

Contact: 071 006 1376

Email: ntsikamlamla@gmail.com

SUPERVISOR

Full Name of Supervisor: Dr. S.M. Mkhize

School: Applied Human Science

College: Humanities

Campus: Howard College

Contact details: 084 072 0086

Email: mkhizes1@ukzn.ac.za

HSSREC RESEARCH OFFICE

Full Name: Prem Mohun

HSS Research Office

Govan Bheki Building

Westville Campus

Contact: 0312604557

Email: mohunp@ukzn.ac.za

I Ntsika Edward Mlamla, Student no. 215081279 I am a Masters in Social Science student, at the graduate school of Applied Human science, at the University of KwaZulu-Natal (UKZN). You are invited to participate in a research project entitled: Perceptions of master's Students on decriminalization of sex work in South Africa. The aims of the study are to attain knowledge on how students perceive sex work and also to ascertain the effect of criminalisation of sex work on community.

Through your participation, the researcher hope's to understand the effect of sex work in communities and to get young academics views on decriminalization of sex work in South Africa. The researcher guarantee's that your responses will not be identified with you personally. Your participation is voluntary and there is no penalty if you do not participate in this study. Please sign on the dotted line to show that you have read and understood the contents of this letter. The Focus Group Discussion (FGD) will take approximately 80 minutes and In-Depth Interviews (IDI) will take 60 minutes to complete.

	willing	Not willing
Audio equipment		
Photographic equipment		
Video equipment		

APPENDIX TWO: DECLARATION OF CONSENT FORM USED DURING DATA COLLECTION

DECLARARTION OF CONSENT

I..... (Full Name)
hereby confirm that I have read and understand the contents of this letter and the nature of the
research project has been clearly defined prior to participating in this research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

Participants Signature.....

Date.....

Researchers Signature.....

Date.....

APPENDIX THREE: CONSENT TO THE REGISTRAR FOR CONDUCTING RESEARCH



University of KwaZulu Natal

The Registrar

Request for Permission to conduct research

I am Ntsika Edward Mlamla a registered student of the University of KwaZulu-Natal registered for Masters in Social Science (Criminology and Forensic studies). The research will conduct a study titled “Perceptions of Masters students on decriminalisation of sex work in South Africa”. The study will be conducted under the supervision of Dr Sazelo Michael Mkhize who is a criminology lecturer at the University of Kwazulu Natal (UKZN). The researcher solicit your consent to approach Masters Students from Criminology and Forensic Studies Department (CFSD) and Masters Students from the Faculty of Law to be my participants for this research project.

Study aim, objectives and research questions

The Masters students from CFSD and Faculty of Law, at their level, they have a better understanding of aspects in of human rights and what is a criminal offence. Sex work is a very sensitive topic to discuss more especial with the sex workers. The perceptions of Master’s students are important on this study as they will give what they think about decriminalization of sex work in South Africa apart from involving sex workers as participants. What better ways of governing sex work in South Africa? What should be done to protect sex workers? Is South African government giving enough attention to sex work and sex workers? What can be done to counteract sex work in South Africa? What is the effect of criminalization of sex work in communities? Answering these questions is paramount as they will assist the researcher attain what the students think about sex work and the way it is governed in South Africa. Including Law Masters students will assist the researcher to get the perceptions of the students from a legal background also Master’s students from criminology

will be convenient to give their criminological perspective of sex work, and the way is it administrated in South Africa.

Once this study is complete, the researcher undertake to provide UKZN with a bound copy of the full research report. If you need any further information, please do not hesitate to contact me on 071 0061 376 emails ntsikamlamla@gmail.com or 215081279@stu.ukzn.ac.za or you can contact my supervisor at 084 0720 086, email mkhizes1@ukzn.ac.za Thank you for your time and consideration.

Yours Sincerely

Ntsika Edward Mlamla

UKN

APPENDIX FOUR: INTERVIEW SCHEDULE GUIDE FOR INTERVIEW AND FOCUS GROUP DISCUSSIONS AND IN-DEPTH INTERVIEWS

The questions Focus Group Discussions (FGD) and In-Depth Interviews (IDI)

VERY IMPORTANT: It is important to note that the researcher will use probing sub-questions that will emanate from the selected participants responses

1. What do you understand about the concept sex work?
2. What do you think are the reasons for people to engage in sex work?
3. What are your perceptions on decriminalisation of sex work?
4. What impact do you think sex work has on the community?
5. Do you think sex work should be accepted and be treated like any other employment?
6. Do you think decriminalising sex work will attribute to the inhumane treatment sex workers get from the public and even law enforcement in South Africa? Why do you think so?
7. Do you think South Africa should decriminalise sex work or not? Why?
8. In your academic view, would you say sex work should be decriminalized?
9. Do you think criminalization of sex work infringes human rights?
10. What contribution do you think decriminalisation of sex work will bring to the country as well as the sex workers?
11. Any further comments?

APPENDIX FIVE: INSTITUTIONAL REGISTRAR CONSENT APPROVAL



22 June 2016

Mr Ntsika Edward Mlamla (SN 215081279)
School of Applied Human Sciences
College of Humanities
Howard College Campus
UKZN
Email: ntsikamlamla@gmail.com

Dear Mr Mlamla

RE: PERMISSION TO CONDUCT RESEARCH

Gatekeeper's permission is hereby granted for you to conduct research at the University of KwaZulu-Natal (UKZN), provided Ethical clearance has been obtained. We note the title of your research project is:

"Perceptions of master's students on decriminalization of sex work in South Africa".

It is noted that you will be constituting your sample by conducting interviews and/or focus group discussions with students on the Howard College Campus.

Please ensure that the following appears on your questionnaire/attached to your notice:

- Ethical clearance number;
- Research title and details of the research, the researcher and the supervisor;
- Consent form is attached to the notice/questionnaire and to be signed by user before he/she fills in questionnaire;
- gatekeepers approval by the Registrar.

Data collected must be treated with due confidentiality and anonymity.

Yours sincerely

MR S MOKOENA
REGISTRAR

Office of the Registrar

Postal Address: Private Bag X54001, Durban, South Africa

Telephone: +27 (0) 31 260 8005/2206 Facsimile: +27 (0) 31 260 7824/2204 Email: registrar@ukzn.ac.za

Website: www.ukzn.ac.za

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APPENDIX SIX: ETHICAL CLEARANCE



16 September 2016

Mr Ntsika Edward Mlamla 215081279
School of Applied Human Sciences
Howard College Campus

Dear Mr Mlamla

Protocol reference number: HSS/0790/016M

Project Title: Perceptions of Masters students on decriminalization of sex work in South Africa

Approval notification – Amendment Application

This letter serves to notify you that your application for an amendment dated 2 September 2016 has now been granted Full Approval.

• Change in Title

Any alterations to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study must be reviewed and approved through an amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number. PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

Best wishes for the successful completion of your research protocol.

Yours faithfully

Dr Shamila Naidoo (Deputy Chair)
Humanities Social Sciences Research Ethics

/pm

Cc Supervisor: Dr SM Mkhize
Cc Academic Leader Research: Dr Jean Steyn
Cc School Administrator: Ms Ayanda Ntuli

Humanities & Social Sciences Research Ethics Committee

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Founding Campuses: Edgewood Howard College Medical School Pietermaritzburg Westville