Partial criminalisation of prostitution: How would we punish offenders?

Chloë Woodin

PBL4605F Women and Law Research Project

June 2014

UCT KNOWLEDGE CO-OP

The UCT Knowledge Co-op facilitated this collaborative project.

Table of Contents

Introduction

The purpose of my research is to investigate the potential punishments that could be meted out to offenders were South Africa to adopt the partial criminalisation model in dealing with prostitution.

Prostitution is currently illegal in South Africa. However, over the years there have been recommendations by civil society, particularly from non-profit organisations advocating for sex workers' rights to restructure the legal framework in South Africa. While the three dominant models for managing prostitution, namely legalisation, decriminalisation and criminalisation, have been explored quite extensively by the South African Law Reform Commission and have been the subject of much academic debate, partial criminalisation as an option for dealing with prostitution has been left lurking in the shadows. Embrace Dignity, a non-profit women's human rights organisation which opposes prostitution, has served to bring this proposed model into the public arena. Embrace Dignity advocates for partial criminalisation of prostitution instead of total criminalisation. In terms of this model, clients, pimps, brothel owners and traffickers would be criminalised, but not the prostitutes themselves. I aim to consider the viability of such a model for the South African context by focusing specifically on the potential sanctions that could be meted out to punish offenders. In determining the suitability of legal reforms in a particular legal system, the issue of punishment is an important one and in order to determine whether South Africa could adopt the partial criminalisation model one must consider how the laws would apply in practice. In order to do this, I have engaged in comparative research into other jurisdictions which have already adopted this model. By drawing on the laws of Sweden, Norway and France, I argue that it is possible to formulate punishments which will be feasible in the South African context.

The issue of prostitution in this context must be located within the realm of criminal law. Broadly, the aim of criminal law is to coerce members of the public, by threat of harm or suffering, to abstain from committing conduct (defined as crime) which is detrimental or harmful to the interests of society.[1] The threat in this case takes the form of punishment. The point of departure when it comes to punishment is that it should fit the criminal as well

[1] Jonathan Burchell *South African Criminal Law and Procedure Volume 1: General Principles of Criminal Law* 4 ed (2011) 3.

as the crime; it should be fair to society and be blended with a measure of mercy according to the circumstances.[2] There are four main purposes for sanctions – retribution (the need to punish offenders), deterrence (the need to prevent crimes), prevention and safety (to protect the public) and lastly, rehabilitation (to change offenders back into law abiding citizens).[3] When considering suitable punishment options for offenders in terms of the partial criminalisation model, it is important to always bear in mind these general purposes underlying punishment.

For the purposes of my research, I have chosen to focus on the liability of clients, pimps and brothel owners. I will not be considering punishment for the crime of trafficking in persons for sexual purposes. Furthermore, this research focuses on adult prostitution and will not delve into the criminal implications where the prostituted person is a child below the age of 18.

Part one of this essay considers South Africa's current legal framework and provides a short explanation of the partial criminalisation model for managing prostitution and the theoretical justifications for its implementation. Part two provides a comparative analysis with the following countries: Sweden, Norway and France. In part three, I evaluate the laws in the aforementioned jurisdictions with regards to their potential applicability to South Africa. Part four includes recommendations for South Africa and conclusions.

Part I: the current legal system in South Africa

Section 20(1A)(a) of the Sexual Offences Act 23 of 1957 makes it an offence for any person 18 years or older to have unlawful carnal intercourse, or commit an act of indecency, with any other person for reward. [4] The Act also criminalises any person living off the earnings of prostitution[5] or who procures a female to have unlawful carnal intercourse with any person other than the procurer[6] ("pimps"); as well as brothel owners.[7] In addition, a number of

[2] *S v Rabie* 1975 (4) SA 855 (A) at 862G.
[3] JJ Joubert *Criminal Procedure Handbook* 10 ed (2011) at 317.
[4] This section was inserted as a result of amendment by s68 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (hereinafter "SORMA").
[5] s20(1)(a) Sexual Offences Act.
[6] Ibid, s10(a).

municipal by-laws make it an offence to loiter in a public place for the purpose of prostitution.[8] In 2007, a provision was included in the Criminal Law (Sexual Offences and Related Matters) Amendment Act (SORMA) which criminalises the client who purchases sexual services from a person 18 years or older.[9] Prior to this section, there was no law directly criminalising the client – a person buying sexual services would be liable to the same punishment as the prostitute under the Riotous Assemblies Act, as a person who instigates or procures another person to commit an offence.[10]

The outlawing of commercial sex has been seen as serving a legitimate and important constitutional purpose in South Africa.[11] In defending the old s20(1)(aA) of the Sexual Offences Act, which criminalised prostitutes, the State in *S v Jordan* put forward a number of explanations for the suppression of commercialised sex.[12] The business of prostitution, according to the State, breeds crime which is not confined to the sale of sex, but extends into violent crime; results in the exploitation of women and children; and leads to human trafficking; as well as the spread of diseases.[13] Whilst it is not disputed that commercial sex results in a number of social ills, over the years there has been much debate about whether total criminalisation is indeed the right approach to this issue.

The South African Law Reform Commission (SALRC) has identified four options for managing prostitution: total criminalisation, partial criminalisation, decriminalisation and legalisation.[14] After calls for submission on the issue of adult prostitution, the SALRC reported in its discussion paper that whilst there is no evidence that criminalisation prevents or deters women and men from entering into prostitution, there is evidence that prostitutes are rendered more vulnerable, once having entered the industry, to exploitation

---

[7] Ibid, s2 & s20(2).

[8] See for example Eastern Cape, Amatole District Municipality, Prevention of Nuisance by-law, s6.

[9] s11 SORMA provides that:

'A person ('A') who unlawfully and intentionally engages the services of a person 18 years of older ('B'), for financial or other reward, favour or compensation to B or to a third person ('C') –

(a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or

(b) by committing a sexual act with B,

is guilty of engaging the sexual services of a person 18 years or older.'

[10] s18(2) Riotous Assemblies Act 17 of 1956.

[11] *S v Jordan* 2002 SACR 499 (CC) para 15.

[12] Ibid para 15.

[13] Ibid para 15 footnote 11.

[14] South African Law Reform Commission Discussion Paper 0001/2009 (Project 107) *Sexual Offences: Adult Prostitution* (2009).

and abuse by the fact that prostitution is criminalised.[15] Some of the negative effects which prostitutes experience as a result of the criminalisation of prostitution include stigmatisation, vulnerability to HIV/AIDS, lack of access to health services for fear of identification as a prostitute, abuse by gangsters, clients, brothel owners and pimps and inability to exercise their human rights and report abuse.[16]

In light of such negative effects and taking the view that law reform is necessary to recognise prostitution as violence against women, Embrace Dignity advocates for a partial criminalisation model to be adopted in South Africa, based on the Swedish model. They believe that prostitution is not a free choice, but rather that it offers a bleak and desperate means of survival for women who are already socially and economically marginalised.[17] The idea is that a partial criminalisation approach will curb demand of prostitution and can facilitate exit strategies for prostituted women.

Partial criminalisation would criminalise the buying of voluntary adult sex indoors and outdoors, as well as criminalise third parties including brothel owners, pimps and traffickers. However, the voluntary selling of sex would be decriminalised as prostitutes are regarded as victims who lack the agency to make a free "choice" to become a prostitute.[18] This position has been considered as one of the potential options for South Africa by the SALRC. If South Africa were to adopt this option, the SALRC proposes to repeal the relevant provisions of the Sexual Offences Act of 1957 and s11 of SORMA and to enact a new Adult Prostitution Reform Act to criminalise specific acts related to "unlawful prostitution".[19] The question is what kinds of sanctions could be prescribed by such legislation in order to punish clients, pimps and brothel owners?

In the next section, I will describe how this model has been employed in Sweden and Norway and the sanctions which apply in these jurisdictions. I will also consider the position in France where the Swedish model has recently been accepted by the lower house of Parliament.

[15] Ibid at 26.
[16] Ibid at 19-21.
[17] Embrace Dignity website, available at *embracedignity.org.za,* accessed on 15 March 2014.
[18] SALRC discussion paper op cit note 14 at 234.
[19] Ibid at 235.

Part II: Comparative analysis:

Sweden

Sweden was the first country to implement the partial criminalisation model which decriminalises the selling of sex. Since then, other countries have followed in its footsteps, namely Norway, Iceland, and most recently, France. This legal framework has become known as the "Nordic" model.[20] It is based on the premise that prostitution poses a serious obstacle to social and gender equality and to the enjoyment of human rights.[21] In Sweden, prostitution is officially acknowledged as a form of male sexual violence against women.[22]

The Sex Purchase Act[23] ("Sexköpslagen") was enacted in January 1999 and made it illegal to buy sex. In connection with the sexual crimes reform of 2005 this Act was revoked and replaced by Chapter 6 of the Swedish Penal Code. [24] Section 11 of this chapter provides:

> A person who, otherwise than as previously provided in this chapter, obtains a casual sexual relation in return for payment, shall be sentenced for purchase of a sexual service to a fine or imprisonment for at most six months.[25]

This section also applies where the payment was made by another person.[26] In July 2011 the penalty was raised to one year imprisonment to create scope for punishment in more serious cases.[27] The Swedish government intends for this legislation to act as a deterrent to decrease the number of purchasers of prostitution, reduce the number of people involved in especially street prostitution and to reduce the number of new recruits into prostitution.[28] Thus, this framework is informed primarily by the deterrence theory of punishment, which

---

[20] Heather Monasky, 'Note: On comprehensive prostitution reform: Criminalising the trafficker and the trick, but not the victim – Sweden's Sexköpslagen in America' (2001) 37:4 *William Mitchel Law Review* 1989 at 1997.
[21] Regeringskansliet: Ministry of Integration and Gender Equality Sweden, 'Against prostitution and human trafficking for sexual purposes' (2008) at 4, available at *http://www.prostitutionresearch.com/pdfs/Against%20Prostitution%20Sweden10-09.pdf*, accessed on 31 March 2014.
[22] Gunilla Ekberg 'The Swedish law that prohibits the purchase of sexual services: Best practices for prevention of prostitution and trafficking in human beings' (2004) 10 *Violence Against Women* 1187 at 1189.
[23] SFS 1998:408.
[24] SFS 1962:700.
[25] Regeringskansliet: Government Offices of Sweden, Swedish statutes in translation, 'Chapter 6 of the Swedish Penal Code', s11, available at *http://www.government.se/content/1/c6/04/74/55/ef2d4c50.pdf*, accessed on 31 March 2014.
[26] Ibid.
[27] Regeringkansliet: Government Offices of Sweden website, available at *www.government.se,* accessed on 31 March 2014.
[28] Ibid.

aims to prevent people from committing further offences and to instil fear of punishment in potential offenders to prevent them from committing similar crimes.

In addition to criminalising clients, s12 criminalises pimps by means of a prohibition against procuring.[29] Such persons will be liable, upon conviction, to imprisonment of at most four years. Paragraph two of this section criminalises brothel-owners and makes them liable to the same punishment. The section also provides for imprisonment of between two and eight years for those convicted of "gross procuring", where the crime concerns large-scale activity, has brought significant financial gain, or involved ruthless exploitation of another person.[30] What is revealed by these penalties is that the activities relating to pimping and owning a brothel are considered in a much more serious light and carry much longer sentences for offenders.

In 2010 the Swedish government presented a report evaluating the prohibition and its effects in the previous ten years of its existence. The overall finding of this report is that the legislation has had its intended effect and has been an important instrument in preventing and combating prostitution and human trafficking for sexual purposes.[31] Groups organised by women who have been in prostitution and who are attempting to leave prostitution reportedly support the law, as it has given them the real incentive to seek the assistance they need to exit the industry.[32]

Street prostitution was reported to have halved since 1999 and reports from police officers and social workers revealed that demand has declined, with clients becoming increasingly cautious.[33] The report notes that there is no evidence to suggest that there has been an increase in indoor prostitution since the decrease on the streets.[34] Police have reported that clients were more fearful about their families and friends finding out about their activities, than the actual penalties. These findings reveal that the ban appears to be bringing positive results and, if similar results are possible for South Africa, the Nordic model may well be the preferred route for South Africa.

[29] Ch 6, s12 Penal Code [Sweden].
[30] Ibid.
[31] Swedish Institute 'Selected extracts of the Swedish government report SOU 2010:49: "The Ban against the purchase of sexual services. An evaluation 1999-2008"' (2010) (English translation) at 11.
[32] Ekberg op cit note 22 at 1204.
[33] SOU 2010:49 translation op cit note 31 at 7 & 9.
[34] Ibid at 8.

At the same time, some prostitutes in Sweden reported no great change in demand for sexual services as so few clients were actually caught and penalties were too lenient.[35] The Swedish report indicates that due to the low penal value attached to the ban on purchasing sexual services, this crime has been given a low priority among police when assigning resources for enforcement. This risk, that the police will not take the ban seriously if too low a penalty is attached, is something that must be kept in mind when determining the extent of the penalty in South Africa. Nevertheless, Swedish police have directed special operations mainly targeted at street prostitution and more organised forms linked to trafficking.[36] When a new penal provision for trafficking in human beings for sexual purposes came into operation in July 2002 there was a drastic increase in prosecutions originating from violations of this provision.[37] The increase in prosecution of clients stemmed from investigations into pimping and trafficking as prosecutors consider clients to be valuable witnesses in such cases.[38] Conviction rates of purchasers of sex have ranged from ten in 1999 when the ban was enacted to 326 in 2010.[39] The majority of prosecutions involve cases where contact was made in a street setting and eight out of ten times the male client would admit to the offence. In these cases the prosecution would not institute legal proceedings, but rather impose a summary fine.[40] Only five persons in 2009 had been reported as receiving a penalty other than a fine (such as a conditional sentence), since the law's enactment in 1999 and none had been imprisoned under the sex purchase law itself.[41] While a summary fine may look appealing to police officers and prosecutors because of the ease of its implementation, it will be argued in the next section that this would not be an appropriate option for South Africa.

The Swedish government has also emphasised that social initiatives to combat demand for sexual services are crucial. One such initiative is the operation of 'KAST' groups by social

[35] Ibid at 9.
[36] Ibid at 10.
[37] Ibid at 39.
[38] Monasky op cit note 20 at 2030.
[39] Max Waltman 'Prohibiting sex purchasing and ending trafficking: the Swedish prostitution law' (2011) 33 *Michigan Journal of International Law* 133 at 149.
[40] A summary punishment is the same as a judgment and is recorded in the central criminal police register, however there is no trial. Kajsa Clause and the Swedish Institute 'Targeting the sex buyer: the Swedish example: stopping prostitution and trafficking where it all begins' (2010), available at *http://exoduscry.com/wp-content/uploads/2010/07/swedish_model.pdf*, accessed on 31 March 2014.
[41] Max Waltman 'Sweden's prohibition of purchase of sex: The law's reasons, impact and potential' (2011) 34 *Women's Studies International Forum* 499 at 465.

services in Stockholm, Gothenburg and Malmö.[42] These groups are aimed at motivating already convicted buyers of sexual services and potential clients to change their behaviour.[43]

While the ban seems to be working well, Max Waltman has recommended that its implementation can be more effective if offenders are liable for civil damages on top of receiving a criminal sanction.[44] Waltman argues that clients should be seen as harming prostitutes when they make them perform sex for money, as they are exploiting the coercive circumstances that push people, particularly women, into the sex industry.[45] Several studies suggest that clients realise that prostitutes do not enjoy the sex and are forced into the industry due to economic hardships.[46] They also know that in many cases prostitutes are subjected to violence by pimps and traffickers; however, they go on buying sex nonetheless.[47] Civil liability would aid the deterrent function of the current laws, as when clients realise that they may be forced to compensate the women whom they have exploited, in addition to paying a potentially hefty fine, they will think twice about paying for sex.[48] Compensation paid to the prostitute can also go a way to changing that woman's economic situation, without the public having to donate funds.[49] In addition, if prostitutes knew that civil damages may be an option, they will be more willing to testify against purchasers and may see it as a way out of their predicament.[50] The prospect of civil damages claims looks very attractive and would undoubtedly improve the lives of women who are exploited through prostitution. However, when considering this option for a country such as South Africa, one must be reminded of the serious problems we face with access to justice. Moreover, as will now be explained, the Swedish procedure in respect of civil claims differs a great deal to ours in South Africa.

In terms of Sweden's Code of Judicial Procedure, applicants against whom an offence has been committed or who have been harmed by criminal conduct, usually have a right to

[42] SOU 2010:49 translation op cit note 31 at 6
[43] Ibid.
[44] Waltman op cit note 41 at 463.
[45] Ibid.
[46] Waltman op cit note 39 at 154.
[47] Ibid.
[48] Waltman op cit note 41 at 468.
[49] Ibid at 463.
[50] Waltman op cit note 39 at 155.

present damages claims and to get them judicially assessed after criminal proceedings.[51] In this case the applicant is the "injured party" and the claim can be partially presented by the prosecution as well as the victim's legal counsel. However, even where the person is not considered to be the injured party, she may still have a claim; the prosecution merely has no formal obligation to support it.[52] Whilst this could provide the opportunity for prostitutes to claim damages against those who have exploited them, there has yet to be an award for civil damages granted to a prostituted person. In 2001 the Supreme Court failed to award damages to a prostitute, interpreting the crime as being one primarily committed against the public order, rather than against the prostituted person herself.[53] The court based this opinion on the reasoning that the prostitute has "consented" and that she would not genuinely consent to a crime against herself as a person.[54] However it is submitted that the court ignored the reality of these women's situation which is that the prostituted person's alleged "consent" is in most cases fictional. One cannot legitimately consent when one is forced into the industry due to one's desperate financial position and abusive circumstances.[55] The judicial response to the ban has in this sense been disappointing.

Fortunately the Swedish government has clarified the matter and in its report on the evaluation of the ban on purchasing of sexual services, the inquiry confirmed that the purchase of sexual services is more a crime against the person than the public order and the prostituted person may be recognised as the injured party for the purposes of the Code of Judicial Procedure.[56] It warns, however that individual assessment should be conducted to determine whether in the particular case, the prostituted person is indeed directly affected by the offence so as to warrant recognition as an injured party[57]. The Parliamentary Committee on Justice in 2011 also added that existing law already provides opportunities for those affected by the offence, but who are not technically injured parties, to claim

[51] Waltman op cit note 41 at 463.
[52] Ibid.
[53] Waltman op cit note 39 at 153.
[54] Waltman op cit note 41 at 463.
[55] Ibid at 153-4.
[56] SOU 2010:49 translation op cit note 31 at 12.
[57] Ibid.

certain damages.[58] Hopefully these statements will result in damages awards finally being made to prostituted women in Sweden.

Norway

In December 2008 the government of Norway amended its Penal Code in order to criminalise the purchasing of sexual services. Section 202a now provides for punishment by means of a fine or imprisonment for a period not exceeding six months, or both, where a person has procured sexual intercourse or any other sexual act for himself or herself or for another person in return for payment or agreement to provide payment.[59] Moreover, punishment is increased to one year's imprisonment where the sexual activity is carried out in a particularly offensive manner (and is not punishable under any other law).[60] This punishment is almost identical to that imposed by the Swedish law, the only difference being that in Norway an offender may be liable to both imprisonment *and* a fine. The Code also criminalises pimps who promote the engagement of any other person in prostitution and brothel owners who let their premises on the understanding that such premises will be used for purposes of prostitution.[61] These offences result in punishment in the form of a fine or imprisonment for up to five years.

While there is not yet any substantial data on the efficacy of the ban in Norway, the Minister of Justice announced plans in 2013 to do an evaluation of the implementation of the law and there have been news reports on the application of the law thus far.[62] According to Fafo, an independent research foundation working within Norway and the larger international context, the police in Oslo have started 'operation homeless' (operasjon husløs) in which police target landlords of women in prostitution and threaten them with pimping charges unless they ensure that the prostitution ceases to occur in the apartments

[58] Waltman op cit note 39 at 156.
[59] General Civil Penal Code 1902 No. 10, s202a. [Norway]
[60] Ibid.
[61] Ibid, s202
[62] Anette Brunovskis & May-Len Skilbrei 'The ban on the purchase of sex – have Norwegian prostitution markets changed?' (2012) available at *http://www.fafo.no/prostitution/ban_purchase.html,* accessed on 31 March 2014.

which they let.[63] One of the ways that landlords are targeted involves police making appointments at indoor markets, such as massage parlours, posing as clients and upon receiving an offer of sex for money, identifying themselves as police and demanding the name of the landlord.[64] Other reports indicate that within two months of the law being in force at least 20 men were arrested and elected to pay on-the-spot fines of between 8 000 and 9 000 kroner ($ 1 195 at the time).[65] It appears that the predominant method employed by police in both Sweden and Norway is to try and avoid the courts, favouring instead the issuing of warnings and, when it comes to clients, imposing spot fines rather than referring the matter to court for imposition of a prison sentence. As I will explain, the French legislature has taken a firmer approach to punishment of offenders, particularly pimps and brothel-owners.

France

In 1946 the French government implemented a zero tolerance policy against organised prostitution. Legislation was adopted which effected the closure of brothels and criminalised *proxénétisme* (procuring or pimping).[66] Then in 2003 the crime of soliciting by those offering sex became a serious offence and was inserted into the French Penal Code by the Domestic Security Bill proposed by the then Minister of Interior, Nicolas Sarkozy.[67] Two months imprisonment and a fine of €3 750 would be meted out to those who publically solicited another person by any means, including passive conduct, with a view to inciting them to engage in sexual relations in exchange for remuneration or a promise of remuneration.[68] Passive solicitation meant that women could be charged even for being present at locations known for prostitution and wearing revealing outfits. However, the

[63] Ibid.
[64] Services for sex workers, 'Sex work' available at *http://www.services4sexworkers.eu/s4swi/articles/view/id/6*, accessed on 31 March 2014.
[65] AFP 'Fewer prostitutes but conditions worsen after new law in Norway' (2009) available at *http://www.google.com/hostednews/afp/article/ALeqM5hVN96Ecm5frV5S37puMWUgTf5KmA*, accessed on 31 March 2014.
[66] Act n° 46-685 of 13 April 1946, also known as the loi de Marthe Richard.
[67] Act n° 2003-239 of 18 March 2003, loi pour la sécurité intérieure.
[68] Article 225-10-1 Penal Code [France], english translation available at *www.legifrance.gouv.fr/content/download/1957/13715/version/4/file/Code_33.pdf*, accessed 31 March 2014.

2013 Bill which has been recently adopted by the lower house of Parliament repeals this offence of soliciting, effectively decriminalising the selling of sex.[69]

This new bill, adopting the Nordic model, also introduces criminalisation of the client. Under the existing Penal Code, purchasing sex was not a crime; however the purpose of the new law is to make clients more accountable by imposing a fine of €1 500 for a first offence and €3 750 thereafter, and may include prison time depending on the amount of prior purchasing offences.[70] In the report presented to the National Assembly which reviewed the proposed law, the objectives for criminalising clients were explained as follows: to suppress human trafficking and sexual exploitation, to make clients understand that they are participating in a form of exploitation of the vulnerability of others and to reduce prostitution in France.[71]

The new law does not amend the Penal Code with regards to crimes relating to pimping and owning a brothel. These crimes, introduced originally by the Domestic Security Bill, will still stand. However the Bill does add a prohibition against the use of the internet in pimping and trafficking persons for prostitution.[72] An obligation is placed on internet service providers to block access to websites abroad which violate French laws against pimping and trafficking.[73] In terms of article 225-5 of the Penal Code, procuring, which covers acts of assisting or protecting the prostitution of others, making a profit out of the prostitution of others and exerting pressure on another to practice prostitution is punishable by imprisonment for seven years and a fine of €150 000. This punishment increases to ten years imprisonment and a fine of €1 500 000 where the pimping involves exploitation of two or more persons or persons with vulnerabilities, or is committed with the use of violence or fraudulent behaviour.[74] Brothel owners will be sentenced to ten years imprisonment and a

[69] Bill "lutte contre le systeme prostitutionnel", Art 13 (hereinafter 'the French Bill").
[70] Article 16 of the French Bill introduces the prohibition against the purchase of sexual acts into Art 225-12-1 of the French Penal Code and provides:
'Soliciting , accepting or obtaining a sexual relationship with a person who engages in prostitution, including occasionally in exchange for payment , promise to pay, providing a benefit in kind or the promise of such an advantage , is punishable by a fine for offenses of the fifth class.'
[71] National Assembly Report to review the proposed law (No. 1437) (19 November 2013) available at *http://www.assemblee-nationale.fr/14/rapports/r1558.asp*, accessed on 31 March 2013.
[72] Art 1st French Bill.
[73] Ibid.
[74] Art 225-7 Penal Code [France].

fine of €750 000 if convicted.[75] These penalties are particularly severe in contrast with the Nordic countries already considered. However, in light of the serious nature of these crimes and the damage which they cause to women in prostitution, I applaud the government for taking such a firm stand in protection of one of the most vulnerable groups in society.

An interesting additional punishment introduced by the 2013 Bill that may be meted out to purchasers of sexual services, is participation in an awareness training course.[76] This may be imposed as an additional penalty on top of the fine and imprisonment, or as a real alternative to prosecution.[77] Such participation will be at the client's own expense. The purpose of awareness training is to educate buyers and to allow them to reflect on the consequences of their actions in order to change their attitudes and the way they perceive their own behaviour.[78] This is similar to the KAST initiative in Sweden, with the French version being imposed as punishment rather than a voluntary undertaking by the client.

The Bill also emphasises the importance of helping victims of prostitution out of their situation, by providing social services to prostitutes. Article 3 of the Bill entitles any victim of prostitution to benefit from a system of protection and assistance which will be provided and administered in collaboration with social services. A tripartite agreement is concluded between the prostitute, the administrative authority and a State-approved association and the nature of the assistance will depend on the health, professional and social needs of the victim and focuses on providing the woman (or man) with alternatives to prostitution.[79] This reveals one of the focuses of the Nordic model which is to acknowledge prostituted persons as victims of exploitation who deserve to be assisted in finding alternatives and opportunities to exit prostitution.

With these legal frameworks in mind, I will now embark on an evaluation of their potential applicability to a South African context. My analysis will be divided between punishment options for clients on the one hand, and pimps and brothel-owners on the other.

[75] Ibid, Art 225-10.
[76] Art 17 French Bill inserted into Art 131-16 Penal Code [France].
[77] National Assembly Report op cit note 71.
[78] Ibid.
[79] Ibid.

Part III: Evaluation of the Nordic Model and its applicability to South Africa

Punishment of clients

'Spot-fines'

As was alluded to in the previous section, spot-fines or summary fines have been a popular method of enforcing the law where the punishment for purchasing sexual services is posed in the form of a fine. This means that the prosecutor does not institute legal proceedings and hence there is no trial; rather it is as if judgment has already occurred and payment is made and the offender's details will be recorded in the central criminal police register.[80] Our equivalent to such proceedings in South Africa would be an admission of guilt fine. In our law an accused may be given the option either in a written notice to appear, or in a summons, to admit his guilt and pay a fine without appearing in court.[81] However, this method may only be used where the peace officer believes on reasonable grounds that a magistrate's court, on convicting the accused, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Government Gazette (currently R5 000).[82] While it might seem that this would be a way of implementing spot fines in the context of punishing clients of prostitution, admission of guilt fines are mainly used in this country for minor offences like traffic fines.[83] It is submitted that the more serious sexual offence of purchasing sexual services, is not suitable for endorsement with an option of admission of guilt. This is particularly so in light of the protection which our Constitution affords arrested, detained and accused persons. In comparison with Sweden and Norway, South Africa places a great emphasis on the right to a fair trial and the presumption of innocence.[84] Moreover, s35(3)(*c*) of the Constitution gives accused persons the right to a public trial before an ordinary court. In contrast, Sweden's Constitution does not include fair trial rights.[85] These come only from article 6 of the European Convention on

[80] Clause and the Swedish Institute op cit note 40 at 20.
[81] s57 Criminal Procedure Act 51 of 1977 (hereinafter 'CPA').
[82] Ibid, s57(1)(*a*) & s56(1)(*c*).
[83] Joubert op cit note 3 at 101.
[84] The right to a fair trial is contained in s35(3) of the Constitution of the Republic of South Africa, 1996 (hereinafter 'the Constitution'), which includes the right to remain silent in sub-section s35(3)(*h*).
[85] Regeringskansliet: Government Offices of Sweden, available at *http://www.government.se/sb/d/2707/a/15187,* accessed on 4 April 2014.

Human Rights,[86] which Sweden has ratified. The Constitution of Norway holds that a penalty may only be imposed by a court of law[87]; however an important exception is that police may offer a person the option of a fine.[88] From this it can be seen that the legal context in South Africa is quite different. Accused persons have the right to have a court of law rule on their guilt or innocence beyond a reasonable doubt.[89] Were we to impose admission of guilt fines on purchasers, the constitutionality of such a process might be challenged on the basis of infringement of the right to a fair trial. As such I do not think that an admission of guilt fine or 'spot fine' would be appropriate for punishing offenders.

Fine and/or imprisonment

The fact that a spot fine may not be a viable option for South Africa does not mean that a fine cannot still be imposed to punish clients. One of the considerations which I believe to be important in determining the penal value appropriate as punishment of purchasers of sexual services is that the crime must be treated by police with the seriousness that it deserves. As can be seen from the Swedish report, where the crime is perceived as having a low penal value, police have been reluctant to devote sufficient resources towards combating it. Thus, fines must be high enough to warrant action by the police in enforcing them. They must also fulfil the functions of punishment in general – the penal value must be sufficient to deter clients and potential clients from committing the crime, as well as being proportionate to the seriousness of the crime and act as a way of punishing offenders. When considering a fine as a method of punishment, one must also keep in mind the Adjustment of Fines Act.[90] All penalty clauses which provide for a fine must be read together with this Act. It provides for a ratio which uses the maximum term of imprisonment to calculate the maximum amount of the fine which may be imposed. At present courts may impose a R20 000 fine for every 12 months' imprisonment.[91] The Act applies particularly where a penalty clause provides for the imposition of a fine without reference to a

[86] European Convention on Human Rights.
[87] The Constitution of the Kingdom of Norway 1814, article 96.
[88] High Court Judge Sverre Erik Jebens, 'The right to a fair trial in Norway', available at *http://www.wfrt.org/humanrts/fairtrial/wrft-sj.htm*, accessed on 3 April 2014.
[89] Schwikkard & Van der Merwe *Principles of Evidence* 3ed (2012) 19.
[90] Act 101 of 1991.
[91] Joubert op cit note 3 at 317.

maximum amount; it does not apply, however where a court has the discretion to impose a fine as it deems fit.[92]

Under the current law, there are no specific penalties which apply to purchasers of sexual services. The crime is located within SORMA, which up until recently made no reference to penalties for sexual offences. It was only after the *Prins* case[93] where this deficiency was brought to the court's attention, that Parliament amended the Act to make reference to s276 of the Criminal Procedure Act (CPA).[94] This empowers judicial officers to use their general sentencing discretion in terms of s276 of the CPA when punishing buyers of sex. This is in contrast with the sale of sex which attracts a punishment of three years' imprisonment, with or without a R6 000 fine, in terms of s22(a) of the Sexual Offences Act.

When considering the penalty it must also be considered whether it is appropriate to distinguish between first time offenders and those clients who are repeat offenders. In France we see that the amount of the fine increases where the client is a second time offender and repeat offenders may also be given a prison sentence. While it may be appropriate to attach a greater sentence where a client has repeatedly exploited prostituted persons, it is also necessary to send a message to the client himself, as well as to the public, on the very first occasion that a client is convicted, that his behaviour is unacceptable and deserving of punishment. With this in mind and considering that law-makers have in the past considered a three year prison sentence for prostituted women as appropriate punishment, I believe that imprisonment should be imposed on even first time offenders in South Africa, in order to send a strong message that purchasing sex will not be tolerated. The length of the sentence need not be radical for first time offenders and the amount of imprisonment may increase where a client is a repeat offender. In addition, the judicial officer should exercise his or her discretion as to whether a fine should be imposed in addition to the prison sentence.

Prescribing the exact amount of a fine or the number of years' imprisonment that would be an appropriate sanction for clients, is not an easy task, and is one best left to the legislature or the courts. However, it is submitted that six months to one year's imprisonment, as is the

[92] s4(b) Adjustment of Fines Act.
[93] *Director of Public Prosecutions of the Western Cape v Prins and Others* 2012 (2) SACR 183 (SCA).
[94] s56A(1) SORMA.

sanction in the Nordic countries, is too lenient for a country like South Africa, with our high levels of violent crime. A comparison of the punishments for some of the other sexual offences in Sweden, for example, reveals that in general, Swedish criminal law imposes lower punishments than does our South African legal system. Rape in its grossest form, for instance, accords a penalty of at most ten years in Sweden;[95] whilst in South Africa offenders face life imprisonment.[96] Due to the fact that the partial criminalisation model is based on the premise that prostitution is a form of violence against women and that prostituted persons cannot truly 'consent' to the sexual acts they perform because such consent is forced by their dire circumstances, it may be argued that the crime can be equated almost to a form of rape with extenuating circumstances and punishment could be informed by that which would be meted out to those convicted of rape. The extenuating circumstances may be understood as being the fact that the ready availability of the service, and illusion of genuine consent, facilitates clients' behaviour. In South Africa rape is covered by the minimum sentencing legislation and where there are no aggravating circumstances, punishment ranges from 10 to 20 years' imprisonment, depending on whether the person is a repeat offender.[97] This framework may be useful as a basis for law makers when considering what would be an appropriate penalty for clients, bearing in mind the circumstances mitigating their behaviour.

Educational programmes

An additional sanction which is important to consider is the order of attendance at some kind of educational programme aimed at changing client's attitudes and behaviour. This idea is informed by the view that prostitution is based to a large extent on unequal gender relations and presuppositions about the roles of men and women. The female prostitute is the social outcast, tainted by her activity; whilst the male buyer returns to respectability after his encounter, considered merely to have given in to temptation or done the sort of thing that men do.[98] Demand is justified by a vision of masculinity that is related to strength

[95] Ch 6, s1 Penal Code [Sweden].
[96] s51(1) Criminal Law Amendment Act 105 of 1997.
[97] Ibid s51(2)(*b*).
[98] *S v Jordan* paras 64-5.

and virility.[99] However these are attitudes that can be changed and educational programmes directed at clients aim to bring about this change. In Sweden there are the voluntary 'KAST' programmes for this purpose and the French Bill envisages compulsory attendance at awareness training courses to complement the main penalty, either added in addition to the fine or imprisonment, or as an alternative to prosecution. This has the potential to be an effective sanction option and it satisfies the rehabilitation function of punishment. Thus, I believe that it would be worth considering for application in South Africa, bearing in mind of course, the potential difficulties we may face in its implementation.

Our law already recognises attendance at these kinds of programmes as viable punishment options. As part of their general sentencing discretion, judicial officers are entitled to impose correctional supervision as punishment of a criminal offender.[100] Such supervision may be the convicted person's only sanction, or it may be imposed in addition to imprisonment.[101] Section 276A of the CPA envisages such correctional supervision to include, if practicable, the attendance of and participation in a sex offence specific treatment programme where the person is convicted of a sexual offence. Thus we can see that the framework for imposition of such a sanction already exists in our law. One of the major difficulties with implementing this method however, must be the issue of resources and funding. In a country such as South Africa, with limited resources in government departments and NGOs greatly under-funded, it may be difficult to keep a so-called 'John-school' up and running. However, I propose that it is possible to use existing services, together with the imposition of a price for participation, which can make this a viable punishment option for purchasers of sexual services in South Africa.

In South Africa, we have NICRO – the South African National Institute for Crime Prevention and Reintegration of Offenders. It is the only national non-governmental organisation which provides crime prevention services across South Africa. NICRO predominantly offers diversion services for children who have committed crimes. It also offers services in relation

[99] European Women's Lobby, '18 Myths on prostitution' at 4, available at *http://www.womenlobby.org/spip.php?action=acceder_document&arg=3513&cle=adf2a4e692356c85e7aa8b35cfd34e7f1be9aa7e&file=pdf%2Fprostitution_myths_final_ewl.pdf,* accessed on 3 April 2014.
[100] s276(1)(*h*) CPA.
[101] Ibid, s276(3)(*a*).

to non-custodial sentencing and offender reintegration into society.[102] NICRO clients may refer themselves to the Institute voluntarily, or they may be referred there by a court. There are a number of programmes on offer, for example one that offers life skills and another aimed at perpetrators of intimate partner violence. In dealing with clients of prostitution, we could make use of NICRO to facilitate the awareness programme that forms part of the punishment, creating a programme aimed at purchases of sexual services. This could be available whether the client is sentenced to imprisonment (in which case the services would take place at the prison), or if he is sentenced only to payment of a fine (attendance at the programme would then be an additional sanction). The only other consideration is whether NICRO would have the resources to offer such services, as it relies on funding from government as well as donations.

Section 276A of the CPA already indicates that the cost of attendance at sex offence specific treatment programmes must be borne by the offender. Moreover, the French Bill directs that awareness training courses will be attended at the client's expense. Thus, were we to make offenders pay for the services themselves, this would be a source of funding for the programme (and would act as an additional retributive punishment, as well as deterrence for potential clients).

Punishment of pimps and brothel-owners

As can be seen in the jurisdictions considered above, a tougher attitude is taken towards those who procure and facilitate the services of prostitutes and who make a profit from providing these services to clients. This is to be expected, as pimps and brothel owners ultimately facilitate the demand and it is only if they are criminalised and brought to justice, that the demand for sexual services may be decreased, as it would be more difficult for clients to access the services of prostitutes. These criminals are also directly responsible for the exploitation of prostituted women and are often the source of violence and abuse, making it more difficult for women to exit the industry.

[102] NICRO website, available at *www.nicro.org.za*, accessed on 3 April 2014.

In Sweden and Norway pimps and brothel owners are faced with four to five years' imprisonment (and up to eight in Sweden where the crime is gross). France on the other hand, imposes even higher penalties of up to 10 years together with a very hefty fine. South Africa's existing laws punish procuring and offences relating to detaining a person in a brothel against her will by seven years' imprisonment.[103] Conviction of owning a brothel results in imprisonment for not longer than three years with or without a fine of up to R6 000[104] while an occupier of a house who knowingly permits the use of that house for purposes of any offence in the Sexual Offences Act, will be sentenced to imprisonment for not longer than six years with or without a R12 000 fine.[105] These penalties are not satisfactory punishment when prostitution is understood as being a form of violence against women. Once the crime of purchasing has been considered on almost an equal footing to rape with extenuating circumstances, pimps and brothel owners, who in essence facilitate and profit off of these acts, must be faced with the harshest penalty, which is proportional to the crime. Prison time is definitely called for and law-makers will have to consider the offences in relation to one another in order to formulate appropriate penal values.

An additional consequence: civil damages

Max Waltman made the suggestion of opening offenders up to civil suits. As we have seen, this option has now been acknowledged by the Swedish government as being possible, but there have been no claims to my knowledge as of yet. We do not in South Africa have a procedure as they do in Sweden, whereby civil damages may be judicially assessed immediately after a criminal trial has ended. In our country a civil action may be instituted by a victim of crime who has suffered damages as a result of the offence, but this is a private matter between the parties and is not influenced by the outcome of a criminal case.[106] However there seems to be no reason in theory, why such a claim could not stand. The problems arise with proving damages, as well as the reality of our legal system where litigation is costly.

[103] s22(e)Sexual Offences Act.
[104] Ibid, s22(a).
[105] Ibid, s22(f).
[106] s342 CPA.

In order to have a claim for damages, the amount of damages will have to be quantifiable. The kinds of damages which one can envisage a prostituted woman suffering are psychological trauma or even physical damage inflicted by violent pimps or associated with overuse of their bodies for sexual services, such as pelvic inflammatory disease or inability to carry a foetus to term.[107] However it may be very difficult to prove causation in prostitution cases where the prostituted person is claiming against a particular client. The costs involved with calling expert witnesses, like psychologists for example, to prove psychological trauma, may also be another detractor. These costs, combined with the other expenses associated with litigation, may render this remedy out of reach for many prostituted women. However there is the possibility of bro bono services rendered through Legal Aid or an NGO like the Women's Legal Centre.

Civil damages awards would go a long way to assisting prostituted women trying to exit the industry and there is no doubt that this is an appealing remedy. The thought of having to fork out money to compensate the prostituted women themselves, would also act as an effective additional deterrent to offenders. Therefore, I think that it should be considered as an option; however the issues of access to justice, and difficulties in proving causation and quantifying damages, may render it impracticable.

Part IV: Conclusion and recommendations

My research has revealed that the partial criminalisation model for dealing with prostitution appears to be working in practice in Sweden and Norway. The numbers of prostituted women on the streets has decreased dramatically, and there have been a good number of arrests and convictions when it comes to purchasers of sexual services. France is now following the lead set by Sweden, with the lower house of Parliament passing a bill which decriminalises the selling of sex but which imposes strict penalties on buyers, pimps and brothel owners. When considering application of the Nordic model to South Africa, it has been shown to be useful to use the legislative framework in these countries as a starting point.

[107] Janice G Raymond, 'Health effects of prostitution', available at *http://www.uri.edu/artsci/wms/hughes/mhvhealt.htm*, accessed on 4 April 2014.

If South Africa were to adopt the partial criminalisation model, the South African Law Reform Commission has recommended that the Sexual Offences Act, which criminalises the prostitute and which contains prohibitions against activities associated with pimping and brothel owning, be repealed. In its place the legislature should enact an Adult Reform Prostitution Act to deal with activities associated with prostitution. The aim of this research has been to consider what kinds of sanctions could attach to the crimes as could be set out in such legislation.

I dealt firstly with punishment of clients of prostitution. It has been shown that spot-fines, or admission of guilt fines, would not be a suitable method of punishment in the South African context in light of the protection our Constitution affords accused persons, particularly to be given a public, fair trial before a competent court. However, this does not mean that fines should be ruled out as a punishment option. In the Nordic countries fines play a greater role than does imprisonment. Moreover, the severity of punishment increases where offenders are repeat offenders. It has been argued that whilst the penal values imposed in these countries may be informative, we must remember the South African context when considering what kind of punishment would be appropriate. We have high rates of violent crime in South Africa and in general our law has taken a stricter approach to dealing with crime – punishments tend to be more severe than in the Nordic countries. With this in mind and considering that the rationale behind the partial criminalisation model is that prostituted women are victims of exploitation and cannot form real consent when performing sexual activities, it has been argued that the crime of rape and the sanctions which are attached to it, should be used to inform law-makers about what would be an appropriate penal value for the crime of purchasing sex.

It has also been submitted that the educational programmes like those in Sweden and France, whereby clients are made to understand and change their attitudes and behaviour towards the buying of sex, would be a viable option for South Africa as an additional penalty for clients. Practically, this could be implemented by using the services of NICRO and by making attendance at such a programme compulsory upon payment of a fee. Thus, clients themselves would be paying for the programme in order to provide NICRO with the resources to carry out the programme. This is an important sanction which gives effect to both the retributive and rehabilitative functions of punishment – retributive because clients

are made to pay and rehabilitative in that such a programme aims to rehabilitate clients and reintegrate them back into society with better attitudes towards women and prostitution.

I then dealt with punishment of pimps and brothel owners, arguing that harsher penalties are called for when dealing with these offenders. This is because they are the ones who actually facilitate the demand and the interaction with clients and without them it would be more difficult for clients to engage the services of prostituted women. All three of the countries I researched impose greater fines and longer prison sentences on those who procure the services of prostituted women for others and who run brothels out of which prostituted women provide sexual services. In South Africa our own laws reflect higher sentences for pimps and brothel owners, yet it is submitted that these are still not sufficient and law-makers should impose even higher penal values.

Lastly I considered the potential for claims for civil damages by prostituted women against offenders. Whilst this would be a commendable option for prostituted women, which could assist them in their efforts to exit prostitution, the realities of the South African context must be borne in mind. It is likely that such claims would prove problematic due to issues around access to justice as well as difficulty in proving causation and quantifying damages.

In conclusion I believe that the partial criminalisation model would be a viable option for South Africa and the sanctions imposed in other countries following this model may be used as guidelines. It is important, however to remember the South African context and to mould the punishment options to fit this context.

Reference List

Primary sources

Cases

Director of Public Prosecutions of the Western Cape v Prins and Others 2012 (2) SACR 183 (SCA).

S v Rabie 1975 (4) SA 855 (A).

S v Jordan 2002 SACR 499 (CC).

Statutes

South African

Adjustment of Fines Act 101 of 1991.

Constitution of the Republic of South Africa, 1996.

Criminal Law Amendment Act 105 of 1997.

Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

Criminal Procedure Act 51 of 1977.

Eastern Cape, Amatole District Municipality, Prevention of Nuisance by-law.

Riotous Assemblies Act 17 of 1956.

Sexual Offences Act 23 of 1957.

Foreign

Sex Purchase Act SFS 1998:408 [Sweden].

Penal Code SFS 1962:700 [Sweden].

The Constitution of the Kingdom of Norway 1814.

General Civil Penal Code 1902 No. 10 [Norway].

Act n° 46-685 of 13 April 1946. [France]

Act n° 2003-239 of 18 March 2003. [France]

Penal Code of 1971[France].

Bill 'lutte contre le systeme prostitutionnel'. [France]

International Instruments

European Convention on Human Rights.

Secondary Sources

AFP 'Fewer prostitutes but conditions worsen after new law in Norway' (2009) available at *http://www.google.com/hostednews/afp/article/ALeqM5hVN96Ecm5frV5S37puMWUgTf5KmA*, accessed on 31 March 2014.

Brunovskis, Anette and Skilbrei, May-Len 'The ban on the purchase of sex – have Norwegian prostitution markets changed?' (2012) available at *http://www.fafo.no/prostitution/ban_purchase.html,* accessed on 31 March 2014.

Burchell, Jonathan *South African Criminal Law and Procedure Volume 1: General Principles of Criminal Law* 4 ed (2011) Juta & Co, Ltd, Cape Town.

Clause, Kajsa and the Swedish Institute 'Targeting the sex buyer: the Swedish example: stopping prostitution and trafficking where it all begins' (2010), available at *http://exoduscry.com/wp-content/uploads/2010/07/swedish_model.pdf*, accessed on 31 March 2014.

Ekberg, Gunilla 'The Swedish law that prohibits the purchase of sexual services: Best practices for prevention of prostitution and trafficking in human beings' (2004) 10 *Violence Against Women* 1187.

Embrace Dignity website, available at *embracedignity.org.za,* accessed on 15 March 2014.

European Women's Lobby, '18 Myths on prostitution' at 4, available at *http://www.womenlobby.org/spip.php?action=acceder_document&arg=3513&cle=adf2a4e692356c85e7aa8b35cfd34e7f1be9aa7e&file=pdf%2Fprostitution_myths_final_ewl.pdf,* accessed on 3 April 2014.

Jebens, Sverre Erik, High Court Judge, 'The right to a fair trial in Norway', available at *http://www.wfrt.org/humanrts/fairtrial/wrft-sj.htm*, accessed on 3 April 2014.

Joubert, JJ *Criminal Procedure Handbook* 10 ed (2011) Juta & Co., Cape Town.

Monasky, Heather, 'Note: On comprehensive prostitution reform: Criminalising the trafficker and the trick, but not the victim – Sweden's Sexköpslagen in America' (2001) 37:4 *William Mitchel Law Review* 1989.

National Assembly Report to review the proposed law (No. 1437) (19 November 2013) available at *http://www.assemblee-nationale.fr/14/rapports/r1558.asp*, accessed on 31 March 2013.

NICRO website, available at *www.nicro.org.za*, accessed on 3 April 2014.

Raymond, Janice G, 'Health effects of prostitution', available at *http://www.uri.edu/artsci/wms/hughes/mhvhealt.htm*, accessed on 4 April 2014.

Regeringskansliet: Ministry of Integration and Gender Equality Sweden, 'Against prostitution and human trafficking for sexual purposes' (2008) at 4, available at *http://www.prostitutionresearch.com/pdfs/Against%20Prostitution%20Sweden10-09.pdf*, accessed on 31 March 2014.

Regeringskansliet: Government Offices of Sweden, Swedish statutes in translation, 'Chapter 6 of the Swedish Penal Code', available at

http://www.government.se/content/1/c6/04/74/55/ef2d4c50.pdf, accessed on 31 March 2014.

Regeringkansliet: Government Offices of Sweden website, available at *www.government.se,* accessed on 31 March 2014.

Regeringskansliet: Government Offices of Sweden, available at *http://www.government.se/sb/d/2707/a/15187,* accessed on 4 April 2014.

Services for sex workers, 'Sex work' available at *http://www.services4sexworkers.eu/s4swi/articles/view/id/6*, accessed on 31 March 2014.

South African Law Reform Commission Discussion Paper 0001/2009 (Project 107) *Sexual Offences: Adult Prostitution* (2009).

Swedish Institute 'Selected extracts of the Swedish government report SOU 2010:49: "The Ban against the purchase of sexual services. An evaluation 1999-2008"' (2010) (English translation).

Schwikkard, P J & Van der Merwe, S E *Principles of Evidence* 3ed (2012) Juta & Co., Cape Town.

Waltman, Max 'Prohibiting sex purchasing and ending trafficking: the Swedish prostitution law' (2011) 33 *Michigan Journal of International Law* 133.

Waltman Max 'Sweden's prohibition of purchase of sex: The law's reasons, impact and potential' (2011) 34 *Women's Studies International Forum* 499.