

Police abuse of sex workers:

Data from cases reported to the
Women's Legal Centre between
2011 and 2015



WOMEN'S LEGAL CENTRE

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Written by: Jerushah Rangasami, Tracey Konstant, Anja Mulder (Impact Consulting) and Stacey-Leigh Manoek (Women's Legal Centre), with assistance from Mosima Kekana and Jeanne Bodenstein.

Publication design: **Jennifer Geib {writing, layout + design}**

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ACRONYMS

HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
MSM	Men who have Sex with Men
SANAC	South African National Aids Council
SAPS	South African Police Service
STI	Sexually Transmitted Infection
SWEAT	Sex Workers Education and Advocacy Taskforce
UNAIDS	United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
WHO	World Health Organization
WLC	Women's Legal Centre

EXECUTIVE SUMMARY

This report draws on reported cases from sex workers who approached the Women's Legal Centre (WLC) between 2011 and 2015 for information, guidance and legal assistance to access their rights.

Analysis highlights the gap between the rights enshrined in the South African Constitution and the treatment that sex workers experience. Even under the present, imperfect law where sex work is criminalised, there is a stark contradiction between the actions of police and the due process laid out by the law, which police are mandated to follow. Based on complaints reported by sex workers, the WLC found the following issues which requires urgent attention:

- Police fuel stigma and discrimination
- Police engage in verbal, psychological, physical, economic and sexual violence against sex workers
- Police conduct arbitrary and illegal arrests
- Police violate formal procedures and standing orders
- Sex workers are denied appropriate access to justice.

Criminalisation is an expression of stigma against sex workers, and this stigma is fuelled by the police. Police abuse as a result of their criminal status increases their vulnerability to violence, and exacerbates the already widespread gender-based violence which is rife in South Africa. The current legal framework forces sex workers to the margins of South African society, where they are easy targets for abuse at the hands of police and clients.

Decriminalisation has been shown to be the most effective method for remedying such injustice in other countries, and is a United Nations target for all countries. It is vital that South African law is reformed in line with these objectives and to ensure that human rights for all is achieved.

"When I got arrested last December I said, "I need a lawyer and I have the right to that". The police man told me that "you don't have any rights because you are makgoshu."

– Sex worker, Limpopo

1. INTRODUCTION

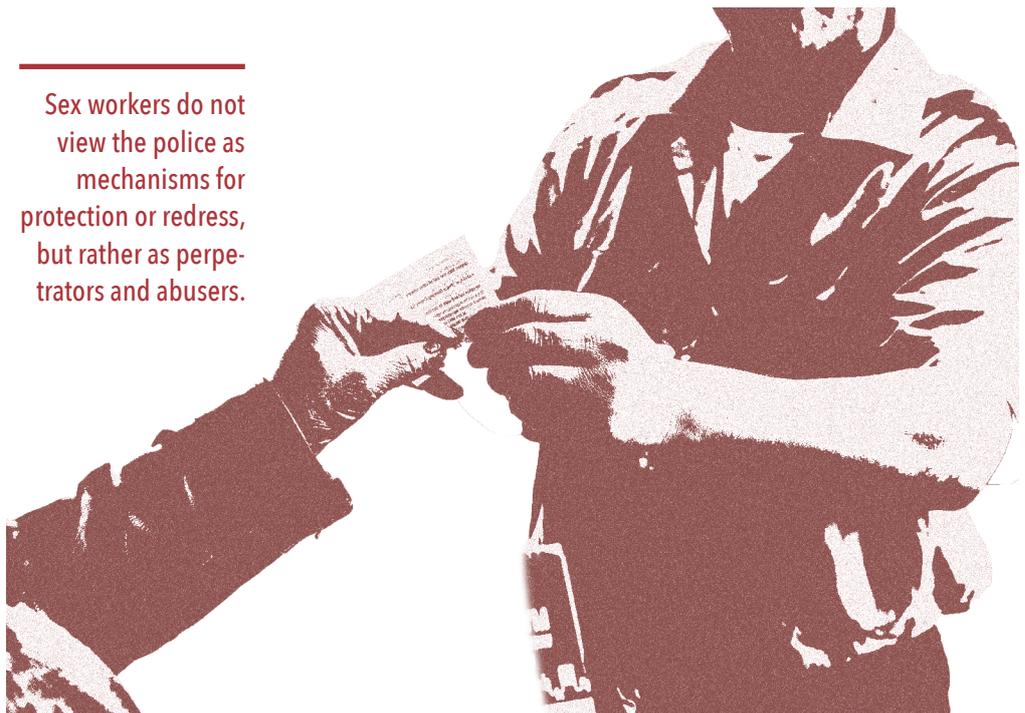
The extent of human rights abuse suffered by sex workers in South Africa is alarming and demands immediate attention. Research on sex work shows that much of this abuse is from the police – almost all sex workers report experiencing some form of abuse at the hands of the police (Sonke and partners, 2014; Richter and Chakvinga, 2012; Scorgie, 2013a; Deering et al, 2014; SWEAT 2013a; Mac AIDS, 2015). Unsurprisingly, sex workers are therefore reluctant to approach the police to report crimes committed against them.

Unreported crimes range from verbal abuse, theft, bribery, threats, physical and psychological assault, to rape. Gould & Fick (2008) report that 12% of sex workers in Western Cape have reported being raped by police. Sex workers do not view the police as mechanisms for protection or redress, but rather as perpetrators and abusers.

This report presents an analysis of human rights violations by police against sex workers. It uses general research about sex work in South Africa and evidence that has been collected by the Women’s Legal Centre (WLC).

WLC is an organisation working to ensure that women in South Africa can live free from violence in safe housing, are free to own property, are empowered to ensure their own reproductive health rights, and are able to work in a safe and equal environment. The human rights violations evidence collected by the WLC further illustrates the urgent need for sex work to be decriminalised in South Africa.

Sex workers do not view the police as mechanisms for protection or redress, but rather as perpetrators and abusers.



**“WE WANT THE
POLICE TO FIRST SEE
THE HUMAN IN US,
NOT JUST MAKGOSHA
(SEX WORKER)”**

— SEX WORKER, KZN

2. A DESCRIPTION OF SEX WORK IN SOUTH AFRICA

2.1 NUMBER AND TYPE OF SEX WORKERS

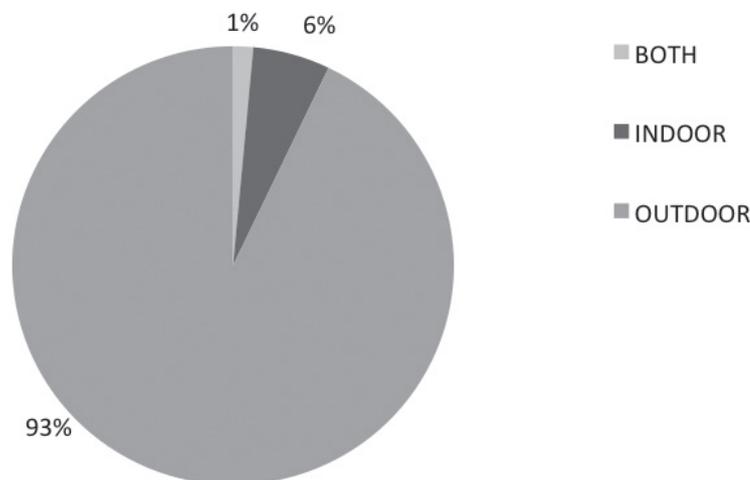
Using the definition of people who self-identify as sex workers, a rapid size estimation study of 2013 (SANAC, 2013a; Konstant *et al*, 2015) estimated that there are between 132,000 and 182,000 female, male and transgender sex workers in South Africa. An intermediate working estimate of 153,000 is being used at present, until further data becomes available, although recent studies (yet to be published) have revealed that this is an under-estimation.

Sex workers may operate independently and directly receive and manage their income, or they may work with a “pimp” who offers some level of protection and management for monetary reward, or they may be managed by a controller who handles their income, controls their movements and provides them with certain services. Equally, sex work may also be full time or part time, and supplemented by other livelihoods strategies. Some sex work is located in

client’s workplaces, such as truck stops and mining hostels. There are also variations in sexual orientations, gender combination, and client and sex worker sexual preferences (Richter *et al*, 2012).

Types of sex work ranges from outdoor/ street-based sex work through working from small to large brothels (often bars or taverns), to being a high-class escort in a more controlled environment (WHO, 2011). Each of these has different dimensions of violence – although outdoor street-based sex workers usually enjoy more autonomy, they also face higher risk of police and client violence. Those working in taverns have to pay fees and abide by certain rules, and still face a fairly high risk of client violence. Higher class escorts and those working in larger brothels may be more protected from the police and clients, but can have far less freedom of movement and work. The graph below shows that the vast majority (93%) of the sex workers who approached WLC for legal assistance between 2011 and 2015 operate outdoors.

Figure 1: Setting of sex work for individuals who approached WLC between 2011 – 2015



2.2 GENDER AND DISCRIMINATION

With cognisance of the artificial constructs around gender distinctions, sex worker genders are generally categorised as male, female or transgender. Most sex workers are female, with population estimation models using a 4% and 5% estimate for the number of transgender and male sex workers respectively (Konstant *et al*, 2015). The three groups differ in terms of their clientele, marketing strategies and working conditions. Men who have sex with men (MSM) and transgender sex workers experience double discrimination: homophobia compounds sex work discrimination (Scorgie *et al*, 2013b). It was found that transgender sex workers are particularly severely abused, and face higher levels of violence, humiliation and harassment than other genders. They are targeted by police, society and clients for their sex work, and for their gender and overt expression of gender identity (Fick, 2006; Boyce and Isaacs, 2011).

2.3 NATIONALITY AND DISCRIMINATION

A high proportion of sex workers are national and international migrants (Scorgie, 2013a); Richter, 2013). International migrant sex workers are more vulnerable to harassment by the police for documentation, and have less legal recourse. They are therefore more vulnerable to violence and abuse, and have less access to health care and services (Crago and Arnott, 2008). These conditions are exacerbated for male and transgender migrant sex workers, who are subjected to all three sources of discrimination.

Given this range of variation amongst sex workers, there is little that can be concluded about a *typical* sex work setting. The needs, conditions and vulnerabilities of sex workers are as variable as their contexts.

The needs, conditions and vulnerabilities of sex workers are as variable as their contexts.



3. SEX WORK AND THE LAW

South African law currently criminalises consenting adult sex under certain conditions, and is difficult to define, justify or enforce. This is through the Sexual Offences Act of 1957, which continues to be applied under the current South African constitution. It states that “*unlawful carnal intercourse or act of indecency with any other person for reward commits an offence*”.

The law acts as a morality-based vehicle for the victimisation of those culturally identified as ‘prostitutes’, and dates back to the oppressive censorship of the apartheid era. For sex workers, the vulnerabilities of poverty are exacerbated by criminalisation, as well as the intimate and dangerous nature of their work, the lack of protection by law, and the cultural stigma attached to the sex work industry (Abrahams *et al*, 2013; Jewkes *et al*, 2009).

When assessing the legal framework with regards to sex work, the key points are¹:

- The **South African Constitution** provides for dignity, equal protection under the law, and non-discrimination on any grounds. It also specifically confers the right to people who are in detention, including rights to trial, and freedom from violence, cruelty, and degradation.
- Internationally, South Africa has signed the **International Covenant on Civil and Political Rights of 1966**, which protects people from arbitrary arrest, and confers equal protection under the law to all.

- The **International Covenant on Economic, Social and Cultural Rights of 1966** states that people have the right to earn a living by work which is chosen and accepted, and to have just working conditions.
- Multiple **conventions** commit countries to eliminate discrimination against women and all forms of gender-based violence.
- The Convention on the **Elimination of All Forms of Discrimination against Women of 1967** specifically highlights the need for sex workers to have equal protection against rape and gender-based violence under the law.
- The **African Charter on Human and People’s Rights of 1986** and the **2005 Protocol on the Rights of Women** confirm that states protect women from all forms of violence, and guarantees all individuals equality, dignity and work.

Despite the freedoms and rights enshrined in the above, the following laws maintain the criminalised nature of sex work in South Africa:

The **Sexual Offences Act 23 of 1957** makes prostitution, brothel-keeping, solicitation, indecent exposure, and knowingly living from the proceeds of sex work illegal.

For sex workers, the vulnerabilities of poverty are exacerbated by criminalisation, as well as the intimate and dangerous nature of their work, the lack of protection by law, and the cultural stigma attached to the sex work industry

1 Laws summarised by Stacey-Leigh Manoek at WLC

In 2007, the **Criminal Law (Sexual Offences and Related Matters)**

Amendment Act 32 of 2007 came into force, criminalising clients who engage the services of sex workers.

Sex workers are generally detained in terms of **municipal by-laws**, although the regulations around by-laws are seldom followed. Under by-laws, offenders should receive written notices and fines, which they have the opportunity to contest, and should only be arrested if it is the only way that their appearance in court can be ensured.

The Sexual Offences Act of 1957, which continues to be applied, states that *“unlawful carnal intercourse or act of indecency with any other person for reward commits an offence”*. However, the criminalised act of sex work is difficult and time-consuming to enforce, and can only be practically achieved through ‘entrapment’ – the posing of undercover police officers as clients. Sex workers are therefore most frequently arrested and harassed under municipal by-laws (Scorgie et al, 2013a). Currently, sex workers are being fined under “bylaw relating to streets, Public Places and the Prevention of Noise Nuisance GN 6469 28/09/2007, Section2(3)(j) (information provided by WLC, 2015). In many cases of arrest, the sex workers have not committed the offence in question (Manoek, 2012). Even when the sex worker is guilty of that offence, the correct procedure for implementing by-laws is not usually followed.

Sex workers frequently report that the violence, harassment and abuse of the law that they suffer from police are one of the most difficult aspects of their lives (Impact Consulting/SWEAT, 2012; Impact Consulting/SWEAT, 2014; Manoek, 2012; Sonke and Partners, 2014; SWEAT, 2013a). This is discussed in more detail in this report.

3.1 DECRIMINALISATION

The criminalisation of sex work is described as “irrational and fuzzy”, particularly as the definitions of illegal sex work can be ambiguous when one looks at the wide range of transactional sexual practices and sexual interactions within consensual adult sexual relations (Scorgie *et al*, 2013a). In South Africa, the law that criminalises consenting adult sex for “reward” is difficult to define, justify or enforce. It is essentially a morality-based vehicle for the victimisation of those culturally identified as ‘prostitutes’, and in South Africa dates back to the oppressive censorship of the apartheid era.

The Global Commission on HIV and the Law states that all countries should repeal laws that prohibit consenting adults to buy or sell sex (UNDP 2012). The UNAIDS Strategy of 2016 to 2021 states: “Criminalization of adult consensual same-sex relations is a human rights violation”, and decriminalisation is a UN target for all countries (UNAIDS, 2013).

In South Africa, *“efforts to change government policy regarding sex work/law reform have shown no progress”* (2012 UNAIDS report; SANAC, 2013b). This is despite support for decriminalisation from the Commission for Gender Equality and COSATU. Decriminalisation is a critical step towards ameliorating the full range of health and human rights limitations experienced by sex workers (Richter, 2009).

Sex workers frequently report that the violence, harassment and abuse of the law that they suffer from police are one of the most difficult aspects of their lives



4

4. SEX WORKERS AND THE POLICE

4.1 VIOLENCE, HARASSMENT AND ABUSE OF THE LAW

Globally, approximately 50% of sex workers experience violence in the workplace (Deering *et al*, 2014). Globally, sex workers' early mortality rates are six times that of the general population, with murder being a significant contributor (SWEAT, 2009; Gould and Fick, 2008; Scorgie, 2013a; Sonke and partners, 2014). Sex workers are physically abused by law enforcement officials, clients, their partners and each other, with minimal recourse to protection or justice (Sonke and partners, 2014; Richter and Chakvinga, 2012). A qualitative study in four countries, including South Africa, found that most sex workers had at some point been beaten, gang raped by clients, and/or assaulted by police (Scorgie, 2011).

These results align with South African research, with over 50% of sex workers in a survey of 1129 sex workers (street-, bar- and brothel-based) reporting having experienced violence by police and/or clients (SWEAT, 2013a). In a sample of 410 sex workers in Port Elizabeth, 62% had been physically abused and 38% had been raped (Mac AIDS, 2015).

Sex workers also experience high levels of stigma and discrimination in South Africa (Richter and Chakvinga, 2012). In a study in Port Elizabeth, 60% of sex workers reported having been subjected to verbal abuse by the public, and that this abuse extended to harassment and victimisation of their children (Mac AIDS, 2015).

Sex workers frequently report that the violence, harassment and abuse of the law that they suffer from police are one of the most difficult aspects of their lives (Impact Consulting/SWEAT, 2012; Impact Consulting/SWEAT, 2014; Manoek, 2012; Sonke and partners, 2014; SWEAT, 2013a). In a survey by Gould and Fick (2008), 47% of sex workers reported being threatened by police with violence, 12% reported having been raped by police, and 28% had been asked for sex by policemen in exchange for release from custody. The SWEAT (2013a) survey of over 1000 sex workers across the country revealed that 55% of sex workers had experienced violence from the police in the previous year, and over 80% had been subjected to police violence. Examples of police brutality experienced by sex workers include murder and attempted murder, rape, gang rape, violence, arrests, neglect in prisons and police stations, regular harassment, as well as police directly obstructing HIV prevention by confiscating condoms, and by using the possession of condoms as evidence of intention for sex work (Scorgie, 2013a, 2013b).

Scorgie (2013a) describes sex worker “*experiences of unlawful arrests and detention, violence, extortion, vilification and exclusions, profound exploitation and repeated human rights violations.*” Since police officers are often perpetrators of violent crime against sex workers, sex workers are also hesitant to attempt to access legal or police services (Scorgie, 2013a, 2013b). On the rare occasions that sex workers do seek recourse for justice, they generally report a negative experience, and further trauma due

55% of sex workers had experienced violence from the police in the previous year, and over 80% had been subjected to police violence. (Sex Worker Survey, 2013)

to humiliation and abuse suffered at the police stations.

Police attitudes and practices have great influence on health and sexual risk outcomes. Where police are supportive of sex workers, condom use can increase, and violence and HIV infection among sex workers can decrease (UNDP, 2012). In addition to enhancing sex workers' access to their rights, police cooperation with sex workers enhances security, which is in the interests of both sex workers and law enforcement.

4.2 EVIDENCE FROM CASES OF POLICE ABUSE REPORTED TO THE WOMEN'S LEGAL CENTRE

Many of the sex workers who approached the WLC for legal assistance between 2011 and 2015 reported more than one violation at the hands of police officers. In line with the literature, the most common human rights violations from police that were reported by sex workers were:

- Being forced to pay a bribe or perform sexual favours to be released from custody
- Violence and discrimination
- Unlawful fines and arrests, and violations of procedures and standing orders
- Being denied access to justice.

4.2.1 Violence and discrimination from police

Sex workers who approached the WLC show that sex workers are frequently victims of police brutality. They are beaten and tortured, and pepper spray is used arbitrarily, unnecessarily and excessively. Sex workers have even reported instances of being shot in the face at close range, and many reports include rape and sexual assault by police officers.

The figure below shows 414 reported cases of various types of violence against sex workers at the hands of police between 2011 and 2015:

Sex workers have even reported instances of being shot in the face at close range, and many reports include rape and sexual assault by police officers.

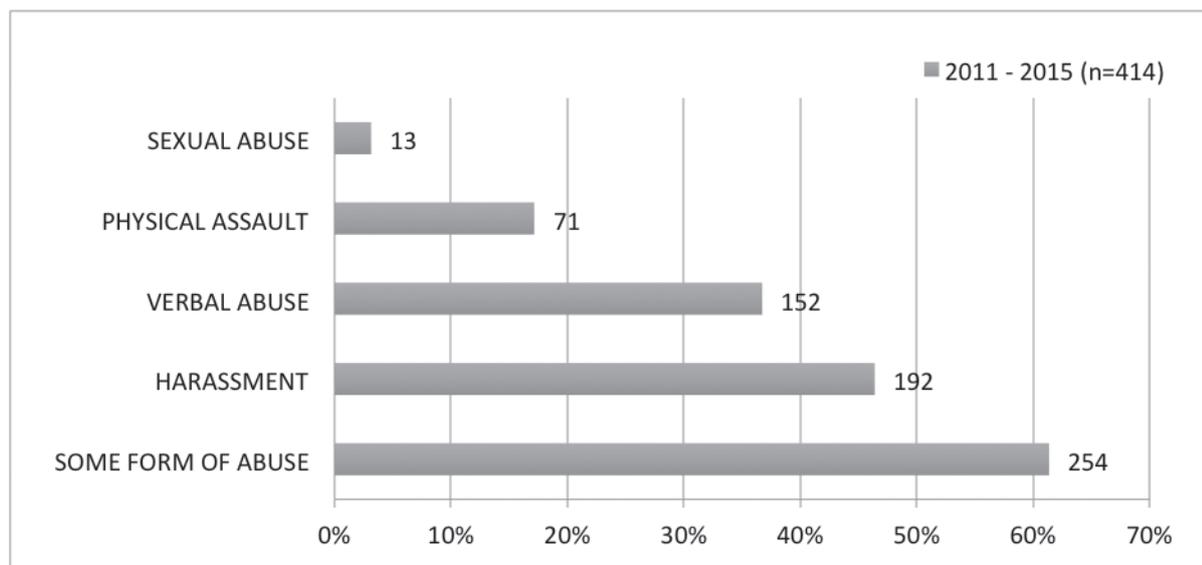


Figure 2. Type and percentage of police abuse against sex workers as reported to WLC

Of the abuse reported to the WLC by sex workers, over 60% of cases were from police as perpetrators. These were mostly cases of harassment and verbal abuse, but there were also cases of physical and sexual abuse.

“[A policeman] threatens me with some of my colleagues that killers are waiting for me, even tell taxi drivers that they should rape and kill me”

— Sex worker, WC

4.2.1.1 Verbal and psychological abuse

Verbal and psychological abuse by police is relentless for many sex workers:

“[They] force me to get into the van. I tried to ask them why? They say, ‘shut up you slut, ugly bitch.’”

— Sex worker, WC

“I was verbally assaulted even when I showed them the pocket of rights booklet, they said I know too much and should be a lawyer”

— Sex worker, KZN

“They took my photo and my fingerprints, making funny comments about being a transgender female and me being raped in Pretoria...saying how could I be raped, I’m a man”

— Sex worker, WC

“I was walking down the road, they were very rude calling me ‘jintoe’, shooting rubber bullets. They take pictures of us and call us names, they escort us down the road and say over the loud speaker, ‘People look at these dirty prostitutes, chase them away.’”

— Sex worker, WC

One result of such open discrimination from police is that many sex workers choose to work away from their communities in an attempt to keep their occupation secret. They fear that if they are exposed to be sex workers within their communities, they face contempt, rejection and social exclusion from their family, community and religious institutions (Scorgie *et al*, 2013a).

4.2.1.2 Physical abuse and harassment

Almost 20% of sex workers requesting assistance from WLC reported having been physically assaulted by police.

“I was walking down Long Street on the way to my sleeping place when the police stopped me and threw me into the van and started smacking me. They took me to an office upstairs where the beating took place. [They] smacked me around and kicked me in my face and ribs. There were six police officers. I told them that I was in pain, I needed to see a doctor. They told me to ‘fuck off.’”

— Sex worker, WC

“He beat me, grabbed me by the arm and hit me with a brick. He kicked me in my face - my eyes were black and red and both swollen”

— Sex worker, WC

[Sex workers] fear that if they are exposed to be sex workers within their communities, they face contempt, rejection and social exclusion from their family, community and religious institutions



I was sitting where we stay under the tree. I was putting on nail polish. Law enforcement came and chased us away, they took all our belongings and destroyed them. They took all my medication and clinic card. I suffer from a severe stroke on my lower body which requires me to get constant medication. I can't get medication [now] because my card was destroyed."

— Sex worker, WC

4.2.1.3 Sexual violence

Sex workers report horrific stories of sexual abuse from policemen:

"Some of us have been repeatedly raped by both the police and our clients, we are destroyed inside and maybe that why we are fighting always, we are even harsh to our own children at home"

-Sex worker, KZN

"You get abused by your client, you go to the police, even that police officer rapes and abuse you emotionally and physically, like one policeman said to me I must show him if my ingquza (pussy) was injured so

that he can help me quick, when I showed him he started raping – 'esgudeni" – and I was forced to go to where we sleep and I have not told anyone as to what happened to me because I will be laughed at by my counterparts"

-Sex worker, KZN

"Police officer pretended to arrest me and then raped me. After being raped I went to lodge a complaint at the Police Station, the police just made as if they were taking a statement by pretending to write in a book, but nothing came of it"

-Sex worker, WC

Almost 20% of sex workers requesting assistance from WLC reported having been physically assaulted by police

4.2.2 Unlawful arrests and abuse of the law

Figure 3 shows that there have been 725 reported cases at WLC of sex workers who have been in conflict with the law between 2011 and 2015.

Of all the sex workers whom WLC assisted between 2011 and 2013, 35% had received a fine, 32% had been arrested, 18% had been charged with a crime and 14% had been to court as a defendant.

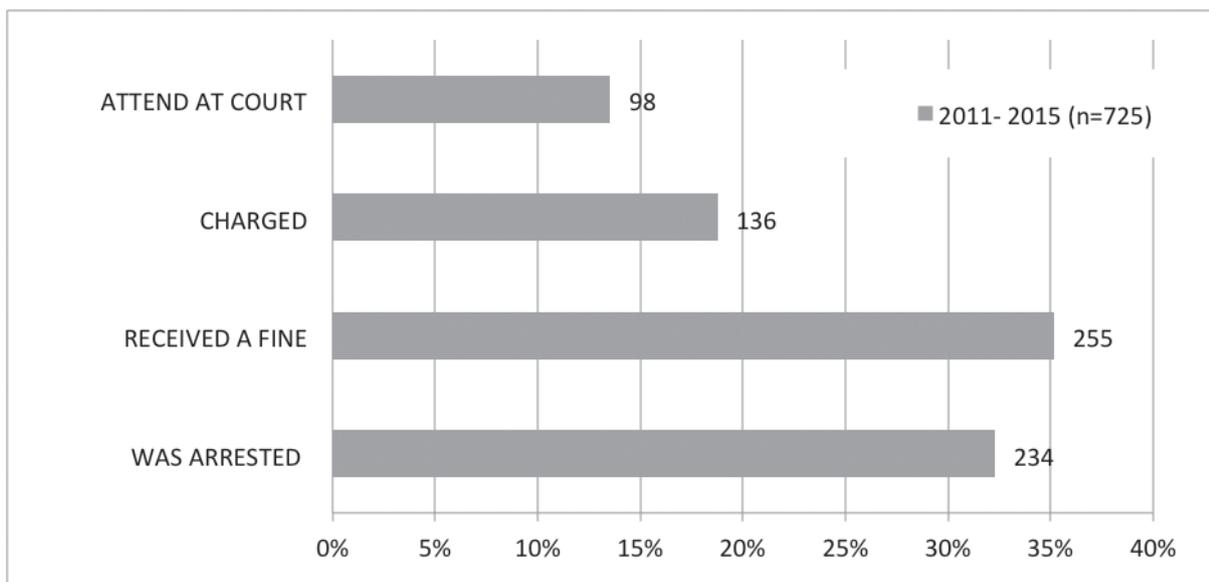


Figure 3. Sex workers in conflict with the law

Police officers commit these crimes with impunity. They remove their badges and nametags so that they cannot be reported to the authorities.

4.2.2.1 Unlawful arrests and violation of procedures

Sex workers who have approached the WLC for legal assistance reported unlawful profiling by police. Police officers allegedly targeted sex workers, chased them and took photographs of them while under arrest so that other policemen could identify them as sex workers. This practice is illegal – photographs are not allowed to be taken of any person without their consent, unless they have been legally arrested. This profiling makes sex workers susceptible to victimisation and harassment by the police. Some reported being arrested whilst running everyday errands – because police officers know what they do for a living and target them. Police officers commit these crimes with impunity. They remove their badges and nametags so that they cannot be reported to the authorities.

The legal provisions against sex work are difficult and time-consuming to enforce, and can only be directly achieved through

‘entrapment’ – the posing of undercover police officers as clients. Sex workers are therefore most frequently arrested and harassed under municipal by-laws (Scorgie *et al*, 2013a). Currently, sex workers are being fined under “bylaw relating to streets, Public Places and the Prevention of Noise Nuisance GN 6469 28/09/2007, Section2(3)(j) (information provided by WLC, 2015). In many cases the sex workers have not committed the offence in question (Manoek, 2012). Even where the sex worker is guilty of the offence, correct procedure for implementing by-laws is not followed.

Section 12 of the Constitution provides that “everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; and not to be detained without trial.” Despite this, there are many situations of alleged unlawful arrest, as depicted in Figure 4.

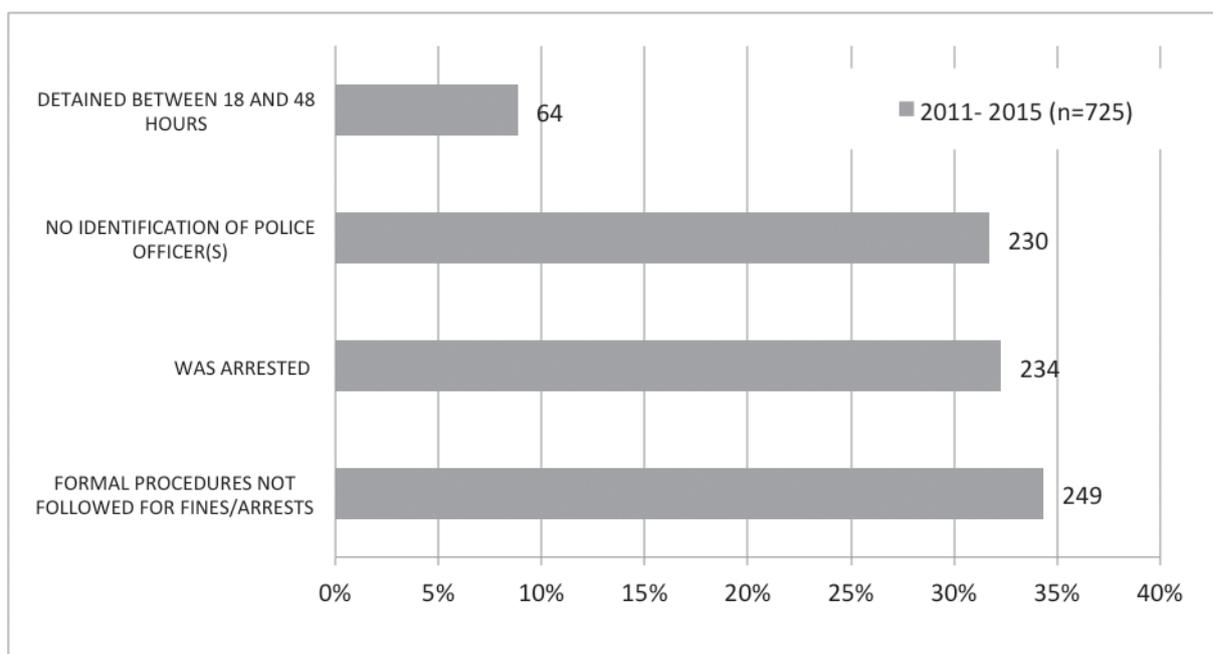


Figure 4. Violations of procedure and due process, as reported by sex workers to the WLC

About a third of sex workers who approached WLC with cases report having experienced violations of procedure and due process. Of all the sex workers who reported cases to the WLC between 2011 and 2015, approximately a third did not experience formal procedures being followed, and/or were unlawfully arrested, and/or encountered police officers who did not identify themselves. Almost 10% of sex workers reported being detained for longer than is legally allowed (more than 18 hours).

The fact that less than half of the sex workers presenting at WLC who reported being arrested were charged with any crime (Figure 4) fits in with sex workers' complaints of being harassed. Sex workers are often told to pay a fine or a bribe to be released, but this is most often done outside of the correct procedures and is extortion. They are also often forced to perform sexual acts on the corrupt policemen as a condition for release.

Police officers are bound by the South African Police Act 68 of 1995, and they are required to abide by regulations set out in Standing Orders. Standing Order G 36 (1) and (6) of the South African Police Services

(SAPS) set out the procedures for lawful arrest. These include entering every arrest into the Occurrence Book and issuing everyone who has been arrested with a Notice of Rights. This includes recording persons who have been detained in the police cells into the Custody Register. Despite this, reports show that authorities often violate procedures. Sex workers are frequently arrested without being given a reason, or charge, without correct procedure being followed and without being read their rights. In addition, there were many reports of the police exploiting sex workers, and of corruption, demanding free sex or money in exchange for their release:

“Police asked how much I charge for sex. I told him that I don’t do business with the police. Then the police said, ‘Open your pussy, I want to see it’. I told him that I can’t because I am menstruating. They then told my other two friends to ‘suck it’. They had to give each other oral sex in front of the police so that they don’t get arrested. But afterwards the police arrested everyone anyway.”

— Sex worker, WC

Sex workers are often told to pay a fine or a bribe to be released, but this is most often done outside of the correct procedures and is extortion. They are also often forced to perform sexual acts on the corrupt policemen as a condition for release.

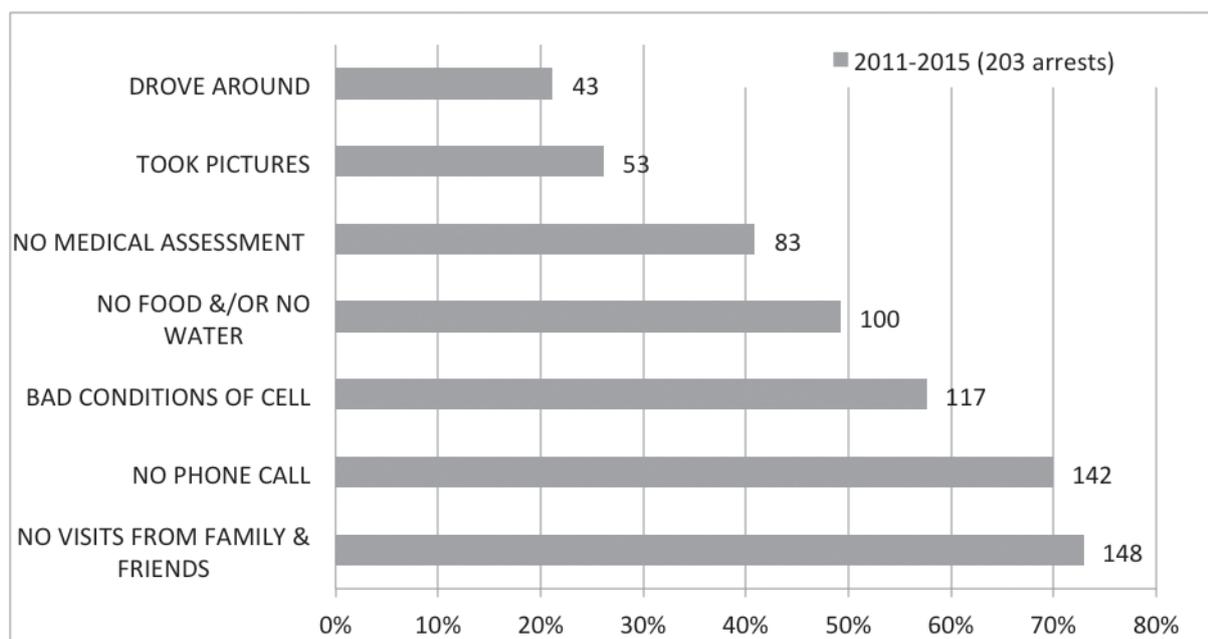


Figure 5. Violations in detention

4.2.1.2. Inhumane conditions of detention

“...You don't have any rights because you are makgosha...”

Despite the fact that Section 35 (2) (e) of the Constitution emphasizes the right to humane conditions of detention, WLC records show that sex workers who were arrested and opened cases at WLC were detained in poor conditions – in dirty cells without food, water, adequate toilets, or blankets. They were deprived of medical treatment and had important medicine withheld. Often their property was confiscated and not returned to them once released. These instances are displayed graphically in Figure 5 and 6.

Denying detained sex workers their right to a visit or a phone call were the most common violations by policemen (70% and more of sex workers reporting cases reported having experienced this). Almost 60% were held in bad conditions, with almost half reporting that they received no food or water. Over 40% of reporting sex workers were not medically assessed, and over 20% had illegal pictures taken of them and were driven around unlawfully. Police officers, according to Section 50(1)(a) of the Criminal Procedure Act 51 of 1977, are required to

take sex workers to the police station immediately when they are arrested. However, persistent reports included ones of police officers picking up sex workers, driving them around in their van for several hours and then releasing them far from where they live, despite it being difficult and dangerous for these individuals to find their way back.

Of the 203 arrests between 2011 and 2015, almost half (43%) of the sex workers who were arrested had had their property taken, with 13% not being given a receipt in the first place, and 12% who never got their property back. Corruption in the form of bribery was also reported by 6% of sex workers who were arrested.

Sex workers also reported being humiliated and degraded throughout the process:

“When I got arrested last December I said, “I need a lawyer and I have the right to that”. The police man told me that “you don't have any rights because you are makgosha, and government won't pay for you to sell dibunu (bums)”

— Sex worker, Limpopo

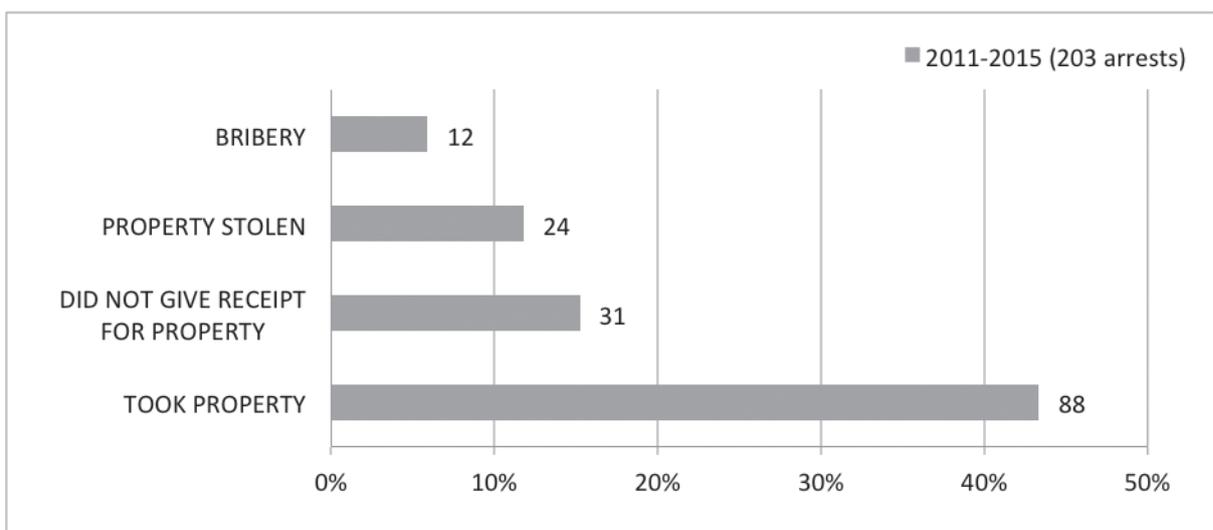


Figure 6. Exploitation and theft

4.2.3 Inadequate recourse to justice

All citizens should be treated equally by the law and should have equal benefit of the law, as stated in under Section 9 of the South African Constitution. Further, Article 26 of the International Covenant on Civil and Political Rights (ICCPR) states that **“all persons have the right to equality before the law and equal protection of the law.”** Sex workers should therefore be assisted immediately when they lodge criminal charges against persons who have violated their constitutional rights. This is reiterated in Article 2.3 of the ICCPR which states that **“every person has the right to an effective remedy for violations of rights or freedoms, notwithstanding that the violation has been committed by persons acting in an official capacity.”**

However, since police officers are often perpetrators of violent crime against sex workers, access to legal or police services is viewed with suspicion (Scorgie, 2013a, 2013b). On the rare occasions that sex workers do seek recourse for justice, they report a generally negative experience, and further trauma due to humiliation and abuse at the police stations.

Frequent complaints from sex workers documented by the WLC relate to police officers failing to take complaints seriously, refusing to lay charges for them, and there being no sufficient avenue for sex workers to make complaints against the police. Recurring reports from sex workers illustrate that they are too afraid to make complaints against police, due to fear of the repercussions from the police officers themselves; that they are continuously denied police protection; and that police are generally perceived to be unhelpful and untrustworthy:

“I got beaten up very badly by a client and he took off with all my clothes and phone, I tried to cover myself with banana tree leaves and went running to the street, I was happy to see a police van approaching; however, I received more insults from the police about my being a sex worker without them listening to my story.”

— Sex worker in KZN

All citizens should be treated equally by the law and should have equal benefit of the law, as stated in under Section 9 of the South African Constitution

“The police officer pretended to arrest me and then raped me. After being raped I went to lodge a complaint at [name excluded] Police Station. The police just made as if they were taking a statement by pretending to write in a book, but nothing came of it.”

— Sex worker, WC

Sex workers also report that police refuse to open assault and rape cases:

“If as a sex worker you are injured or you come into the police station to report that you have been raped, you are told to go away because you asked for it”

— Sex worker, KZN

Cases reported relating to rape by ‘white’ clients are laughed off by the police:

“You are lucky you got a white one, appreciate it instead of coming to complain’ they say...”

— Sex worker, KZN

South Africa’s extremely high levels of violence against women indicates a broader problem that effective policing can address. Many sex workers are on the front line of gender-based violence in that perpetrators know that they are unlikely to report it, and that they are vulnerable and unprotected. Sex workers are a target because of these factors and the fact that they are subject to violent misogyny. Police could play a role in enhancing sex workers’ access to their rights, and police cooperation with sex workers enhances security, which is in the interests of both sex workers and law enforcement.



**“ONE POLICEMAN IS
HIV POSITIVE AND
DEMANDS CONDOM-
FREE [SEX].”**

— SEX WORKER, GAUTENG

5. IMPACT OF POLICE VIOLENCE AND CRIMINALISATION ON HEALTH AND HIV

Sexual violence is a clear danger to the health of sex workers. The World Health Organization (WHO) identifies three key risks:

1. forced sex increases the risk of transmission of HIV
2. the threat of violence limits the ability of people to negotiate safer sex
3. disclosure of HIV test results or the disclosure of a person's HIV status may also entail an increased risk of violence.

The sex workers reporting cases to the WLC indicated that the threat of violence inhibits condom use and safer sex negotiation. Clients and police often force condom-free sex on sex workers, or become violent if sex workers insist on using condoms. This is clearly a danger to the health of sex workers, as it increases their risk of contracting HIV.

In addition, sex workers report that police confiscate their condoms and even their medication. In many instances, sex workers are afraid to carry condoms as police illegally search their bags and unlawfully arrest them if they find condoms on them. ARVs are also denied to sex workers when they are in custody.

Since most sex workers don't report violence, victims are likely to suffer disproportionately from the psychological and physical effects of trauma.

Compounding the risks are the fear of stigma and abuse at clinics – meaning that sex workers have poor access to adequate health services, such as HIV prevention, post-exposure prophylaxis after rape, emergency contraception, access to condoms and lubricant, management of STIs, as well as other health related services.

The attitudes and practice of the police are a critical area of opportunity to influence positive health and sexual risk outcomes. Where the police are supportive of sex workers, condom use can increase, and violence and HIV infection among sex workers can decrease (UNDP, 2012).



6. DECRIMINALISATION TO REDUCE HUMAN RIGHTS VIOLATIONS AND ABUSE OF THE LAW

To most effectively address the gross human rights violations that sex workers suffer, sex work in all its forms (selling and buying of sex, running a brothel, living off the proceeds of sex work, etc) needs to be decriminalised. The current legal framework leaves sex workers vulnerable to police violence, harassment and abuse, and does not provide them with the necessary protection of their rights. Decriminalisation is appropriate in South Africa because:

- it would assist towards ameliorating the full range of health and human rights limitations experienced by sex workers (Richter, 2009)
- it is focused on human rights
- it is built on a public health model that minimises harm
- it allows for a cooperative relationship between sex workers and police to reduce violence
- it allows for the dignity of sex workers to be built, facilitates movement-building, solidarity and the building of social capital²
- it will assist in the work being done to reduce HIV transmission.

Convened to specifically address the global stance on criminalisation, the Global Commission on HIV and the Law states that all countries should repeal laws that prohibit consenting adults to buy or sell sex (UNDP, 2012). The UNAIDS Strategy of 2016 to 2021 states: “Criminalization of adult

consensual same-sex relations is a human rights violation”, and decriminalisation is a UN target for all countries (UNAIDS, 2013).

Decriminalisation in South Africa would mean that³:

- Criminal sanctions surrounding sex work are removed, as are most special regulations.
- Brothels and individual sex workers can operate as ordinary businesses.
- Collective working is specifically allowed and encouraged.
- Sex workers can work without artificial and arbitrary limitations.
- Laws protecting sex workers from special risks are put in place.
- Underage sex work, forced labour and sexual coercion remain criminalised.

Research shows that decriminalisation would reduce stigma and violence, increase access to health and legal services, ensure less exploitation from controllers, ensure that sex workers are able to engage in fair labour practices, and assist with prosecuting those involved in driving under-age sex work and trafficking.

The current legal framework leaves sex workers vulnerable to police violence, harassment and abuse, and does not provide them with the necessary protection of their rights.

2 From Asijiki Network communications material, written by Dr Dean Peters

3 From Asijiki Network communications material, written by Dr Dean Peters

7. CALL FOR ACTION

In order to address the serious and widespread human rights violations experienced by sex workers in South Africa, the following actions must be taken:

7.1 ACTION REQUIRED FROM STATE ACTORS

- Laws prohibiting the selling and buying of sex should be repealed to facilitate sex workers' increased access to health and other social services. The laws criminalising sex work must be repealed in order to honour the international treaties that South Africa has signed and ratified that protect women from violence.

7.2 ACTION REQUIRED FROM INDEPENDENT INSTITUTIONS PROMOTING DEMOCRACY

- The Commission on Gender Equality and the Human Rights Commission should investigate the human rights violations that sex workers experience.
- The South African Law Reform Commission should complete its Project 107 on "Adult Prostitution" and make their reports public and available.
- The Independent Police Investigative Directorate (IPID) should pay special attention to investigating police abuses against sex workers.

7.3 ACTION REQUIRED FROM POLICE AUTHORITIES

- They should immediately issue directives to staff members prohibiting them from harassing and arresting sex workers for ulterior purposes, and enforcing compliance with the High Court interdict of 2009 in the Western Cape, which prohibits the arbitrary arrest of sex workers.
- Together with sex workers, police authorities should establish guidelines for police conduct when interacting with sex workers.
- Administrative mechanisms must be developed for monitoring and responding to reports of violence and unlawful conduct to help minimise such occurrences, to enable effective responses, and to ensure the protection of complainants from further victimisation. These mechanisms include the allocation of a "sex work police liaison officer" at every police district, which will ensure all complaints are investigated and also liaise with sex worker collectives and organisations around investigations (ensuring that organisations are able to communicate with sex workers, alerting them to potential dangers and encouraging them to come forward with information for prosecution).
- A memorandum of understanding must be established between the police and sex worker rights organisations in which they commit themselves to working together to ensure the protection of sex workers' human rights.



- The Western Cape Standing Operational Procedure (SOP) for dealing with the Detention of Transgender Prisoners should be made a national SOP.
- Authorities should ensure that there are SOPs put in place to prohibit the practice of using condoms as evidence,
- Authorities should ensure that there are SOPs put in place to prohibit the practice of profiling sex workers to target them.
- Civil society should collect and publish disaggregated data on the implementation of the Sexual Offences Act as it pertains to sex work.

7.4 ACTION REQUIRED FROM CIVIL SOCIETY PARTNERS

- Support sex workers' call for the decriminalisation of sex work in South Africa.
- Meaningfully include sex workers in the conceptualisation, design and implementation of all projects targeting them and in broader human rights

initiatives to address violence and police misconduct.

- Offer services to sex workers in the form of legal advice, legal representation and health services.
- Ensure counsellors that provide support to victims of violence are sensitised and do not stigmatise sex workers, including shelter providers.

7.5 ACTION REQUIRED FROM INTERNATIONAL HUMAN RIGHTS INSTITUTIONS

- Investigate the South African state's failure to protect the human rights of sex workers and hold the state accountable for violating human rights as protected in the international and regional treaties to which South Africa is a signatory.
- Support sex workers' call for the decriminalisation of sex work in South Africa.

8. CONCLUSION

South Africa's current legal framework on sex work fails to conform to international, regional or domestic law in relation to violence against women and equality. It enables high levels of abuse and human rights violations by law enforcement officials.

It is clear that the framework must be reformed to bring the treatment of sex workers in line with our constitutional obligations and to reduce police abuse and corruption. South Africa needs to shift from approaching sex work through the lens of criminalisation, towards treating sex work as a form of labour that is governed with the same rights and responsibilities as all other forms of work.

South Africa needs to shift from approaching sex work through the lens of criminalisation, towards treating sex work as a form of labour that is governed with the same rights and responsibilities as all other forms of work.



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WOMEN'S LEGAL CENTRE