

POLICING SEX WORKERS A VIOLATION OF RIGHTS?

**“ I know that
what I am doing
is illegal, but
at the same time
I would like to be
treated like
a human being
as well ”**

*The South African
Constitution guarantees
certain rights to those
who are arrested, detained
or accused of crimes.*

Since the end of apartheid the South African Police Service (SAPS) have committed themselves to serving the community through policing that is “conducted in a manner that is consistent with human rights and democratic values” (Pigou, 2002).

It has been the experience of the Sex Worker Education and Advocacy Taskforce (SWEAT) that the police are engaging in unlawful and unconstitutional acts when arresting sex workers. The rights of sex workers who are arrested and detained are not upheld and in some cases members of the police are engaging in criminal actions themselves, whilst supposedly enforcing the law.

Over a period of a number of years sex workers have been coming to SWEAT to make complaints about how they are treated by the police. In addition to responding to these complaints individually, we analysed 48 statements we had received up to the end of 2004, to draw out the common kinds of abuses that sex workers report experiencing at the hands of the police.



RAPE, ASSAULT AND OTHER SERIOUS ABUSES OF POWER

One in three of the women who made statements to SWEAT told of being forced to have sex with police officers or of their knowledge of other sex workers who had been forced to have sex.

Women spoke of police officers that offered to release them from jail in return for sex. One woman described this as follows:

“There were three of us arrested and taken to the cells. One person was released, when we asked why, the officer indicated that the person who was released and the other police officer were having sex.”

Others spoke of it in the following way:

“Another cop I don’t know his surname, but I know and will always remember his face, always tells me that he will not lock

me up if I sleep with him.”

“Sometimes they ask for sexual favours in the cells (one policeman will come to the cell and choose who he would like to have sex with, so that he can free them all) and if that sex worker doesn’t want to do that they all had to sleep there [in the police cell]”

In addition to this type of coercion, sex workers also reported incidents of forced sex acts with police officers, either in exchange for not being arrested or during the process of being arrested:

“he was actually sex bribing me so he won’t lock me up...the cop ordered me to give him a ‘fuck’ and to suck his colleague. I felt so shit after that... they left me sitting in front [of the police van] and they drop me at the Total Garage...”

“suddenly he grabbed me and kissed me on my

mouth and touched me all over including my breasts, arms and buttocks. I tried to push him away but he still continued. I said to him please don’t do this. In the meantime I noticed that he took his gun off and put it on the desk and he took a condom from his pocket and he has pulled my pants down.

I told him when I do this I always get paid....I told him that even when your wife says no its no and that I did not like what he was doing to me... he unzipped his pants and put on the condom. He made me sit on the desk and took off my panties and had sex with me. Afterwards he said he was sorry and that he liked African women like me. He took the condom off and I got dressed”

Two sex workers also described incidents of indecent assault by police officers. In legal terms indecent assault relates to the indecent handling of a person who is usually, but not always, a female, including touching the complainant’s private parts, lifting up her dress, putting a hand up her dress, or caressing her breasts.

*In one case a sex worker who was arrested describes a clear case of indecent assault by a police officer:
“he pulled my jersey up to see if I had a belt on, touching me... when I asked him to stop he hit me on the back of my head and swore at me”*

One in two of the women who made a complaint to SWEAT spoke of being physically assaulted or sprayed with pepper spray by the police, either while being arrested or during detention.

Assault is defined in South African law as the unlawful and intentional application of force to another person or the threat of force. Usually the application of force is of a direct nature - a slap, a punch or a kick.

Section 49 of the Criminal Procedure Act 51 of 1977 states that in the event that a suspect resists arrest or flees, the arresting officer may, *“in order to effect the arrest use such force as may in the circumstances be reasonably necessary to overcome the resistance or prevent the person concerned from fleeing”*. However there is also a recommendation, and indeed a legal requirement, that the police use the minimum amount of force required to effect an arrest. It is significant to note that in reality this is not the case and the minimum use of force is rarely applied in arresting sex workers.

Sex workers speak of various physical abuses when they are arrested by police officers, including being beaten or choked by police officers. Thirteen of the forty eight statements had complaints by sex workers of being sprayed with pepper spray when being arrested. One sex worker describes her experience of being arrested as follows:

“...A white golf car with three SAPS police officers stopped. They told me to get out of the car and the client to go. After the client left they sprayed me with a spray gun, at the same time they were kicking me all over my body as I had fallen down at the time...the two were swearing...

As I was trying to run they followed me with the golf, I felt that they wanted to knock me with

the car with the intention of killing me, I thought they were planning to do a hit and run.”

In this case the person involved was hospitalised for 3 days after the incident and the doctor on duty encouraged her to make a case against the police. She decided not to follow this advice for fear of further abuse by the police, but she did come to SWEAT’s offices to make a statement.

In the standard police operating procedure for the use of pepper spray it is stated that pepper spray is meant to be used in the following cases:

- If a suspect is resisting arrest.
- For self-protection when a police officer is attacked.
- For crowd management.
- Inside cells – if the safety of the police officer concerned is threatened.

However when sex workers speak of their experiences of the use of pepper spray a different story emerges. They talk of being sprayed with pepper spray as police drive past and being sprayed with pepper spray once they are already confined inside the police van. At most, only two or three sex workers may be standing together next to the side of the road, a gathering that could hardly be defined as a crowd. It is equally hard to understand why pepper spray is used once people are already confined in the police van. Women reported their experiences to us as follows:

“Police spray me with pepper spray as they are driving past...”

“The van drove up to me and sprayed pepper gas from the van into my eyes. Then they stopped and put me into the van.”

“...the police sprayed tear gas into the police van.”

Newham and Bruce (2000) comment that racism is still an issue that confronts members of the SAPS. They speak of the fact that police abuse disproportionately affects marginalised and vulnerable groups. A number of the women who made complaints spoke of racial slurs and reported that police officers called them ‘kaffir’ or ‘swart poes’ when speaking to them. A sex worker who made a statement said the police were:

“calling us jintoes and telling us to take our black pussies and sell them in Bellville”

Sixteen of the women who made complaints spoke of being verbally abused by members of the police.

They talk of being called ‘whores’, ‘jintoes’, ‘naaiers’ or ‘poes’. One woman spoke of her experience as follows:

“hy het my lelik gevloek en gesê hy trap my ‘poes’ in twee, sodat ek nie meer kan bloei nie... Hulle het my besonderhede gevra... toe ek sê ek het Std 9, toe sê hulle ek is ongeleerd dis waarom ek poes verkoop.”

[he swore at me and threatened to kick me in my ‘pussy’, until I couldn’t bleed anymore... They asked for my details...when I said I had completed Std 9, they said I am uneducated and that is why I sell my ‘pussy’]

Five sex workers complained that the police required them to pay bribes or very high fines for which they got no receipt.

They also spoke of the fact that the police required sex workers’ clients to pay ‘fines’ and that they threatened to expose clients to their wives or families if they refused to pay the ‘fine’.

“he told me the fine is R500 and if I take too long to get in [the police van] it will be R1000”

“If they caught you with a client, they want money from the client (saying is his fine so that he can’t be locked in or they will tell his family) and from the sex worker too...they don’t ask the same amount all the time; it depends.”

“The police also threatens the clients (by saying they will tell their wives or lay a charge against them) they want R300 – R1500.”

The dictionary definition of extortion is that it involves the use of one’s official position to obtain a fee

ARRESTS AND THE ABUSE OF MUNICIPAL BY-LAWS

The majority of sex workers are targeted and arrested through the use of municipal by-laws.

The by-laws that are used to arrest sex workers include those against loitering or loitering with the intent to commit prostitution. The offence of loitering is described in the by-law as ensuring the convenience of persons using streets or public places as follows:

1. (1) No person shall in a street or public place –
 - (a) Run, walk, stand, sit or lie, or
 - (b) Deposit, leave, spill, drop or place any matter or thing as to obstruct or be likely to obstruct or cause or to be likely to cause inconvenience or danger to persons or other traffic using such street or public place

- (2) Any person running, walking, standing, sitting or lying in a street or public place in the manner referred to in subsection (1) shall forthwith cease to do so when so directed by a peace officer as defined in the Criminal Procedure Act 1977 (Act 51 of 1977).

The by-law against loitering is in tension with constitutional rights guaranteeing freedom of movement and is often implemented in a way that restricts sex workers from even going about their ordinary activities as citizens.

Other by-laws that are used to arrest sex workers are those relating to public nuisances. These include prohibitions against littering, excessive noise, use of abusive or threatening language, fighting or acting in a riotous or physically threatening manner, urinating, defecating, spitting or being nude in public or publicly performing any sexual act. In our experience by-laws against obstructing traffic (*“no person shall intentionally block or interfere with the safe or free passage of a pedestrian or vehicle”*) and the prohibition against carrying on trade on a national road are also by-laws that are used to arrest sex workers. Committing an offence in terms of municipal by-laws can result in fining, imprisonment or alternative sentencing in a Magistrates Court.

CONTINUOUS CYCLE OF ARRESTS, UNLAWFUL ARRESTS AND CONDITIONS OF DETENTION

In reality sex workers, although arrested, are seldom charged under these by-laws and are generally not prosecuted.

Sex workers are often held for 48 hours and then released without seeing a magistrate or they are fined arbitrary amounts for these offences. This cycle of arrest and release without being charged is contrary to what is set out in the Notice of Rights given to arrested persons which states that everyone has the right: *“to challenge the lawfulness of their detention in person before a court of law and to be released if such detention is unlawful”*. It is also a particularly malicious form of harassment.

Approximately half of the sex workers who made complaints to SWEAT spoke of such cycles of arrests. They described high levels of contact with the police

and frequent arrests, sometimes as often as 4 or 5 times a month. They also had concerns about the fact that despite these frequent arrests they were not charged or brought before a magistrate:

“every second night they pick us up for loitering, not even giving us a warning”

“I was arrested twice in the last month without appearing in court”

“I was locked up for no reason and I did not want to come out [of the cells] because I was there for no reason and wanted to go to the court, but they would not allow me to go.”

Ten sex workers reported being fined for contravening the by-laws against loitering.

The fines they received ranged between R50 and R500 and different fines were often given for exactly the same offence.

“I was fined R50 for walking up and down the street after dark”

“I was fined R500 for loitering”

“They gave us a R100 fine... I could not phone anyone to pay my fine and had to remain at the police station... I asked one of the other women to inform my baby sitter of the situation.”

This fining of sex workers is a counter-productive strategy in terms of preventing people from continuing to do sex work, as the arbitrary fining of sex workers impacts on their income and they therefore often have to solicit more clients to pay the fines they are given.

The cycle of arrests impacts particularly badly on sex workers who work in the area where they live.

The Criminal Procedures Act states that one should only arrest a person “...in circumstances which afford reasonable grounds for believing that such person has committed or is about to commit an offence.”

However sex workers report that they are arrested even when going about their daily business, as a result of being known to be a sex worker. Sex workers often speak of feeling trapped in their homes, unable to go to the shop or to buy daily necessities without the threat of being arrested. One sex worker reported that she was arrested while talking to someone on a public phone. Others described their experience as follows:

“I can no longer walk in the area where I live for fear of being arrested”

“A police officer told me that I must not even think of going on the road as he was locking the workers up that day. I asked him

why I couldn’t even walk on the road... he said that the moment he sees me on the road he will lock me up.”

There were also complaints made by four sex workers about the length of time they were held in custody. According to the Bill of Rights, arrested, detained and accused persons have the right “to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest or at the end of the first court day after the expiry of the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day”

The Bill of Rights says that arrested, detained and accused persons have the right to be brought before a court

"We were kept in the cell for a day, with no food the whole day. They released us without seeing the magistrate or being given a fine."

One person spoke of being arrested by the City Police and held for 7 days with almost no food (two slices of bread per person per day). Others spoke of being:

"arrested for loitering and kept 5 days in the ... police cells, with no hearing, we were released afterwards"

Persons engaged in sex work who are arrested also spoke of various abuses of their rights while they are held in detention. The Notice of Rights given to those who are detained by the police, informs them that: *"You have the right to be given the opportunity to communicate with, and be visited by, your spouse or partner, next-of-kin, religious counsellor and a medical practitioner of your choice."*

A number of the women we work with are mothers who are responsible for taking care of their children. One in four of the women who made complaints

indicated that they were refused the right to make a phone call when they were held in custody.

The result of this is that they are held overnight or longer, but are not able to let their family know where they are or to make arrangements for the care of their children.

"I was kept in custody for 2 days and refused the right to make a phone call."

"We asked to make a phone call, but were not allowed."

When detainees are informed of their rights they are told that: *"you have the right to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate accommodation, nutrition, reading material and medical treatment at state expense"*. In reality one in four sex workers who made complaints spoke of the fact that they were not held in proper conditions.

Sex workers highlighted that they were kept in crowded, dirty cells, without being given adequate amounts of food or water.

"If we are kept in the cells there is never enough food and we are told that 'kaffirs' must share porridge and the coffee."

"We were kept in an overcrowded cell, with no toilet paper and no drinking water."

Two sex workers also spoke of being refused medication while they were in detention. In one case a sex worker who suffers from asthma asked for access to an asthma pump. The officer who arrested her refused to provide her with this potentially life-saving medication. Another sex worker who was detained with burn injuries on her foot spoke of being treated as follows while she was in detention:

"I had third degree burns on my foot, for which I received treatment at the day hospital. I informed the arresting officer I was in pain and he joked that I should have my foot cut off. He refused to give me painkillers and indicated that the only painkiller he had was this (patting his weapon)."

Other sex workers also spoke of the theft of their property while they were held in detention. One person indicated that her jewellery was taken and never returned to her. Someone else reported in her statement that when she was arrested with R150 in her possession she only received R100 back:

"but when they let you out the next morning when they gives your property back there will be R50 short."



LACK OF ACCESS TO POLICE PROTECTION

Stigma and social marginalisation play an important role in preventing certain groups from accessing police services and the legal system (Nel, 2005).

Given the levels of harassment that sex workers experience it is not surprising that mistrust of the police plays a role in them not accessing the services of the police. Another factor is victims' fears that they won't be believed and that "the criminal justice system too may be biased against the group to which the victim belongs" (Nel, 2005: 245).

In other research done by SWEAT in 2005, participants spoke of their fear of not being believed or their actual experiences of not being taken seriously when they reported violence to the police (Fick, 2005).

Interviewer: "Since the police know that you are a sex worker, if you go and lay a charge how do they treat you?"

Respondent: "They come together and laugh."

"I don't think the police will believe anything, if I have to go there and tell them I'm raped now, I'm a sex worker, they're going to think that you then, in the job, you're doing these things for money, so how can you say you have been raped, that, things like that, that's why I'm very scared, that's why I avoid being raped and stuff like that, but you can't avoid, so if you must get raped you rather, keep quiet, because I know the police are not going to believe."

Eight participants in the 2005 study described having been treated badly by the police when they asked for assistance.

In three of those cases the police refused to help, simply because they knew that the person making the complaint was a sex worker. As one person said:

"Ek sal nou geen mens aanraai, geen meisie aanraai om insidente by... te raporteer nie, want as jy by... iets aankla... hulle sal sommer sê: 'Hoere - Moenie notisie vat nie dis net hoere'. Nou, dis wat hulle nou doen."

Sex workers who came to our offices to make complaints confirmed this view, with one sex worker reporting that when she tried to lay a complaint

"I would not advise any person, none of the girls, to report at..., because when you lay a charge at... they will just say: 'Whores. Don't take any notice of them they are just whores'. Now that is what they do."

against the police she had the following response:

"When I complained to the captain about how I was hurt when they arrested me he said 'Ag dis maar net hoere en hy kan nie 'n saak

van 'n prostituut aan-
neem nie '."

*[Oh they are only whores
and he can't take a case
made by a prostitute.]*

Persons engaged in sex work are often traumatised and humiliated by the treatment they receive from the police when they report having been raped (Wojcicki & Malala, 2001). Two sex workers reported that the police laughed at them when they tried to lay a charge. In one of these cases two women were trying to report a rape and they said that, when they reported the rape to the police, the police just laughed at them and refused to take their complaint.

"And we reported it to the police, they just laughed at us... No. We were made to sit in the waiting room. And I just remember this girl saying she wants to speak to the detective and then he didn't want to help. So then she wanted to speak to the man in charge, he didn't help. So eventually we left and went back to the agency, told the boss, he wasn't interested."

CONCLUSION

It is clear, that in the Cape Metropole area, police are increasingly using by-laws as tool in broader campaigns to 'clean up the streets' or 'remove crime and grime from our cities'.

The policing of the industry seems to be unrelated to community complaints and by-laws are being actively used to target and arrest sex workers to the extent that some sex workers speak of feeling 'hunted' by the police.

What is of grave concern is that these frequent arrests are accompanied by increasing complaints of abuse and human rights infringements.

We question whether the frequent arrests of those engaged in sex work is an effective use of police resources. It is also important to consider the cost effectiveness and impact of local municipal policies that encourage clamping down on sex work and arresting sex workers.

Our experience at SWEAT indicates that the highest levels of violence against sex workers come from the police and law enforcement sectors. However there is not a lot they are able to do about the threat of harassment and violence from the police in the current situation where sex work is illegal.

Sex workers report that their strategies for coping with police violence are often largely based on trying to avoid contact with the police as much as possible by hiding or working at times when they think the police are less likely to be present.

In order to hide from the police sex workers often work in remote, poorly lit areas where they are more vulnerable to violence.

Their fear of the police means that sex workers are unable to access the services of police for protection both personally or while working. They are also unlikely to report crimes that they may have witnessed.

Sex workers indicate that they seldom feel able to lay charges against violent police officers with other members of the police force. In most cases they would need to lay a charge at the same police station where the perpetrator works and risk encountering him or her again.

Sex workers do not want to risk exposing their identity and they are afraid of retaliation by police officers if they complain about police brutality.

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Their other recourse is to make complaints about police mistreatment at SWEAT. We do assist individual sex workers in laying complaints against police officers, although as a strategy this has not been very successful. There has only been one instance where the Independent Complaints Directorate has taken up the case of a sex worker who was raped by a police officer. Our attempts to work with the Internal Investigations Unit of the Police Service have also not resulted in the prosecution of police officers who are mistreating or abusing sex workers.

In the interests of sex workers SWEAT engages in a combination of strategies to deal with the issues we have described and to reduce the abuse and harassment of sex workers. One of these strategies is to offer training to police officers when requested, or to attempt to mediate and negotiate on behalf of sex workers in community policing forums.

We are also developing more confrontational strategies to challenge the incorrect use of by-laws used to target sex workers and to address abuses against sex workers.

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Sex workers are human beings. They are citizens of this country who have every right to demand the protection of the police when required and to be treated with dignity when they are suspected of breaking the law.

They have the right to demand due process and to be protected against arbitrary harassment by the police. These are fundamental human and constitutional rights.

The personal experiences that sex workers describe reflect a dehumanising lack of respect for these basic rights. In many instances the actions ascribed to police officers constitute unlawful conduct, including theft, assault, indecent assault and rape. Sex workers are put at physical risk through these actions, through the conditions in which they are held and by the denial of access to necessary health care while in detention.

Their children are put at risk when they are unable to call home and make arrangements for their care.

The psychological impact of repeated harassment and the denial to sex workers of their legal rights is devastating, reinforcing stigmatisation and discrimination. It is also this stigma and discrimination, coupled with the ongoing criminalisation of sex work, that enables the abuse of law and of due process to which they are subject when sex workers come into contact with the criminal justice system.



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