

SEX WORKERS SPEAK OUT

Policing and the sex industry

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South African sex workers, especially those working on the street, have good reason to feel afraid when they are on the job. Not only do they have to contend with the inherent dangers of their profession, but because sex work is a crime, they face frequent abuse and harassment from the police who are ostensibly upholding the law. But the threat of arrest does little to stop sex workers; instead it forces them underground and into situations that are potentially even more dangerous.

The Sexual Offences Act (23 of 1957) criminalises selling sex and all associated activities. SWEAT (Sex Worker Education and Advocacy Taskforce) is an organisation that advocates for the decriminalisation of sex work in South Africa. It believes that criminalising the industry has not resulted in eradicating sex work or reducing the number of people involved in sex work. Instead, it has increased the vulnerability of sex workers to violence and exploitation by forcing sex workers further underground, hindering access to health and legal services and increasing the stigma attached to the work.

There are those who would argue that sex work is an inherently violent occupation; however, it is clear that the laws criminalising this work make sex workers easy targets for violence.¹ The physical safety of sex workers is threatened by the criminal sphere in which they are forced to work.² Steve Chapman eloquently explains the association between sex work, crime and violence as follows:

As for criminals, hookers tend to be surrounded by felonious confederates because what they do is illegal. The enterprise attracts violent people because

violence is often useful in a business that can't expect protection from the cops. The retail liquor trade used to be that way too, during Prohibition. Since repeal, it has been about as violent as the dairy industry.³

Sex workers' contact with the police

In a recent exploratory study of sex workers' experiences, SWEAT examined some of the difficulties that sex workers face working in a criminalised environment. The study consisted of one-on-one interviews with 17 sex workers in Cape Town – and looked, among others, at their experiences with the police and their ability to receive protection from violence. Most agency-based sex workers in this study indicated that they had never experienced violence at the hands of the police. In fact the sex workers working at agencies reported very little contact with the police. Members of the police do occasionally raid specific indoor agencies, but for the most part they focus their efforts on policing the more visible sector of the industry: sex workers who are working on the street.

The majority of street-based sex workers are arrested or fined using local municipal by-laws, like

those against loitering, causing a public disturbance, or public indecency (including nudity in public). The police rarely use the Sexual Offences Act to arrest sex workers, as this Act is difficult to enforce. The prosecution would have to prove beyond any reasonable doubt that sexual services had been exchanged for reward and generally the only way to do this would be to make use of police entrapment, which is labour intensive and raises evidentiary difficulties in court.

Street-based sex workers speak of high levels of contact with the police and frequent arrests, sometimes as often as four or five times a month.

It has been SWEAT's experience that while the fear of arrest causes distress, it does not stop people from working. In fact, the fines that sex workers get or the time they spend in jail causes a loss of income for them and means that they have to work harder to make the money they need. One participant described the continuous threat of arrest as a major stressor for her and spoke of feeling "hunted" by the police:

...and even if you go up the streets, like the other day they were driving almost half an hour with, there were five at the back – five girls at the back. They almost drove half an hour just looking beside the streets and the corners for girls. I mean, they even drove up all the streets like hunting us down.

Research has described the impact of the threat of arrest on sex workers' daily lives. Both in New York and Kerala, India, sex workers spoke of how the threat of arrest prevented them from accomplishing daily tasks, like shopping or riding the subway. Respondents reported feeling as if they were confined to their houses by the threat of arrest.⁴ In the SWEAT study, participants who work in the area they live in spoke of similar experiences of feeling trapped in their homes, unable to go to the shop or to buy daily necessities without the threat of being arrested.

And the police then stopped cars... But they didn't even see me; they saw me coming out of the shop. You know what he said; he said

'It's a plan'. He slapped the milk out of my hand that it fly over and out in the street and all the people looking, but he's busy with criminals, and he just pressed and threw me like rubbish into the van.

... but now – now I can't walk, because the police are all over and even if you walk to the chemist, if I take a walk to the chemist and they see you, they will have problems.

Furthermore, in SWEAT's experience, when people engaged in sex work are arrested, they are often mistreated, assaulted or verbally abused by police officers:

They rock up and they like pull the girls from the street and throw them, not ask them, to get in. They will like force them to get into the van... I don't think that is fair, because, they're all here to make a living and that's part of... some people say that they don't see it as a job, but I see it as a job right... It's not fair towards any sex worker to be thrown into a van and kept over two nights in a cold cell. I don't think it's fair.

Seven of the nine street-based sex workers who participated in this research indicated that they had experienced physical violence at the hands of the police.

I have a problem now with the police. We are looking for safety, but they just spray gun us or they beat us up.

Die een polisieman het sy mou opgerol en die ander, die vroue kollega het haar horlosie afgehaal om vir my te slaan en jy kan sien daai man is 'n 'lustige molestor', hoe gaan hy my nou slaan... [The one policeman rolled up his sleeve and the other one, the female colleague, took her watch off to hit me and you can see that man is a vicious one, how he is now going to hit me...]

I know a black girl. She told me she was picked up once by the police... She was thrown when they picked her up and then they actually beat

her in the cells... Yes, eyes, blue eyes and she said she made a case against them and they gave her a court date, but the police, the two policemen didn't show up in court and when she went back there, they told her the case was thrown out.

Studies have shown that transgender sex workers suffer the same abuses and harassment as other sex workers, but are also harassed by officers who check their genitals and make comments about their gender.⁵ SWEAT too has found that transgender sex workers are treated particularly badly by the police, not only because they are sex workers, but also on the basis of their gender identity.

SWEAT has had a number of reports of transgender sex workers who identify as female being kept in police cells with male prisoners. The police then encourage the male prisoners to abuse these sex workers. In this study one of the participants spoke of the brutal abuse of a transgender sex worker by the police:

The police physically abused her and then tramped her on the ground in the stomach. They have to open the stomach, the liver and the bladder and then they kept her in the police cell for two days. I wish I can get her then she can come talk to you, I'm going to try my best. It's a transsexual... How, the doctor said at Tygerberg if it was a day later, she was dead. The whole bladder was open like this, like the police said to her 'I'm going to, I'm going to kick your *naai weg* [genitals away] now'... She's got stitched right up here, to like right down till there. The cop said, 'I'm going to show you now, you want to be a woman, I'll show what I'm doing now'. It's horrible I want to bring that woman to you...

Participants also told of incidents where they were abandoned in remote areas by police officers who did not feel like taking them to the police station. This exposes sex workers to situations that are extremely risky as they have to find a way to get home safely, often late at night:

Hulle laai die meisies ook op hier, dan gaan laai hulle die meisies 'n ander ver plek weg, as hulle nie vir hulle wil toesluit nie... En dit is in die aande, so doen hulle iets... Hulle moet terugstap. As sy afgelaai is miskien verby Stellenbosch, dan gaan hulle huis toe dan gaan los hulle die meisies daar. [They pick the girls up here, then they drop them off far away, when they don't want to lock them up. And it is at night time, that they do these things... They must walk back. If she is dropped past Stellenbosch then the police go home and leave the girls there.]

Police officers also abuse the current system by offering not to arrest sex workers if they provide sexual services to them for free:

They want to come, *ja*, for free and tell you that there will be a warning when they pick the others up. I've been through a lot of that, but it doesn't interest me at all. I'm here to just make my money, you know. Not here to give 'freebies' for anybody. You know, at the end of the day, a whole police station comes to you and say, 'Okay, she's done it for free for you, so all of us here must come for sex now.'

Because a lot of the police were friends of the agencies, and they'd come in and we'd have to sleep with them. And we'd get paid half... Friends of the owners. I think it's a very, you know, they're all in with each other. They're paying, they get paid.

Sex workers in police custody are often refused permission to make a phone call to let their families know where they are. One sex worker also spoke of the bad conditions they are held in when they are arrested:

The police are also a problem, if they arrest you on Friday they will keep you in the cells until Monday and you will be arrested without seeing the magistrate. We don't get food in the cells. We only get two slices of dry bread. You don't even get a chance to wash.

Do the police provide protection to sex workers?

Given the violence sex workers experience at the hands of the police, and their fear of being arrested, it is not surprising that very few sex workers actually approach the police for help if they have been victims of violence. Almost half of the participants in this study said that they had never asked the police for assistance. Some participants indicated that this was because they had not needed to, but others said they did not ask the police for help because of bad experiences, or because they are afraid that the police will not believe them or not take them seriously. One respondent said that when she went to lay a charge, the police, knowing she was a sex worker, "came together and laughed". Another commented that:

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 then 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.

Church et al have described how stigma and the need to remain anonymous often prevent sex workers from reporting incidents of violence.⁶ In this study participants working at an agency explained their reluctance to approach the police and the need to protect their identity as follows:

You see that's probably – that's the first thing people think I'm going to go lay a charge against you, but then I'm going to have to say, besides which circumstance I was in, you understand? I don't want to put that down...So I can't say I was sitting in a brothel (indoor agency), and this is a client who did this to me. No, I can't.

I don't know if I'd actually be going so far as to actually press charges or anything else like that because where would it actually get me? My name would be in a situation where

I'd be associated with being a sex worker. Would I find that really necessary?

There is growing research evidence to suggest that women in street-level prostitution are not likely to report violence to police.⁷ Barnard et al found, for example, that of the 240 sex workers in their study who reported having experienced violence, only 34% had reported these attacks to the police.

Eight participants in SWEAT's research described having been treated badly by the police when they asked for assistance. In three 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 (name of police station) te rapporteer nie, want as jy by (name of police station) iets aankla... gehoor het wat gebeur en hulle sal sommer sê: 'Hoere. Moenie notisie vat nie dis net hoere'. Nou, dis wat hulle nou doen. [I would not advise any person, none of the girls, to report at (name of police station), because when you lay a charge at (name of police station) they will just say: 'Whores. Don't take any notice of them they are just whores'. Now that is what they do.]

It is a well-established fact that police don't take cases involving the rape of sex workers seriously.⁸ There is widespread belief in the myth that sex workers cannot be raped and that by having made themselves sexually available in one way they have given up their right to withhold consent to other sexual advances. Persons engaged in sex work are often traumatised and humiliated by the treatment they receive from the police when they report having been raped.⁹ Two sex workers in this study were trying to report having been raped by a client and they indicated that 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.

Positive experiences of the police

There were some reports by sex workers of more positive experiences when approaching the police for help. Four participants spoke of occasions when the police were helpful and treated them with respect and kindness. One participant related that the police took her to hospital after a client attempted to rape her. Another participant related that the police treated her with sympathy and kindness when she went to lay a charge against a client who had shot at her. In two cases participants spoke of the police protecting them from a partner and a client who was harassing them.

Coping with mistreatment from police

There is not a great deal sex workers are able to do about the threat of violence from the police in the current situation where sex work is illegal. Sex workers seldom feel comfortable enough to lay charges against violent police officers with other members of the police service. 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. In SWEAT's experience 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.

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 from them, or working at times when they think the police are less likely to be present. Sex workers in the study expressed a great deal of anger and frustration about their treatment at the hands of the police and how it affects their ability to be able to move around and work. In some instances participants indicated that they come to SWEAT to report violence or mistreatment by the police:

Ons was daar gearresteer. Van die meisies wat weggekom het, het dadelik na SWEAT

toe gebel. SWEAT het dadelik gery mos en polisie stasie toe gekom...SWEAT het 'statements' van ons afgeneem. Dis, een ding moet ek vir jou sê, SWEAT is 100% agter die meisies, 'never mind' wat wie sê, dit het ek deur al die jare geondervind. Hulle het ons altyd bygestaan, 100%. [We were arrested there. Some of the girls that got away immediately phoned SWEAT. SWEAT came immediately to the police station. SWEAT took statements from us. That is one thing I must tell you, SWEAT is behind the girls 100%, never mind who says what, I have experienced it through the years. They have always helped us 100%.]

SWEAT assists sex workers who want to make a complaint about police mistreatment by taking their legal statements and accompanying them to the police station when they make the complaint. The sex workers are informed about the process that needs to be followed when they want to make complaints against the police.

SWEAT staff members remain involved by following up on the progress of these individual complaints – but its main focus is on gathering information and statements from a number of sex workers who are experiencing the same mistreatment, and arranging group litigation that will have a greater impact for sex workers overall.

Finding ways to stop the abuse

Sex workers face significant harassment and abuse at the hands of the police, and are frequently arrested – unlawfully – while going about their daily business. But even when sex workers are arrested lawfully they are often subject to exploitation, sexual harassment and physical or verbal abuse at the hands of police officers.

SWEAT's broad approach to dealing with the issues that have been raised is based within a human rights framework. One of the key arguments in favour of the decriminalisation of sex work is the ongoing human rights infringements that sex workers are exposed to by the very authorities that are supposed to protect them. The ongoing targeting, arrest and release of sex workers is a

waste of police resources and it does not provide long-term solutions. The arrests only succeed in temporarily removing sex workers from the street.

To this end, SWEAT recommends the following:

- It is important to consider the cost-effectiveness and impact of local municipal policies that encourage clamping down on sex work and arresting sex workers, to determine whether this is an effective use of resources.
- It would be useful to start looking at the frequency of the unlawful arrests of sex workers. When sex workers who are not violating the law are arrested, police officers must be sanctioned.
- Special attention should be given to police violence against sex workers and a clear message needs to be sent that this will not be tolerated.
- Sex workers need better access to the criminal justice system and they need their complaints of violence to be taken seriously by the police.

Endnotes

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- 2 Ishida, *Morals Cost Money...* <http://www.walnet.org/csis/papers/ishida_morals.html> 1994.
- 3 S Chapman, Fighting a futile war on prostitution, *Chicago Tribune*, 2005 <<http://www.chicagotribune.com/news/columnists/chi0507140125jul14,0,220653.column>>
- 4 J Thukral & M Ditmore, *Revolving door: An analysis of street-based prostitution in New York City*, 2003 <<http://www.sexworkersproject.org/reports/BehindClosedDoors.htm>>. AK Jayashree, Searching for justice for body and self in a coercive environment: Sex work in Kerala, India, *Reproductive Health Matters*, 12(23), 58, 2004.
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- 6 S Church, M Henderson, M Barnard & G Hart, Violence by clients toward female prostitutes in different work settings: Questionnaire survey, *British Medical Journal* 322 (7258), 2001, pp 524-525.
- 7 M Barnard, G Hart and S Church, *Client violence against prostitute women working from street and off-street locations: A three city comparison*, Royal Holloway, University of London, Violence Research Programme, 2000 <<http://www1.rhbc.ac.uk/>

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- 8 N Romero-Daza, R Weeks & M Singer, Conceptualising the impact of indirect violence on HIV risk among women involved in street level prostitution, *Aggression and Violent Behaviour* 10, 2005, pp 153 – 170.
- 9 JM Wojcicki & J Malala, Condom use, power and HIV/AIDS risk: Sex workers bargain for survival in Hillbrow/Joubert Park/Berea, Johannesburg, *Social Science and Medicine* 53, 2001, pp 99-121.