

Partial Criminalisation of Prostitution – how would we punish offenders?

A summary

Prostitution is currently illegal in South Africa and the South African Law Reform Commission has done extensive research on other possible models of dealing with prostitution such as decriminalisation and legalisation. My research focuses on a model that has as yet not received much attention, but which has been brought to the fore by the work done by *Embrace Dignity* – that of partial criminalisation of prostitution. This model entails the criminalisation of the buyers of sexual services and those who control and exploit the services of women forced into prostitution by their dire circumstances; but does not criminalise the prostituted women themselves who are regarded as victim of circumstance. The aim of my research is to determine the viability of this option for South Africa by focusing specifically on the potential punishments which could be meted out to offenders.

I conducted my research by engaging in a comparative analysis with some of the legal jurisdictions which have already adopted the partial criminalisation model – Sweden, Norway and France (where the model has been adopted by the lower house of Parliament). From this analysis I propose that the partial criminalisation model is a viable option for South Africa and that law makers may use the penal codes which set out the punishments for offences related to buying sexual services, brothel-owning and pimping as a basis for determining suitable punishments for similar crimes in South Africa.

In evaluating the punishment options presented by these jurisdictions and bearing in mind the importance of the South African context and the challenges that our legal system faces with regards to access to justice and scarcity of resources, I make the following recommendations for South Africa:

- a) 'Spot-fines' are not appropriate for South Africa due to the importance placed on the Constitutional rights to a fair trial and the presumption of innocence. However a fine itself is an appropriate method of punishment.
- b) In punishing clients a fine should be imposed and in many cases a prison sentence would also be appropriate. In considering the term of imprisonment it is submitted that the punishment for the crime of rape should be used as a guideline based on the argument that purchasing of sexual services may be seen as a form of rape with extenuating circumstances when it is understood as a form of violence against women and that the prostituted woman cannot truly 'consent' to the sexual acts they perform.
- c) Educational programmes can be a viable and important option for clients where the services of an organisation such as NICRO may be engaged.
- d) Third-party offenders such as pimps and brothel owners should be given a stiffer sentence as they are directly responsible for the exploitation of these women and facilitate the demand for sexual services. Both a fine and imprisonment would be appropriate.
- e) Civil damages awards to prostituted women may be an appealing remedy but it is likely to create difficulties relating to access to justice, proving causation and quantifying damages.

Chloe Woodin; July 2014

