



WOMEN'S LEGAL CENTRE

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19 August 2011

Chairperson of Portfolio Committee on Police

Mrs Lydia Sindisiwe Chikunga

Parliament Street

Cape Town

Dear Mrs. Chikunga,

RE: WRITTEN SUBMISSION ON POLICE ABUSE OF SEX WORKERS

We write on behalf of the Sex Worker Education and Advocacy Taskforce ("SWEAT"), who has instructed us to submit a written submission to your office in relation to the regular infringement of the human rights of sex workers by the South African Police Service, Cape Metropolitan Police and the Vice Squad.

SWEAT is a non-profit organisation situated in Cape Town. SWEAT works with sex workers around issues of health and human rights, and advocates for the decriminalisation of adult sex work in South Africa. In 2009, SWEAT on behalf of a group of sex workers, sought and obtained an interdict to restrain all members of the South African Police Services in the Cape Metropole and City Police from continued unlawful and wrongful arrests of sex workers.

The Women's Legal Centre ("WLC") is a public interest law centre started by women to enable women to use the law as a tool to advance and achieve their right to equality, particularly women who are socioeconomically disadvantaged. WLC uses litigation and advocacy in order to fulfill its objectives.

Trustees: Shereen Mills (Chairperson) Shaamela Cassiem Teboho Molebatsi Alison Tilley Mary Vilakazi

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The WLC has conducted constitutional litigation to advance the rights of women since its inception in 1999. The WLC was involved in the constitutional court case of *Jordan*, which dealt with the constitutionality of the criminalisation of sex work under the Sexual Offences Act prior to its recent amendment. The WLC also represented Kylie, a sex worker, who challenged the interpretation of the definition of an "employee" in terms of the Labour Relations Act which prevented sex workers from obtaining the necessary labour protections in terms of the labour legislation and the Constitution. The WLC has, in the past, represented sex workers in the Cape High Court to prevent abuse by police officers.

The purpose of the written submission is to highlight the systematic patterns of abuse that sex workers in South Africa experience at the hands of law enforcement. In a society rife with violence against women, sex workers are a particularly marginalized and vulnerable group.

We thank you for this opportunity and trust that you will assist us in addressing these practices of lawlessness.

We look forward to hearing from you.

Yours faithfully,

WOMEN'S LEGAL CENTRE

PER:



STACEY-LEIGH MANOEK



WOMEN'S LEGAL CENTRE

Written submission on police abuse of sex workers

1. In South Africa sex work is a crime for both the client and the sex worker. In terms of our current legislation the act of having sex for reward and the act of buying sex are criminal offences.¹
2. It is also an offence to keep a brothel and related activities.
3. Statistics provided by the state reflect that there have only been 11 clients of sex workers found guilty since buying sex was made a crime in December 2007. In contrast, sex workers are regularly arrested.
4. From 2009 to date the WLC and SWEAT have been monitoring the human rights violations of sex workers. We have documented the experiences of 309 sex workers. We have been able to identify the types of human rights abuses that sex workers suffer.
 - Harassment;
 - When sex workers are menstruating – they are not provided with the necessary toiletries when arrested/charged;
 - Police officers arrest sex workers even when it's out of their jurisdiction;
 - They are often abused physically as well as verbally; and are sometimes raped.
 - Sex workers are often fined even when not committing an offence;
 - Often no medical assistance i.e. a doctor is not called upon when
 - Police badges are often removed when sex workers are either fined or arrested which makes it extremely difficult to identify the police officer in order to lodge a complaint;

• ¹ Section 20(1)(aA) of the Sexual Offences Act of 1957 provides: "Any person who has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward commits an offence."
• Section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, provides: "A person ("A") who unlawfully and intentionally engages the services of a person 18 years or 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."

- Sex workers are often sprayed with pepper spray when in a police van or even when they are in cells;
 - There have been numerous instances when sex workers would be arrested and driven to isolated locations where they would have to walk back to their places of residence;
 - Sex workers are often threatened with violence which induces fear, thus they refuse to lay charges against police officers;
 - Sex is often exchanged for their release;
 - They are often blackmailed or bribed;
 - They are often detained without being charged;
 - They are often arrested unlawfully
 - They are often detained and police officers fail to record it in the Occurrence Book.
 - When they are arrested, the police officers allow other inmates to have sex with them, and then the inmates pay the police officers.
 - Unlawful profiling of sex workers. We have received reports that the police approach sex workers and tell them that they need to take pictures of them for a database.
5. Despite sex work being criminalised, sex workers should not be stripped of their constitutional rights. Our courts have been very clear that the right to personal liberty is unquestionably one of the most fundamental rights that a person is entitled to assert. The courts have repeatedly pointed out that arrest is drastic and may have horrific and far-reaching consequences for the detainee.
6. Often, municipal by-laws are used to arrest sex workers instead of the Sexual Offences Act because of the difficulties involved in proving the elements of the offence, particularly in relation to the client. The only real way to convict the client is by entrapment or if the sex worker testifies against him, thereby implicating herself.

7. The most common by-laws used are those dealing with loitering, drunken behaviours and soliciting for the purposes of prostitution. In many cases the sex workers have not committed the offence in question.
8. Even where the sex worker is guilty of the offence, the by-laws set out procedures relating to the arrest of a person that has allegedly violated the by-law, and it states that the most appropriate response would be to give such person a written notice to stop the offending activity and only if he or she fails to adhere to the terms of the notice, can the person be fined or given a notice to appear in court.
9. Due to the fact that they are by and large female, sex workers remain particularly vulnerable to all crimes of violence against women. The incidence of physical violence, including rape, is higher among sex workers than among the general population. Violence links with social stigma and discrimination producing disempowerment and in some situations learned helplessness giving the sex workers the message that their life does not matter.² During our research, we found that sex workers are reluctant to report the violence committed against them to the police, as they face many barriers when trying to exercise their rights.
10. Most sex workers are very reluctant to report crime committed against them or others to police. Unreported crimes include verbal abuse, refusal to pay and being robbed, threats of physical assault, physical assault and rape. Currently there is great scepticism about the police as an avenue of redress, especially in light of the fact that some police officers are themselves perpetrators of the above crimes.
11. The existing legal framework is unacceptably conducive to police discretion and encourages police corruption due to the spin offs, for example bribes and demands of sex. In reality a system of *de facto* decriminalisation exists in South Africa in that the sex work industry is left largely undisturbed by the police and law enforcement. The majority of interventions are based on responses to public and community complaints. In these instances the targets are the most visible elements, namely street based or outdoor sex workers, and in the majority of arrests, it is the municipal by-laws that are used.
12. The Sexual Offences Act as it stands is a very difficult law to prosecute under and requires intensive and intrusive police methods such as entrapment to secure a

² Ibid

conviction. The indoor industry is rarely targeted except when the brothel tends to become too high profile or there are community complaints. In these instances entrapment procedures are used.

13. The continued arrest of sex workers when they have not committed the acts for which they have received fines for conveys a practice of abusing the law to deliberately persecute a specific group of people. This practice violates the right to be equal before the law and amounts to unfair discrimination.
14. Sex workers further complain of the violation of their Constitutional rights to be informed promptly of the reason for being detained, to choose and consult with a legal practitioner, to challenge the lawfulness of the detention, to communicate with or be visited by next of kin or a doctor, and the conditions of detention that are inconsistent with the right to human dignity.
15. Sex workers frequently report being assaulted, raped and pepper sprayed during the arrest even though they do not resist arrest. The fact that sex workers report incidences of being raped, sworn at and assaulted at police stations indicates that not only individual police officers but their colleagues and superiors are involved in or condone such criminal behaviour. In addition, sex workers report being detained in conditions which deprive them of medical treatment, which are unhygienic, without food or adequate bedding, suggesting a disregard for police Standing Orders and for the basic rights to which all detainees are entitled.
16. The experience of sex workers typically testifies to the human rights violations that occur during and after arrest and the devastating impact that this has on their lives. The regular arrest of sex workers when they have not committed the acts for which they have received fines for conveys a practice of abusing the law to deliberately persecute a specific group of people. This practice violates the right to be equal before the law and to amounts unfair discrimination.

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