

# Silences and Vulnerabilities: Sex Work and Gender-Based Violence in South Africa and Sweden

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## Background

In 1999, Sweden introduced legislation that prohibits and criminalises the purchase of sex – while continuing to decriminalise the selling of sex. Referred to as the ‘Swedish model’, or the ‘Nordic model’ after neighbouring countries followed suit, this legal framework is built on an understanding of ‘prostitution’ as exploitation and a form of violence against women. Examined through this lens, the selling of sex can never be regarded as work. Through its feminist foreign policy platform (in place between 2014 and 2022), Sweden declared that it would engage in ‘persistent and robust commitment and agency’ to encourage other countries to adopt similar legal frameworks. Yet, evidence of the presumed success of the Swedish model is scant at best, with recent research raising concerns over how the Sex Purchase Act in conjunction with immigration law and third-party regulation has contributed to increased vulnerability of migrant sex workers – who make up the majority of people selling sex in the Nordic region (Vuolajärvi, 2019).

In South Africa, both the selling and buying of sex is criminalised, in spite of the country being party to several international treaties that recognise the right to free choice of work. As decriminalisation of sex work in South Africa is currently high on the public agenda, and the ‘Swedish model’ is one of the alternatives discussed, critically examining the possible consequences of adopting this model is crucial. In this paper, we draw on research and activist interventions in Sweden and South Africa to examine the possible implications of the adoption of the ‘Swedish model’ in South Africa – a country with markedly different historical and demographic trajectories, migratory patterns, and a much less extensive and supported social welfare system. We caution that such a move may not achieve the aim of reducing sex workers’ vulnerability and exposure to violence. Furthermore, framing the selling of sex as violence rather than work may risk silencing causes for social justice by stripping sex workers of their agency and autonomy, while simultaneously casting them as victims.

## Introduction

The Swedish Sex Purchase Act, which prohibits the purchase of a 'temporary sexual relationship', became effective on 1<sup>st</sup> January 1999, making Sweden the first country in the world to criminalise purchasing but not selling sex. Prior to this, neither the selling nor the buying of sexual services was criminalised<sup>1</sup>. The idea of shifting the criminal focus and moral guilt from the seller to the buyer has a historical genealogy which can be traced to before 1919, when women's movements, in various petitions to the Swedish government, foregrounded 'curbing of male demand' (Svanström, 2017: 31). The contemporary case for client criminalisation was also made using feminist arguments: indeed, the legislative changes were introduced by the ruling Social Democratic Party to parliament as part of the Women's Peace (Kvinnofrid) Bill in 1997. The proponents of the legislation perceive prostitution<sup>2</sup> as violence against women who sell sex; as something which contributes to violence against women in society more broadly and as something that emanates from but also entrenches gender inequality even further. Constructing all prostitution/sex work as a form of violence, Swedish policy diverges from recommendations by UN agencies that understand sex work as consensual sex between adults, and cautions states not to conflate sex work with trafficking, as it risks leading to inadequate responses, and to denied access to rights and increased exposure to violence and oppression for sex workers and victims of trafficking (UNAIDS, 2021). When the legislation was introduced, client criminalisation was presented as a measure that would be combined with social support to persons selling sex, with the ultimate aim of assisting them to exit the industry. This combined approach of criminalising the buyer while decriminalising the selling of sex, and providing social support to persons selling sex, is referred to as the 'Swedish' or, more recently, the 'Nordic model'. Since its adoption, the political support for the legislation has continued to grow. In May 2011, when the Parliament approved a government bill which extended the maximum penalty for the purchase of sexual services from imprisonment for six months to imprisonment for one year, few critical voices were raised in the preceding debate – a sharp contrast to the late 1990s, when several political parties opposed the legislation (Svanström, 2017). Yvonne Svanström (2017) suggests that the reason for this consensus is a

shift in the framing of the model, where the question of selling and buying of sexual services has become embedded in broader human rights discourse, linked to measures aimed at preventing trafficking in human beings for sexual purposes. The adoption of an anti-trafficking frame, which was absent when the legislation was first introduced, was prompted by trafficking emerging as a key policy concern within the EU, as well as by the UN Palermo Protocol on trafficking in 2000 (Svanström, 2017). Within this frame, trafficking of human beings for sexual purposes cannot be eliminated unless measures to combat prostitution and sexual exploitation are in place (Ekberg, 2004). Thus, prostitution is subsumed under the rubric of trafficking.

Linking sex purchasing and trafficking, and arguing that client criminalization helps prevent sex trafficking, has also been central in Sweden's recent efforts of exporting the model to other countries within the EU and beyond. Promoted as part of Sweden's feminist foreign policy (launched in 2014 and in place until October 2022, when it was revoked by the newly formed coalition government<sup>3</sup>), the model seeks to advance an understanding that 'prostitution' can never be regarded as work, and that it is always exploitative (Ministry for Foreign Affairs, 2019: 71). Furthermore, supporters of the Swedish model have in recent years increasingly started referring to it as 'The equality model'. This has to be located within the understanding of the Swedish welfare state as a state feminist/women-friendly entity (Svanström, 2017). Through the feminist foreign policy, Sweden, as the first country in the world, committed to 'systematically [integrating] a gender perspective throughout [its] foreign policy agenda' (Ministry for Foreign Affairs, 2019: 9). Activist and academic Petra Östergren (2006), a vocal critic of the Swedish model, has suggested that one of its key functions is to embed in the larger discourse of Swedish exceptionalism; the national identity that constructs Sweden as gender-equal, anti-racist, and detached from a colonial past. This moral high ground has been reinforced through Sweden's strong welfare state identity (Habel, 2012). Furthermore, anthropologist Don Kulick (2003) has suggested that through this legislation, as a relatively new EU member state, Sweden wanted to depict itself as the conscience of the EU, and a beacon of morality

with regards to the protection of women's rights. One of the leading proponents of the legislation, former Minister for Gender Equality, Margareta Winberg, indeed spoke of Sweden as a 'shining star' when it comes to gender equality (Winberg, 2006, cited in Östergren 2006: 208). Nonetheless, the attribution of gender equality and empowerment of women to Western liberal values and practices is in itself deeply problematic (see Towns, 2009). As noted by Langford and Skilbrei (2022: 166), Sweden 'both drew on and sought to strengthen its nation brand in promoting the criminalization of the purchase of sex'. In recent years, France has emerged as a close ally to Sweden in attempts to export the model to countries within and outside of the EU. Besides France, the model has become exemplary for countries such as Canada, Norway, Iceland, Northern Ireland and Israel who all have adopted a similar legislation (Ministry of Foreign Affairs, 2019). While the notion of a Swedish or Nordic model has emerged as a well-known, strong brand, Langford and Skilbrei (2022) note that policy differences between the four Nordic countries having implemented some aspect of client criminalisation is too great for it to reflect an actual model. The 'Nordic model', they suggest, functions rather as an important construct and resource in attempts to reform prostitution policy in various countries, often with different aims, focus, and outcomes (Langford and Skilbrei, 2022; McMenzie, Cook and Lang, 2019; Kingston and Thomas, 2019).

With the 'Swedish model' being one of the exemplary alternatives looked at in South Africa, where a bill regarding decriminalisation of sex work was recently published, a close reading of critical scholarship from the Nordic region, and predictions by South African activists and practitioners on the possible implications of adopting this model, are crucial. This article contributes to such a reading using three different entry points. First, we bring critical research on the Swedish model and its consequences in Sweden into dialogue with contemporary activist and researcher debates in South Africa. Second, we discuss the possible implication for South Africa in adopting a model aimed at strengthening gender equality, which does not address other hierarchies of power that shape women's everyday lives, such as race, class, and migration status. Third, we scrutinise the importance accorded to the Swedish/Nordic model in South Africa against the backdrop of the historically close ties between the countries, emanating from Sweden's solidarity with the struggle against apartheid, and the present-day relationships which are marked by power inequalities and north-south dependence. Following these three threads, we argue that a possible adoption of the 'Swedish model' in South Africa – a country with markedly different historical and demographic trajectories, migratory patterns, and a much less extensive and supported social welfare system – would risk enhancing the vulnerabilities of sex workers while silencing causes for social justice.

### Conundrums and contestations: Sweden

In spite of the Swedish government's endeavours to widely market the Swedish model abroad, state-led initiatives to evaluate the impact of the sex purchase act are curiously few. The only large-scale evaluation to date was published in 2010 (SOU, 2010: 49) and it suggests that sex purchases and trafficking have decreased substantially since the introduction of the legislation. This was corroborated by the Minister of Justice and Home Affairs, Beatrice Ask, who stated that 'the police, as well as social workers, state that criminal groups that sell women for sexual purposes view Sweden as a poor market. They choose not to establish themselves in Sweden because of our legislation' (Ask, 2011). These conclusions have received criticism from researchers in the field, who argue that the knowledge base for such claims is insufficient. A

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scoping study by Holmström and Skilbrei (2017) on the consequences of the sex purchase act notes that while there may be grounds for claims that fewer sellers operate on the streets since the legislation was adopted, there is no reliable data regarding sex purchase in less visible sites such as indoor and/or online sex (see also Levy and Jakobsson, 2014). This was corroborated in the 2007 enquiry on prostitution by the *National Board of Health and Welfare* (2008), which stated that 'hidden prostitution' was even harder to account for after the implementation of the law (Socialstyrelsen, 2008).<sup>4</sup>

Furthermore, Holmström and Skilbrei (2017) note that the 2010 SOU evaluation ignores other social processes that are likely to have impacted the market, including the rapid increase in the use of online sites for client contact in the same period. The research evidence reviewed by the authors, which they describe as patchy and often biased, also does not give a clear indication of whether trafficking for sexual purposes, an activity that is even more difficult to research, has increased or decreased. Parallel to this, a global media content analysis of the spread of the 'Nordic model' notes several discrepancies between the actual implication of prostitution policy reform packages in the Nordics and how the model is communicated by its promoters on the international scene (Langford and Skilbrei, 2022: 175–178). For instance, while criminalisation of clients and third-party agents was the key policy shift introduced in the Nordics, the communication puts a lot of focus on the decriminalisation of the selling of sex and strengthened welfare services for people selling sex as cornerstones of the model. Nonetheless, the selling of sexual services had been decriminalised in Sweden long before the introduction of the model. Furthermore, the provision of welfare support for persons selling sex in the country is described as weak (Langford and Skilbrei, 2022: 177).

The lack of comprehensive evidence backing the exportation of the 'Nordic model' discussed above, and the dissonance between its marketing and implementation on the ground, represents two of the contradictions and conundrums surrounding the legislation. Below, we delineate what we see as several additional discrepancies built into the model, drawing on experiences in the Swedish context, emanating in the question of whether this seemingly progressive

policy approach ultimately may aggravate the very problems it seeks to address.

### **Whither gender equality?**

As discussed above, gender equality has been used to frame the prostitution debate in Sweden, with prostitution seen as incompatible with 'freedom of the individual' and 'gender equality' (SOU, 2010: 49). Assessing people's attitudes towards prostitution in Norway and Sweden through an internet-based survey, Jakobsson and Kotsadam (2011) argue that gender egalitarian attitudes have more purchase in Sweden (while in Norway the debate was triggered by reactions to the increased presence of Nigerian sex workers on the streets) and can be traced to feminists within ruling political parties in Sweden (preceding the criminalisation of buying sex) viewing prostitution as patriarchal oppression of – and violence against – women. This 'neo-abolitionist' policy approach (Kingston and Thomas, 2019: 423) makes the static link between prostitution as a result of 'male oppression of women' and the consequent enforcement against men as the assumed clients. Furthermore, this legislation, as well as other gender equality policies in Sweden, largely builds on an understanding of 'women' as a unitary and homogenous political subject with shared interests, for whom marginalisation is primarily experienced on the basis of gender. As highlighted by critical scholars, this gender equality framing has in effect led to a privileging of the interests of white, middle-class, heterosexual women, while ignoring the (growing) inequalities between women (see Tollin, 2011; de los Reyes, 2005; de los Reyes, 2016). In other words, what is lacking is an intersectional understanding of gender, without which the experiences of working-class women, women of colour and trans women, and the ways in which overlapping structures of social inequality interact, tend to be marginalised in Swedish gender equality policy as well as in Swedish feminism more broadly (Crenshaw, 1991; de los Reyes et al, 2002; de los Reyes and Mulinari; de los Reyes, 2005). Another component to the 'gender equality paradox' is the assumption that women sell sex and men buy those services. It thus fails to acknowledge instances in which women and couples pay for sex and men and trans people sell sexual services (Kingston and Thomas, 2019).

Niina Vuolajärvi's (2019) ethnographic study draws on over two years of fieldwork and 195 interviews with people who sell sex and other informants working within the field of commercial sex in Sweden, Norway, and Finland. She draws attention to how the 'Nordic model' fails to offer support to, and in fact contributes to the increased vulnerability of, migrants who sell sex in the region. Vuolajärvi observes that the majority of persons selling sex in the region are migrants (70–80%), often entering the Nordic countries on a tourist visa or a residence permit from another EU country. This resembles the South African context, where a large share of persons selling sex are foreign nationals, who are furthermore highly vulnerable to violence as is evident in the recent spate of murders of sex workers in Johannesburg (Njilo, 2022). In Sweden, Norway, and Finland, the third-country nationals – many of whom are citizens of Russia, Nigeria, or Latin America – are subjected to punitive measures through immigration policies and made particularly vulnerable (Vuolajärvi, 2019). For instance, third-country nationals operating in Sweden risk being deported, or denied entry, on suspicion that 'he or she will not support himself or herself by honest means' (Swedish Aliens Act, 2005, Chapter 8, Section 2). This points to an additional ambiguity in the Swedish policy, where the selling of sexual services is neither criminalised, nor regarded as a legitimate (or 'honest') form of work.<sup>5</sup> Furthermore, all forms of facilitation of the selling of sex are criminalised through third-party ('pimping') laws in the Nordic countries, also when facilitation is not for profit, and not exploitative. This includes providing a space where sexual services are sold, such as letting out an apartment or a hotel room to a person selling sex, and it further prohibits sex sellers from working together as a form of protection (Vuolajärvi, 2019). Combined with racialised profiling and policing (Vuolajärvi (2019) notes that Nigerian women are particularly vulnerable to arbitrary controls and deportation) many women have no choice but to pay exorbitant prices for housing where they can meet their clients.

The Nordic model may be found appealing through its humanitarian claim of protecting women. It is important to highlight a paradox here about the gendered and raced nature of victimhood. It is well established that a moral paternalistic attitude frames the discourse on sex work with sex workers being cast as 'victims' in need of 'saving' and justifies

interventionist impulses (also reminiscent of the discursive framing of imperialist ideology which cast the 'third world woman' as ignorant victims of their culture (see Mohanty, 2003)). Levy and Jakobsson (2014: 602) also point out that some of their respondents were expected to 'adopt a victim status' in order to be eligible for assistance. Furthermore, research participants in Anna Hall's (2021) qualitative study describe being questioned or even seen as guilty when reporting physical and sexual abuse from a violent client, if they resist identifying themselves as victims of prostitution who wish to quit selling sex. On the one hand, this discourse is as problematic as one that overemphasises the agency of the sex workers – at the other end of the spectrum. On the other hand, if we were to accept the frame of victimhood as uncontentious, then the lack of its extension to third country nationals is baffling in itself. The ambiguities embedded in how persons selling sex are expected to relate to the notion of 'victim' is again visible in how the sex purchase act frames the buying of sexual services from an adult as a public-order crime, to which the person selling sex is assumed to have consented. Women (and other persons) selling sex may thus be called as witnesses in the court of law, but are not granted a 'crime victim status', which would make them eligible for legal representation and damages (see Johansson and Östergren, 2021; Hall, 2021).

Furthermore, the model's decoupling of gender from other relations of power – including class, race, and migration status – thus negates the experiences of third country migrants who are engaged in selling sex. Research points out that when it comes to matters of immigration and immigrants, the 'exceptionalism' of the Nordic model falls short in addressing the material realities for women from ethnic minority backgrounds. Corroborating this and drawing on an ethnographic study with Swedish sex workers, Levy and Jakobsson (2014: 603) state: 'Where the sex purchase law appears to be used to displace sex workers from public space, immigration legislation and trafficking rhetoric is used to displace migrant sex workers.' Moreover, also in cases when non-EU citizens have been trafficked to Sweden for sexual purposes, they risk facing deportation, as the government, regardless of which party has been in power, has refrained from granting the right to permanent residency to victims of trafficking (Svanström, 2017).

But what alternative livelihood strategies are offered for exiting the industry, especially for migrant women who lack permanent residency? This is pertinent since immigrant women and minority ethnic women in Sweden are less integrated in labour markets, in politics, and in society in general (Lister, 2009). Among Vuolajärvi's respondents, foreign third-country nationals looking for jobs outside of the sex industry received no support to do so and were unlikely to succeed, as only long-term employment is grounds for obtaining a working visa. This speaks to the limitations of analysing violence solely through the lens of gender relations, and individual men's behaviour. Drawing on an interview study with women selling sex in Sweden, Anna Hall (2021: 140) observes that a single-axis focus on gender-based violence that women face from individual male clients risks making invisible the structural violence that conditions sex work for many women in the first place, namely: unequal access to rights and resources, cuts in or exclusion from the social welfare system, lack of access to trauma support, racism, and restrictive migration regimes. The linking of the sex purchase act with harshly policed immigration laws and third-party laws, in Vuolajärvi's analysis (2019: 164), produces a Nordic model that is 'ultimately a form of punitivist humanitarianism, or governing in the name of caring'.

### **Increasing stigmatisation and ambiguous readings of 'violence'**

Research mapping attitudes towards the sex purchase act in Sweden shows that there is strong support for the legislation (Holmström and Skilbrei, 2017). However, in addition to this, quantitative surveys also indicate that the majority of Swedes favour a complete criminalisation, a view that is particularly strong among women (Kuosmanen, 2011). In other words: rather than imagining women (and other persons) selling sex as victims, the general public appears to view sex sellers as (potential) culprits. Persons selling sex have in opinion pieces and in interviews with researchers reported facing increased stigma and being more vulnerable since the introduction of the Sex Purchase Act – while those who had stopped selling sex were generally positive to the legislation (see SOU, 2010; Östergren, 2006). The 2010 government evaluation of the Sex Purchase Act curiously suggests that increased stigmatisation could be regarded

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as a positive rather than a negative outcome, given that the legislation ultimately aims at eliminating prostitution (SOU, 2010: 130). As noted by Holmström and Skilbrei (2017), this reflects a dissonance with the legislators' framing of prostitution as a form of violence against women. At the same time, a high share of persons selling sex in Sweden, like elsewhere, have been physically and sexually assaulted by clients – with trans-persons and people with disabilities being particularly exposed to violence (Holmström et al, 2020). Such violence often goes unreported, as many sex workers have had negative experiences in their contact with the police, and may also refrain from seeking healthcare services out of fear of not being taken seriously; of being reported to the social services (which in turn may lead to losing social welfare support or even custody of one's children); or out of fear of losing clients (Holmström et al, 2020; Östergren, 2006; Levy and Jakobsson, 2014). Hall observes that while asserting one's agency (as a sex worker) in meetings with clients is perceived by her informants as a key strategy for avoiding violence, asserting one's agency (as a sex worker) in encounters with the police and other authorities may be perceived as a threat, leading to a questioning of one's status as a 'true' victim of violence from clients. This ultimately raises questions as to which women the 'Swedish model' is designed to protect. As noted by critical scholars, the aim of abolishing prostitution appears to override concerns of protecting individuals involved in selling sexual services here and now – unless they are Swedish permanent residents and willing to exit (see Holmström and Skilbrei, 2017; Vuolajärvi,

2019; Rydström, 2021; Hall, 2021). Put differently, one may ask if it is primarily hegemonic (white) female respectability and (white) heteronormative Swedish ideals of gender equality that the Swedish policy makers aim to protect and market abroad?

### **Conundrums and contestations: South Africa**

In relation to Sweden, South Africa is a country with markedly different trajectories: historical, demographic, migratory patterns and a much less extensive and supported social welfare system. As a former settler colony where wealth was accumulated through slavery and indentured labour, South Africa remains one of the most unequal countries in the world, where inequalities have increased since the end of racially privileged, white minority rule in 1994. The majority of the country's black population continues to live in poverty, lacking access to basic services (SERI, 2018). Furthermore, while both the South African and the Swedish economy have depended on the availability of (cheapened) migrant labour over the past decades, South Africa's historical migrant labour system has a particular trajectory, linked to the demand for ultra-cheap labour on the mines, in commercial agriculture and private households under colonialism and apartheid, combined with repressive laws prohibiting black labourers from permanently residing in the areas where they worked, together with their families. As unemployment rates have continued to rise in present-day South Africa, and the country continues to be a destination for migrants seeking refuge from conflicts or better economic opportunities (mainly from the Democratic Republic of Congo, Somalia, and Zimbabwe), xenophobic violence is rife, with fearful consequences, particularly in poor communities (Greenburg, 2010).<sup>6</sup>

Reflecting on the persisting inequalities in post-apartheid South Africa, political theorist Neville Alexander (2002, 2012, 2013) believes that the ideals of solidarity embodied within the post-1994 notion of South Africa as a 'rainbow nation' masks the unequal socio-economic and political structures (high income inequality, poverty and unemployment), where 'a few thousand black middle class people have boarded the gravy train and are being wooed into the ranks of the established (white) elite, but the nature of the state remained fundamentally unchanged' (Alexander, 2002: 64). Paradoxically, this not only

heightens racial competitiveness and ethno-racial consciousness (Moodley and Adam, 2000), but also undermines the 'non-racialism' that post-apartheid transition was supposed to embody. Furthermore, the current democratic government's failure to provide basic services to a large portion of society must both be understood against the backdrop of post-apartheid and post-colonial legacies, and the political factionalism and cronyism within the African National Congress, which exposes the vulnerability of the institution of democracy.

With regard to gender equality, the Bill of Rights<sup>7</sup> in South Africa's constitution provides for the right to equal protection and outlaws discrimination on the grounds of, among other things, gender, sex, pregnancy, race, and sexual orientation. Despite the strong legal protection, structural discrimination is rife in the deeply patriarchal South African context, with very high rates of sexual and gender-based violence, disproportionately affecting poor and working-class women of colour.

Feminist scholars have traced the legacy of sexual violence in South Africa back to the period of slavery (practiced between 1658 and 1838 in the Cape Colony, with slaves being brought in from South East Asia, East Africa, and the Southern African region) (see, for instance, Gqola, 2015). Sexual violence and forced prostitution were key features of slavery, with the Slave Lodge in Cape Town operating as a brothel, while marriages as well as concubinage between white male settlers and enslaved and free non-white women were common (Keegan, 1996). Furthermore, throughout white minority rule, from colonial times (including the Dutch Cape Colony, the British Cape (and other) colonies, the Union of South Africa (a self-governing dominion of the British Empire), the sovereign, white-ruled Republic of South Africa from 1931, the apartheid era from 1948) until the first democratic elections in 1994, South Africa has had a legacy of both informal and formal policing of sexualities. In particular, relationships across race were increasingly perceived as a threat, and were barred through the Immorality Act of 1927 (amended in 1957). During the apartheid era (from 1948 until the early 1990s), police actively patrolled the intimate lives of citizens (Klausen, 2004, 2015). With regards to sex work, the formal policing by colonial powers of women selling sex was for the most part lenient during the

19<sup>th</sup> century, when legal measures primarily sought to control the (primarily black or mixed race) sex workers as potential vectors of disease, or as a public nuisance (Thusi, 2015). However, this changed with the arrival of white female sex workers from Europe in great numbers at the turn of the century, who were entertaining both white and black male clients in the rapidly increasing number of brothels. The relationships between white female sex workers and black clients sparked moral panic among the racist white regime and in 'respectable' white communities, prompting a decision to criminalise such interactions through the adoption of the 1902 Morality Act in the Cape Colony, later extended to other parts of present-day South Africa (Thusi, 2015). In other words, the white colonial regime took action based on the fear of the so-called 'black peril' putting at risk the purity of 'respectable' white women, not out of concern for the bodily integrity and sexual and reproductive health of black women (and) sex workers. Another example of this disinterest is reflected in the instrumentalization of black women's bodies during apartheid, through the extension of well-funded family planning services to black townships from the 1970s onwards, aimed at reducing fertility rates among black communities and addressing the political concern around 'overpopulation' (Norling, 2019).

The Sexual Offences Act 23 of 1957 formally criminalised the selling of sexual services, while the purchase of sex was made an offence through the Sexual Offences and Related Matters Amendment Act 32 of 2007, to more explicitly criminalise clients. Thus, both the sex worker and the client are presently criminally liable (Spies, 2021). South African laws also prohibit a range of activities viewed as sex work, including running or owning a brothel, living off the earnings of 'prostitution,' and enticing a woman into 'prostitution'.

The global influence of the Swedish or Nordic model discussed above is visible also in the South African context. The South African Law Reform Commission's (SALRC) Report Sexual Offences: Adult Prostitution (Project 107) approved by the Cabinet and released in 2017, discusses the 'Swedish model' at length. While recommending that both the selling and buying of sexual services remains criminalised, the report suggests, among other things, that research on the Swedish model 'reflects a decline in trafficking

and illegal immigrants' (South African Law Reform Commission, 2015: 225). The trajectory of the SALRC report has spanned nearly 20 years, with a starting point in the 1997 'Investigation into Adult Prostitution' (originally entitled 'Sexual Offences by and Against Children'). Unlike Sweden, where sex workers and their organisations have been marginalised in the public debate by both the state and the women's movement (Goodyear and Weitzer, 2011), sex worker-led organisations in South Africa have invested large amounts of time and resources to remain active participants over this 20-year process. However, influential organisations like the *Sex Workers Education and Advocacy Task Force* (SWEAT) argue that the lack of commitment by government towards reforming laws governing sex work makes it evident that the government lacks the political will to take the lives of sex workers seriously (Richter and Chakuvinga, 2012).

Yet, in a surprising turn of events, swift policy initiatives aimed at decriminalising sex work were taken at the tail end of 2022. On November 30, the Cabinet approved the publishing of the Criminal Law (Sexual Offences and Related Matters) Amendment Bill of 2022 regarding the decriminalisation of sex work, for public comments. The Bill repeals the Sexual Offences Act (previously Immorality Act), 1957 (Act No. 23 of 1957) and Section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) to decriminalise the sale and purchase of adult sexual services. In a briefing on December 9th, the Minister of Justice, John Jeffery, said: 'The Bill follows a two-step approach to sex work. It does not decriminalise and regulate the industry all at once. It deals with decriminalisation only, with regulation to follow at a later stage. It was thought to be important to deal with the decriminalisation first, so as to ensure that sex workers are no longer criminally charged. This will mean greater protection for sex workers. Decriminalisation will de-stigmatise sex work and enable access to basic services and protection by law enforcement agencies. Existing laws prohibiting children from selling sex and trafficking for sexual purposes, remain in force.' This briefing took place days before the fraught political conference of the African National Congress where the Minister was a key figure in the leadership contest. While the outcome is yet uncertain, this risky political behaviour of introducing a bill on a topic that has attracted fierce

conservative opposition, may indicate that this move has strong support in the Parliament as well as from global actors such as UNAIDS and Human Rights Watch. Some of those who oppose decriminalisation call the bill the 'Jeffery' bill, referring to the Deputy Minister, ostensibly linking him to the disgraced sex offender Jeffrey Epstein.

### **Sex work as violence – or violence against sex workers?**

As noted above, proponents of the Swedish legislation spoke of prostitution as violence against women who sell sex, and also as something which contributes to violence against women in society more broadly. In an attempt to infuse a position to address gender-based violence, the SALRC (2015: 4) report's reasoning includes the contention that 'exploitation, particularly of women in prostitution, is inherent in prostitution' and that decriminalising sex work would make women who already face high levels of interpersonal violence in South Africa 'even more expendable.' This perspective was countered by SWEAT, which, on the contrary, views criminalisation of sex work as enabling gender-based violence. The organisation argues that it drives sex work underground and prevents sex workers from accessing public services, whether health or education. Today, most persons selling sex in South Africa are poor, black, and female, and they sell sex primarily in order to support their children, as well as other dependents,<sup>9</sup> some referring to themselves as engaging in 'survival sex' while others identify as (commercial) sex workers (Wojcicki, 2002). They endure extraordinarily high levels of violence – including rape, beatings, extortion, and theft – often at the hands of clients and police officers (Hands off! 2016: 5). Furthermore, as noted by Leigh Manoeck and Abrahams Fayker (2014: 118), sex workers experience 'layered levels of stigmatization' and abuse, intersecting with power hierarchies of gender, race and class. The criminalisation of sex work may thus be understood as a systemic legacy emanating from the racialised violence and policing of sexualities under apartheid, where the bodies of poor black women were made particularly vulnerable and expendable. In other words, activists and researchers in South Africa suggest that by criminalising sex work, policy makers are contributing to, rather than addressing, violence against female (and other) sex workers.<sup>9</sup>

### **Health programming for sex work – and the influence of foreign funding**

Since the transition to democracy, South Africa has progressively introduced laws protecting a range of sexual and reproductive rights that were earlier seen as controversial. This includes the extension of the right to safe abortion (The Choice on Termination of Pregnancy Act of 1996) and to same-sex marriage (the Civil Union Act of 2006, amended in 2020). Furthermore, the legal challenges concerning HIV treatment resulted, after successful campaigning by civil society, in the provision of access to Anti-Retroviral Therapy. Curiously, sex work reform – albeit currently high on the political agenda – remains one of the few contested sexual and reproductive health and rights (SRHR) issues that has not been resolved, despite 28 years of democracy and commitment to transforming injustices.

Stevens et al (2022) consider SRHR as a continuum of intersecting services, from information about sexuality and reproduction, care for cancers, STIs and HIV, contraception and abortion and note how these are poorly provided to sex workers. They conclude that reproductive justice – which envisions full access to reproductive rights in a safe and healthy environment – is undermined by both the criminalisation of sex work and the denial of quality and humanising sexual and reproductive healthcare to sex workers. Reproductive health care to sex workers is primarily provided as part of HIV prevention for 'most at risk populations', motivated by the need to address the 'threat' that sex workers present to public health in general (Stevens et al, 2021: 21). Stabile (2020) cautions that this risk and rescue focus, a dominant discourse in western feminist scholarship, undermines sex workers' human dignity and reproduces racism and colonial hierarchies of power as well as sex and gender binaries. The public health arguments addressing STIs, including HIV, and the health and safety of sex workers were presented to the SA Law Reform Commission in favour of full decriminalisation. It cannot be denied that sex workers are at a greater risk of contracting HIV because of their exposure to multiple sexual partners, the ever-present threat of violence in sexual encounters, and riskier sex (Manoeck and Fayker, 2014: 104–5). However, criminalisation of selling of sexual services in itself fosters an unsafe environment for sex workers by undermining their access to justice

for crimes committed against them and exposing them to unchecked abuse and exploitation by law enforcement officials (Rangasami et al, 2016). Notwithstanding the Department of Health's National Strategic Plan on HIV for Sex Workers being informed by a respect for the human rights of sex workers, outreach, and non-discrimination,<sup>10</sup> public health researchers have cautioned that criminalisation hinders sex workers' access to health care (see Louskieter et al, 2021), including HIV prevention, treatment, care and support (Strathdee et al, 2015).

As noted above, while there has been legal and policy reform aimed at increasing access to SRHR in South Africa, these laws are poorly implemented and women experience the burden of poor social determinants of health (Stevens, 2021). Furthermore, given that many key stakeholders in South Africa – sex worker organisations, the Commission for Gender Equality, and the South African National AIDS Council (SANAC) – favour a decriminalisation of sex work, the question which arises is what causes this inaction? The substantial deficits in government capacity and provision of resources to provide a basic package of sexual and reproductive health services has resulted in a gap which is presently filled by predominantly foreign donors (Klugman, Stevens and Van den Heever, 2000). The Gates Foundation and Buffet Foundation are large funders of reproductive health care in SA currently. This development, where essential services are delivered by donors, is a cause of concern, due to the possibility of agendas being aligned with the interests of foreign donors rather than South African policies and local priorities – something which is perhaps even more challenging where there exists a political legacy of solidarity (Stevens, 2021). Foreign donors also fund a large share of the research on sexual and reproductive health and rights in South Africa, including large-scale research projects with sex workers. Here, sex workers fall between the cracks, as they are invited to take part in research regarding public health concerns often related to HIV or cervical cancer projects, yet they do not have their general health, including sexual and reproductive health needs met. This is due to sex workers experiencing being stigmatised and judged when they access public health care facilities, linked to sex work being criminalised (Stevens et al, 2022).

The concern of the strong influence from US-based private funders, who engage in SRHR work in South Africa without investing in a sustainable local movement for reproductive justice (Stevens, 2021) have been corroborated by Gerber Fried and Hendrixson (2014: 22) who describe the Gates Foundation as having an 'outsized leadership role in initiatives to promote contraception in the Global South'. The Gates Foundation's policy to not fund abortion work (in place since 2014), Gerber Fried and Hendrixson note, results in 'a wall dividing abortion from family planning', which in turn contradicts South African policy decisions to provide integrated sexual and reproductive healthcare packages. Favier et al (2008) further note the 'creep' of US international NGOs taking over the purview of the state public sector and undermining the work of public health systems' sustainability. In displacing government action and public decision making, international NGOs may thus exercise quasi-governmental power – imposing paternalistic restrictions and incentives while simultaneously overriding people's decisions on how to live their own lives (Saunders-Hastings, 2022).

While the US is the largest donor, including both public and private foundations (Stevens, 2021), Sweden is also an important player in the region, both when it comes to development assistance to sexual and reproductive health and rights and to policy dialogue initiatives by the Ministry of Foreign affairs. As noted above, Sweden actively worked to promote the adoption of the 'Nordic model' in other countries and regions, as part of its feminist foreign policy (in place 2014–2022). Through this work, Sweden has among other things provided a platform to South African NGOs, such as *Embrace Dignity*, that advocate for the adoption of the model.<sup>11</sup> Given the history of self-gagging on matters of SRHR in South Africa, as evidenced by the experience during the US Global Gag rule and the simultaneous decision by the Gates Foundation not to fund abortion work (Du Plessis et al, 2019), it may well be that the South African government would in similar ways refrain from undertaking legal reforms with regard to sex work, if this is not favoured by foreign allies. While this is the purview of the Department of Justice within South Africa, one may ask if the lack of traction and engagement in reforming sex work legislation in South Africa, despite evidence from human rights and public health actors, may be linked to, or reinforced by, not wanting to jeopardise good

relations with Sweden and other like-minded foreign allies and development partners.

## Conclusion

The central aim of our paper is to bring critical research on the Swedish Sex Purchase Act known as the Nordic or Swedish model, in dialogue with contemporary research and activist debates in South Africa, where it has been exemplary in the lengthy process of reforming sex work legislation, an issue presently high on the political agenda. In Sweden, the initiative to criminalise buying sex was driven by feminist policy makers who argued that prostitution is an expression of gender inequality, and a form of male violence against women. Consequently, the objective of this legislation is to eradicate all forms of sex work. However, to this date, the only existing evaluation of the model is inconclusive as to its efficiency to curtail the selling of sex. The Swedish Model, as well as the framing of debates on prostitution in Sweden, have been criticised for building on a universal female subject for whom marginalisation is primarily based on gender, whereas the majority of women selling sex are migrants, subjected to punitive measures through immigration policies which creates an environment conducive to high levels of abuse and violence. A growing body of research indicates that the Swedish model's failure to address other vectors of inequality such as class, race, sexuality, and migration status has in fact increased their vulnerability.

In South Africa, as opposed to Sweden, organisations supporting sex workers are vocal in debates on sex work. South Africa has a larger sex worker population (mainly women but also men and transgender persons) where disparities, compounded by racial inequalities, disable poor women from accessing 'decent work' – with sex work being seen as the only viable means of survival. Furthermore, the criminalisation of sex work may be understood as a legacy of the racialized violence of colonialism and apartheid, where the bodies of poor black women were made particularly vulnerable and expendable. Thus, in spite of different entry points and different historical trajectories, a common denominator between the two countries is that sex work is mainly performed by marginalised populations.

Another area of concern raised in the article is the extensive reliance on foreign funding for the provision of, and research on, sexual and reproductive healthcare services in South Africa. The risk of agendas being aligned with the interests of foreign actors rather than South African policies and local priorities was raised in this regard. While the US is the largest donor, including both public and private foundations, Sweden is an important player when it comes to support for sexual and reproductive health and rights in the region. Furthermore, Sweden has actively promoted the adoption of the Swedish Model as part of its feminist foreign policy, including by giving visibility to South African actors in favour of the model.

However, we argue that in South Africa, as well as in Sweden, full or partial criminalisation contributes to stigma and unfair discrimination against sex workers and facilitates the non-observance of sex worker's human rights, rights that all persons living in Sweden and South Africa are constitutionally entitled to. Criminalisation also jeopardises long-fought feminist battles over bodily autonomy and integrity. This increases the sex workers' vulnerability to violence and abuse. In fact, policy standpoints of UN international bodies including UNAIDS suggest that full decriminalisation would enable better access to health and social services for sex workers and their children, since sex workers fear functionaries of the state and experience violations. Thus, introducing the Swedish model in South Africa would be inconsistent with an ambition to strengthen the position of women engaging in sex work, who experience multiple and interlocking forms of discrimination and violence. More broadly, it would work against the efforts being made at various levels to improve gender equity and to bring an intersectional feminist perspective to foreign policy.

## Notes

1. While the regulation of prostitution was abolished in 1919, vagrancy legislation (in place until the 1960s) continued to be used to monitor (working class) women selling sexual services, who, if found guilty, could be sentenced to forced labour (Svanström, 2022).

2. We are aware that the framing and terminology is contested and reflected in the theoretical stances of feminist approaches. Radical feminists align themselves with the vocabulary of prostitute/prostitution as it emphasises the exploitation inherent in selling sex. Liberal feminists, on the other hand, choose the terminology of sex work as it is no different from other kinds of work/labour that women may choose to do (Spies, 2021). Nonetheless, self-identification by sex workers associates the derogatory nature of the word 'prostitute' while recognising that this terminology frames many legal documents (see [www.nswp.org/sites/nswp.org/files/StellaInfoSheetLanguageMatters.pdf](http://www.nswp.org/sites/nswp.org/files/StellaInfoSheetLanguageMatters.pdf)). State organisations such as Folkhälsomyndigheten in Sweden choose the term 'sex mot ersättning' (sex for a fee) instead of prostitution or sex work. In public health work that engages with sexual and reproductive health and rights (SRHR), the term 'give or receive compensation for sex' is used even when the compensation consists of other exchanges besides money, such as clothes, gifts, alcohol, drugs, or sleeping accommodation.
3. The newly formed government comprises a coalition between the Moderates, the Christian Democrats and the Liberals with heavy reliance on the Far-Right party the Sweden Democrats. The latter in particular is well known for its resistance to progressive gender policies. Furthermore, the new government, unlike its predecessor, refrains from associating itself with feminism.
4. For a gendered breakdown of those who have received financial or other compensation for sex, see [www.folkhalsomyndigheten.se/pubreader/pdfview/display/60999?browserprint=1](http://www.folkhalsomyndigheten.se/pubreader/pdfview/display/60999?browserprint=1)
5. Sweden's new conservative government is furthermore investigating the possibility of making 'bristande vandel' (an old expression referring to immoral/unrighteous ways of living) grounds for expulsion of foreigners, listing prostitution as one such condition, as one of its policy manoeuvres aimed at driving a deeper wedge between the mutually exclusive categories of citizens versus foreigners.
6. The unemployment rate among women was 37,3% in the third quarter of 2021, compared to 32,9% among men according to the official definition of unemployment. The official unemployment rate among black African women was 41,5% during this period, compared to 9,9% among white women, 25,2% among Indian/Asian women, and 29,1 among coloured women. For further details, see [www.statssa.gov.za/?p=14957](http://www.statssa.gov.za/?p=14957) and [www.statssa.gov.za/?p=15407](http://www.statssa.gov.za/?p=15407)
7. For further details, see: [www.statssa.gov.za/?p=14957](http://www.statssa.gov.za/?p=14957) and [www.statssa.gov.za/?p=15407](http://www.statssa.gov.za/?p=15407)
8. For further details, see: [www.sweat.org.za/wp-content/uploads/2020/01/Why-Sex-Work-Should-be-Decriminalised.pdf](http://www.sweat.org.za/wp-content/uploads/2020/01/Why-Sex-Work-Should-be-Decriminalised.pdf)
9. For further details, see: [www.sweat.org.za/wp-content/uploads/2020/01/Why-Sex-Work-Should-be-Decriminalised.pdf](http://www.sweat.org.za/wp-content/uploads/2020/01/Why-Sex-Work-Should-be-Decriminalised.pdf)
10. For further details, see: [www.sweat.org.za/wp-content/uploads/2019/08/National-Sex-Worker-Strategy-plan-for-HIV-Prevention.pdf](http://www.sweat.org.za/wp-content/uploads/2019/08/National-Sex-Worker-Strategy-plan-for-HIV-Prevention.pdf)
11. For further details, see [www.cap-international.org/fr/activity/cap-intl-participates-south-africa-advocacy-visit/](http://www.cap-international.org/fr/activity/cap-intl-participates-south-africa-advocacy-visit/) and [www.embracedignity.org.za/about-us/#who](http://www.embracedignity.org.za/about-us/#who)

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