



Commission for Gender Equality
A society free from gender oppression and inequality

INVESTIGATIVE REPORT

Complaint Ref No: NC/SL/01

Complainant(s): Ms X
Ms Y¹

And

Respondent: The South African Police Service (hereinafter referred to as SAPS)²

¹ The Complaint was formally lodged by the Women's Legal Centre on behalf of the Complainants. The Complainants have elected to remain anonymous, however their identities are known to the Commission for Gender Equality and the South African Police Services.

² The lodged complaint also cites the South African Law Reform Commission as the second respondent. However, the second leg of the cited complaint attends to this facet of the complaint.

TABLE OF CONTENTS

1. Introduction	4
2. The parties	5
3. Nature and Background of the Complaint	6
4. Legal Framework	9
4.1 International Context	
4.2 Domestic Context	
5. Preliminary Assessment	15
6. Steps taken by the Commission	16
7. South African Police Services findings	17
8. Police abuse of sex workers: data from cases reported to the Women's Legal Centre between 2011 and 2015	20
8.1 Background	
8.2 Police Abuse	
8.3 Types of abuse	
8.4 Inhumane conditions of detention	
8.5 Inadequate recourse to justice	

<p>8.6 Impact of police violence and criminalisation on health and HIV</p> <p>8.7 Decriminalisation to reduce human rights violations and abuse of the law</p> <p>8.8 Call for action</p> <p>8.9 Recommendations by the WLC</p>	
<p>9. Commission's Findings and Recommendations</p>	<p>35</p>
<p>10. Annexures: -</p> <p>10.1 Commission for Gender Equality's position on the decriminalisation of sex work in South Africa.</p>	

1. Introduction

- 1.1. The Commission for Gender Equality (hereinafter referred to as “the Commission”) is an institution established in terms of section 181 of the Constitution of the Republic of South Africa 108 of 1996 (hereinafter referred to as “the Constitution”).
- 1.2. In terms of section 187(1) of the Constitution, the Commission is specifically mandated to:
 - 1.2.1. Promote respect for gender equality and the protection, development and attainment of gender equality;
 - 1.2.2. Monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality;
 - 1.2.3. Assess the observance of gender equality.
- 1.3 The Commission for Gender Equality Act 39 of 1996, as amended (hereinafter referred to as “the CGE Act”), further supplements the powers of the Commission to fulfil its constitutional mandate.
- 1.4 This investigative report will avoid being voluminous and overwhelming in nature and shall ensure brevity in order to focus on the salient findings and recommendations.³ Accordingly, this report's key focus is on the aspect of the complaint relating to the allegations of gross violations of sex worker's rights by the South African Police Services (hereinafter referred to as “SAPS”). Lastly, the submitted complaint outlines various reasons justifying the need for the Commission to advocate for the decriminalisation of adult sex work in South Africa.

³ Decriminalisation of adult sex work & SALRC Project 107 Adult Prostitution

- 1.5 The plea of the formal complaint will not be examined as the Commission has formally published a position paper in support of decriminalisation of adult sex work in South Africa. Kindly refer to Annexure 9.1 for further elaboration thereon. The Commission refers to sex work vis a vis prostitution, as prostitution is viewed as coerced sex work where women have no choice in the matter and is necessarily demeaning and women are victims. Sex work, on the other hand, indicates agency and therefore allows for women's decision-making power in capitalist systems. The Commission further follows a human rights-based approach, which is a conceptual framework for the process of human development based on international human rights standards. It is directed at promoting and protecting human rights, and it analyses inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.
- 1.6 Due to capacity constraints, the Commission acknowledges that there has been a delay, on its part, in handling the complaint since its lodgement in 2012.

2. The Parties to the Complaint

The Complainants: Ms X and Ms Y are both sex workers in the Cape Town area⁴.

The Respondent: members of SAPS (Cape Town area), who allegedly perpetrated the violence against the two Complainants.

⁴ The original complaint contained many statements from Sex Workers alleging human rights violations on the part of the South African Police services.

3. Nature and background of Complaint

On the 20th of November 2012, the Women's Legal Centre (WLC) lodged a complaint with the Commission on behalf of the Sex Worker Education and Advocacy Taskforce⁵ ("hereinafter referred to as SWEAT). The issues as amplified by the statements of complaint sought the following remedies:

- a) An envisaged move towards changing the current legislative framework to provide sex workers with protection;
- b) To ensure that the rate and prevalence of violence against sex workers is reduced;
- c) To curb the rate of abuse of sex workers by SAPS members;
- d) To ensure a safe working environment for sex workers, where they can seek protection and redress from the law.

The letter of complaint was substantiated by numerous sex workers' statements alleging gross human rights violations and harassment on the part of SAPS. Twenty-eight sex workers lodged complaints, however, after careful consideration of the contents and facts of the statements, only two sex workers were interviewed for a fully detailed affidavit.

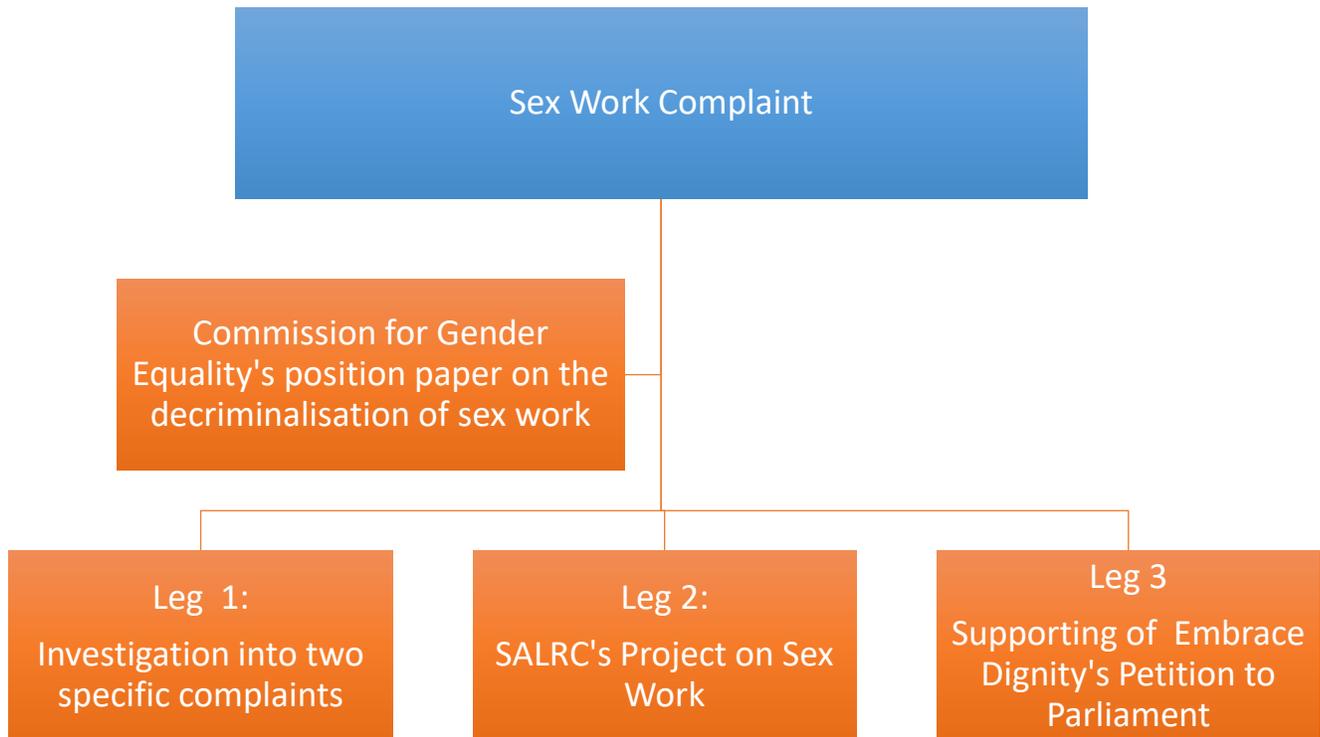
The twenty-six other statements did not contain sufficient detail and the cited sex workers did not want to disclose their identity for fear of secondary victimisation.

After thoughtful consideration, the Commission embarked on the complaint in three sections. The first leg of the complaint related to the two sex workers,

⁵ SWEAT is a non-profit organisation who works with sex workers around issues of health and human rights, and advocates for the decriminalisation of adult sex work in South Africa.

and the second leg related to the decriminalisation of sex work. The third leg related to the Commission's involvement and support of the 'Embrace Dignity Campaign' petition to Parliament. While the Commission supports full decriminalisation of sex work, the Embrace Dignity Campaign support partial decriminalisation. The Campaign strives to pursue legal and policy reforms that seek to criminalise the buying of sex, decriminalising the selling of sex and providing comprehensive support to those who wish to leave sex work.⁶

The diagram hereunder provides visual illustration of the complaint as a whole including the differing reports and actions, influenced by the opinion of Adv Kameshni Pillay SC⁷ on the subject matter: -



⁶ <http://embracedignity.org.za>, 2017.

⁷ Advocate Kameshni Pillay was briefed by the Commission to provide an opinion addressing the prospects of challenging the decision of the Constitutional Court in S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae (CCT31/01) [2002] ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117 (9 October 2002) ("Jordan").

Adv Pillay's SC opinion

The Commission formally presented its viewpoint to the Parliamentary Select Committee on Petitions and Executive Undertakings on the 11th of November 2015 regarding the decriminalisation of sex work and tendering its support to the Embrace Dignity's petition. The Commission expressed the following during its presentation: -

- a) *There has been an inadequate state response to prostitution and sex trafficking*
 - *There is Sexual Offences and Trafficking in Persons legislation in place, but there is insufficient information as to the extent of forced prostitution, sex trafficking, and the effectiveness of SAPS and Justice stakeholders in responding to such instances, and implementing this legislation;*
- b) *The report on the SALRC investigation into legal options to address prostitution is long outstanding, and the need for law reform in this regard is critical;*
- c) *The Commission is concerned at the reported levels of human rights abuses directed against sex workers, particularly at the hands of SAPS officials, occasioned by their criminal status, and is currently investigating a complaint in this regard.*

Moreover, it is highlighted that the Commission has further lobbied and raised awareness regarding the subject matter during its presentations to the 4th Parliament's Portfolio Committee for Women, Children and People with disabilities. In respect of the 5th Parliament, the Commission reports quarterly on the lodged complaint and its position on decriminalisation of adult sex workers to

the Portfolio Committee of Women in the Presidency. The Commission has notably made presentations to the above-mentioned structures on the 17th August 2016 and the 2nd November 2016.

4. The Legal Framework

4.1 International Context

Section 39 of the Constitution mandates a court, tribunal or forum when interpreting the Bill of Rights to consider international law. South Africa is a signatory to various international treaties that call on state parties to eliminate all forms of discrimination and violence against women. The obligations set within the international arena should find homage in the member states.

The South African Law Reform Commission's Discussion Paper of 2009 stated that *"the current legal position of prostitution is in need of comprehensive review. It is clear that South Africa's international obligations to realise various rights such as dignity, security of the person, equality and equal access to the law and access to health care, as well as to provide effective remedies for violations of rights, must inform the decisions of the legislature"*.⁸

4.1.1 Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers 2016⁹

Amnesty International calls *"for the decriminalization of all aspects of adult consensual sex work due to the foreseeable barriers that criminalization*

⁸ South African Law Reform Commission, Discussion Paper 0001/2009, Project 107, para 5.83, page 109.

⁹ 26 May 2016 Amnesty International, Policy on state Obligations to Respect, Protect and fulfil the Human rights of Sex Workers, Pol 30/4062/2016, <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>.

creates to the realization of the human rights of sex workers. Amnesty International considers that to protect the rights of sex workers, it is necessary not only to repeal laws which criminalize the sale of sex, but also to repeal those which make the buying of sex from consenting adults or the organisation of sex work (such as prohibitions on renting premises for sex work) a criminal offence. Such laws force sex workers to operate covertly in ways that compromise their safety, prohibit actions that sex workers take to maximize their safety, and serve to deny sex workers support or protection from government officials. They therefore undermine a range of sex workers' human rights, including their rights to security of person, housing and health".¹⁰

Amnesty International's Policy, amongst other things, provides that States, must:

- repeal existing laws that seek to criminalise or penalise consensual, adult sex work;
- refrain from using other discriminatory law enforcement measures against sex workers, these would include by-laws on loitering;
- ensure that sex workers participate in the development of laws and policies that affect them; and
- ensure that sex workers, like everyone else, have access to justice, public services and equal protection of the law.¹¹

4.1.2 International Covenant on Civil and Political Rights (ICCPR) 1966¹²

¹⁰ Ibid, page 2.

¹¹ Ibid, page 2.

¹² 16 December 1966, United Nations, Treaty Series, vol. 999. <http://www.refworld.org/docid>.

Article 2.3 of ICCPR provides that “every person has the right to an effective remedy for violations of rights to freedoms, notwithstanding that the violation has been committed by persons acting in an official capacity”.

Article 26 of ICCPR states that “all persons have the right to equality before the law and equal protection of the law”.

4.1.3 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹³

South Africa ratified CEDAW in 1995 and therefore committed itself to eradicating and protecting women against violence. General recommendation 19 of CEDAW states that “*prostitutes are especially vulnerable to violence because of their status, which may be unlawful, tends to marginalise them. They need the equal protection of laws against rape and other forms of violence*”.¹⁴

The report of the United Nations High Commissioner for Human rights has made the following recommendation, “*reform and monitor all laws that impede effective HIV responses, including removing punitive criminal laws used repressively against sex workers*”.¹⁵

4.1.4 Vienna Declaration 1993 and South African National Action Plan for the Promotion and Protection of Human Rights.

Article 8 highlights the importance of working towards the elimination of violence against women in public and private life, the elimination of all

¹³ 18 December 1979, UN General Assembly. <http://www.un.org/womenwatch/daw/cedaw>

¹⁴ General Recommendation No. 19(11th session, 1992), Article 6.
<http://www.un.org/womenwatch/daw/cedaw/recommndations/recomm.htm>

¹⁵ Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner. <http://www.ohchr.org>

forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.

4.1.5 The Beijing Platform for Action (BPA)

The BPA requires governments, international communities and civil society, including non-governmental organisations and the private sector to take strategic action to address twelve critical areas of concern. These areas include but not limited to violence against women; the burden of poverty on women; and inequality between men and women in the sharing of power and decision making at all levels

4.2 Domestic Context

4.2.1 Constitutional Framework.

South Africa's Constitution is the supreme law of the country and any law inconsistent with the Constitution is unlawful and invalid.

Section 9 of the Constitution provides that *“everyone is equal before the law and has the right to equal protection and benefit of the law”*.

Section 9(3) provides that *“the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth”*.

Section 10 of the Constitution provides that “everyone has inherent dignity and the right to have their dignity respected and protected”.

In addition, Section 12 provides the right to freedom and security of the person, which right includes, the right,

- (a) Not to be deprived of freedom arbitrarily or without just cause;
- (b) Not to be detained without trial;
- (c) To be free from all forms of violence from either public or private sources;
- (d) Not to be tortured in any way; and
- (e) Not to be treated or punished in a cruel, inhuman or degrading way.

Section 35 of the Constitution also provides protection for the rights of arrested, detained and accused persons in that it provides that “everyone who is arrested for allegedly committing an offence has the right –

- (d) to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest.

Section 35(2) provides that “everyone who is detained, has the right –

- (a) to be informed promptly of the reason for being detained;
- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released.

Despite these Constitutional imperatives, sex workers are still abused and harassed by police officers because South African law criminalises sex work in that it is accepted by our law that both the sex worker and the client commit an offence, though it is trite that it is difficult to prosecute the buyers and sellers as the law contemplates.

4.2.2 Sexual Offences Act 23 of 1957

Section 20(1)(aA) of the Sexual Offences Act 23 of 1957 criminalised sex work by making it an offence to have unlawful carnal intercourse or commit an act of indecency with any other person for reward.

4.2.3 The Sexual Offences and Related Matters Amendment Act 32 of 2007

Section 11 of the Sexual Offences Amendment Act also criminalises sex work in that it is an offence to pay or otherwise reward someone over 18 years of age for a sexual act, whether that act was committed or not. The Amendment Act addresses the criminality of clients, this came as a result of the Jordan case,¹⁶ which only penalised the sex worker and not the client. According to the minority judgment in *S v Jordan*, Section 20(1)(aA) did not limit the right of sex workers to dignity as their dignity was already diminished as a result of the nature of their work as sex workers. The court also held however that this does not mean that they are stripped of their right to be treated with dignity.¹⁷

The Labour Appeal Court, in *Kylie v CCMA*¹⁸ held that sex workers cannot be stripped of the right to be treated with dignity¹⁹.

4.2.4 Municipal By-laws

Since it is difficult to prosecute both sex workers and clients under the Sexual Offences Act of 1957 and 2007, municipal by-laws are often used to arrest sex workers. These by-laws include those that deal with loitering. South Africa's

¹⁶ *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae)* (CCT31/01) (2002) ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117 (9 October 2002).

¹⁷ *Ibid*, para 74.

¹⁸ *Kylie v Commission for Conciliation, Mediation and Arbitration* CA10/08 (2010) 7 BLLR 705 (LAC).

¹⁹ *Ibid* 5, para 26.

legal system in relation to sex workers needs to be reformed to bring it in line with our constitutional imperatives and international obligations to which it does not comply with in its current state.

It is critical therefore, that South Africa's sex work laws are brought in line with its Constitutional imperatives and certainly in line with its commitments and obligations to international obligations, which South Africa is a signatory to.

5. Preliminary Assessment

The Commission's investigative team conducted in-depth interviews with the Complainants on the 25th of February 2015, wherein commissioned affidavits were in turn obtained. The Commission acknowledges that due to capacity constraints, there was a delay in immediately attending to the complaint.

The summary of the allegations are as follows: -

- 5.1 **Ms Y**, is a female sex worker was talking to a fellow sex worker in Voortrekker Road, when a SAPS van passed them and made a U-turn to approach them. The complainant was afraid due to the history of abuse of sex workers at the hand of SAPS members, that she ran away and hid behind two dustbins, near the toilet at a BP Garage. The SAPS members followed her and shone their headlights at her, and grabbed her, assaulted her and tore her clothes whilst trying to push her into the van. She was also pepper sprayed.
- 5.2 **Ms X**, is a female sex worker from Khayelitsha. She was standing on Voortrekker Road, trying to get a lift to Khayelitsha when she was approached by SAPS members in a van, who beat her and tried to cut off her jacket with

a knife. She was then pushed into the back of the SAPS van and also sustained injuries due to the bad driving. Two of her cell phones and gold earrings were also taken by SAPS members. She was placed in a urine - smelling holding cell, and detained for approximately eleven hours. She paid a R50 fine for being a nuisance and was released. She was not advised of her rights, or taken to court. She was arrested numerous times after that and kept in a holding cell without being charged and thereafter released after a few hours. She was never able to identify the police officers as they always took off their badges when they approached them.

6. Steps taken by the Commission

The Commission dispatched urgent correspondence for the attention of the SAPS Provincial Commissioner and requested a response to the allegations made by the two complainants herein. SAPS responded by indicating that the complainants were not willing to pursue their matters or honour their appointments arranged with them, by the investigating officer. SAPS also indicated that a Standard Operating Procedure was drafted with SWEAT, Gender Dynamix, Scalibrini, Sisonke and the Women's Legal Centre to facilitate proper guidance to members of the SAPS in the Western Cape.

SAPS also indicated that they were involved in the Provincial Task team chaired by the Department of Justice and Constitutional Services: Head Office, which was established to develop and manage provincial intervention strategies to address challenges of LGBTI persons in the Criminal Justice System.

The Commission was dissatisfied with the response from SAPS and requested specifications relating to SAPS investigation, as the Commission was not provided with any concrete information relating to how the complaints were dealt with. There was a great deal of back and forth between the Commission and SAPS in relation to complying with the Commission's request, after which SAPS thereafter furnished its investigative findings.

7. SAPS Investigative Findings

Background: - Ms. X and Ms. Y's complaint related to an infringement of their human rights as sex workers and the unacceptable behaviour by members of the Parow SAPS. An investigation was done after the complaint was lodged with the Acting National Commissioner: SAPS and the Acting Provincial Commissioner: Western Cape.

The complaints that were tabled related to:

Ms X: - That on the 27th of March 2010 she was arrested by police officials of Parow SAPS and detained at the Parow SAPS. She did not receive a Notice of Rights in accordance with section 35 of the Constitution or any notice to appear in court.

On the 18th of May 2010, she was arrested again and placed in the Bellville SAPS cells. She was allegedly assaulted and insulted, pepper sprayed and placed in a cell with wet blankets. The police further denied her to make a call.

Ms. Y: - That on the 26th of March 2010, she was confronted by two police officials who pepper sprayed her face and pulled her by her clothing in an attempt to arrest her. Her sweater was pulled off which left her breasts bared. The officials aborted the arrest and threw her clothes on the road and left.

SAPS Findings: - Ms X: - It was confirmed that she was arrested on the said date by constable M. Qikila for Nuisance (Local Authorities Act 10 of 1974 read with regulation 235 (W) PK 235/1992). She was arrested at 02: 00 on the 27th March 2010 per Parow CASxxxx²⁰, and placed in the cells at Parow SAPS. She was released the same day at 12:15 and issued a J534 (number C xxxx²¹) with an admission of guilt fine to the value of R100.00 or appear in the Bellville Magistrate Court "D" on the 08th May 2010.

A notice of rights was rendered in terms of the Constitution with serial number Qxxxxx (SAPSxxx)²² to this complainant. A copy was found to have been signed by the Complainant on the 27th March 2010 at 02:20.

The cells were visited on nine occasions by various officials during the period of the complainant's incarceration. No record was found that she ever complained to any official.

On the 18th of May 2010, wherein the complainant alleges that she was assaulted by police officials who she knows as Stander and Johnson; it was confirmed that the complainant was arrested on the 19th May 2010 at 3:20 by Constable Idus for Loitering (PK 5332/1999/REG26 (1)) per Bellville CAS:xxxx²³.

²⁰ Case Number not provided to ensure anonymity of the Complainant.

²¹ Case Number not provided to ensure anonymity of the Complainant.

²² Case Number not provided to ensure anonymity of the Complainant.

²³ Case Number not provided to ensure anonymity of the Complainant.

On the night in question there was no officer by the name of Johnson on duty. Warrant Officer JF Stander conducts duties on D -Relief but on the night of the 17th May 2010 from 18:00 to the 18th May 2010 at 06:00 this member was on vacation leave (AR/915/10).

Ms Y: -

All relevant registers and documentation at Parow SAPS were scrutinised. C-Relief was under the command of Inspector Fielies, who conducted duties on the night in question. No record of this incident could be found. Since 2010 the BP garage in Voortrekker Road, Parow has been taken over by new management and staff.

The SAPS investigation report revealed that the contact numbers and names of the complainants were previously rendered to the SAPS. Attempts were afforded to schedule meetings with complainants to obtain detailed statements and it was a fruitless endeavour. Attempts by the SAPS Inspectorate to obtain statements from the complaints were unsuccessful.

At a later stage the SAPS corresponded with Ms Jeanne Bodenstein, an attorney of the Women's Legal Centre, in an attempt to obtain the necessary statements from the two complainants. Only a statement by Ms Y was eventually obtained. Further attempts with the assistance of Ms. Bodenstein were unsuccessful. All calls and correspondences were recorded in this regard.

Although it was discovered that Constable Idus was the arresting officer, no allegations were made against him. The complainant clearly stipulates that the two members involved is known to her as Johnson and Stander. This

proves to be problematic as there was neither Johnson nor Stander on duty at Bellville SAPS on the night of the allegations.

No disciplinary file can thus be registered against these members. Warrant Officer Stander was interviewed in this regard and has no recollection of the incident.

8. Police abuse of sex workers: Data from cases reported to the Women's Legal Centre (WLC) between 2011 and 2015

8.1 | Background

The Women's Legal Centre (hereafter referred to as 'The WLC') published a report on Police abuse of sex workers in 2016 based on the data that they had collected.²⁴

The WLC identified five (5) crucial issues that require urgent attention²⁵:

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

²⁴ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016.

²⁵ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 5.

The WLC is of opinion that decriminalisation has been shown to be the most effective method for remedying injustices that sex workers experience in other countries and they stated that it is a United Nations Target for all countries.²⁶

It would therefore be of paramount importance that South African law be reformed in line with the objectives of the United Nations to ensure that human rights for all is achieved.²⁷

The research that The WLC conducted on sex work illustrates that a considerable amount of abuse already experienced by sex workers is at the hands of the police. Nearly all sex workers report experiencing some form of abuse by the police.²⁸ WLC referred to reports by Sonke & Partners et al.²⁹

Sex workers are therefore hesitant to report the crimes committed against them, to the police. Unreported crimes range from verbal abuse, theft, bribery, threats, physical and psychological assault, to rape. Sex workers view the police as perpetrators and abusers and not officials that will protect their rights and ensure that justice is served.³⁰

The evidence of human rights violations collected by the WLC shows the urgent need for sex work to be decriminalised in South Africa. A sex worker from KZN

²⁶ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 5.

²⁷ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 5.

²⁸ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 6- Sonke & Partners, 2014; Richter & Chakuvinga, 2012; Scorgie, 2013a; Deering et al, 2014; SWEAT 2013 a; Mac AIDS, 2015.

²⁹ Sonke and partners (2014) Press Statement issued by Sonke Gender Justice, SWEAT, Sisonke Sex Workers Movement and the Women's Legal Centre, on the De Jager sentencing, 21 May 2014.

³⁰ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 6.

told the WLC that 'We want the police to first see the human in us, not just makgosha (sex worker).' ³¹

South African National Aids Council (hereafter referred to as SANAC) ³² estimates that there are between 132 000 and 182 000 female, male, and transgender sex workers in South Africa. ³³ Types of sex work ranges from outdoor/street-based sex work through working from small to large brothels (often bars and taverns), to being a high-class escort in a more controlled environment. This was established by the World Health Organisation in 2011. ³⁴

Outdoor street-based sex workers enjoy more freedom but also face a higher risk of police and client violence. WLC stats (data collected between 2011-2015) indicates that 93% of sex work is done in an outdoor setting. ³⁵

Men who have sex with men and transgender sex workers experience double discrimination. Homophobia compounds sex work discrimination. ³⁶

It was found that transgender sex workers are particularly abused and face higher levels of violence, humiliation and harassment than other genders. ³⁷

They are targeted by police, society, and clients for their sex work and for their gender and overt expression of gender identity. ³⁸

³¹ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 6.

³² SANAC, SWEAT and Impact Consulting (2013a). Estimating the size of the sex worker population in South Africa.

³³ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 8- SANAC 2013A, Konstant et al, 2015.

³⁴ WHO (2011) Preventing HIV among Sex workers in Sub-Saharan Africa: A Literature Review.2

³⁵ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 8.

³⁶ Scorgie, F, et al. (2013b)' We are despised in hospitals': sex workers' experiences of accessing health care in four African countries. *Culture, health & sexuality*. 15(4): 450-465.

³⁷ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 9.

³⁸ Fick, N. (2006) Sex workers speak out: Policing and the sex industry. *SA Crime Quarterly*: 15 (March 2006)

International migrant sex workers are more defenceless to harassment by the Police for documentation, and have less legal recourse. They are therefore more vulnerable to abuse, and have less access to health care and services.³⁹ Conditions are aggravated for male and transgender migrant sex workers, who are subjected to all three sources of discrimination.⁴⁰

Sex workers frequently report that the violence, harassment and abuse of law that they suffer from police are one of the most difficult aspects of their lives.⁴¹

The Global Commission on HIV and the Law states that all countries should repeal laws that prohibit consenting adults to buy or sell sex.⁴²

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.⁴³

Decriminalisation is a critical step towards ameliorating the full range of health and human rights limitations experienced by sex workers.⁴⁴

8.2 Police abuse

³⁹ Crago, A and Arnott, J (2008). Rights Not Rescue: A Report on Female, Trans and Male Sex Workers' Human Rights in Botswana, Namibia and South Africa. Report to the Open Society Initiative for Southern Africa.

⁴⁰ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 10.

⁴¹ Impact Consulting/SWEAT (2012). Qualitative data in the size estimation study. Impact Consulting/SWEAT (2014) SWEAT Mapping Studies, Internal Reports for 32 sites in seven provinces. Manoek S. (2012) A report on human rights violations by police against sex workers in South Africa. Women's Legal Centre, Sisonke and SWEAT.

⁴² UNDP (2012) Risks, Rights & Health. Global Commission HIV & Law.

⁴³ UNAIDS (2016). Strategy 2016-2021.

http://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_pcb37_15_18_EN_rev1.pdf.

⁴⁴ Richter M, Cherisch M, Temmerman M and Luchters S. (2013) Characteristics, sexual behaviour and risk factors of female, male and transgender sex workers in South Africa. **SAMJ: South African Medical Journal**, 103(4): 246-251.

Globally sex workers' early mortality rates are 6 times that of the general population, with murder being a significant contributor.⁴⁵⁴⁶

In a survey conducted by Gould & Fick⁴⁷, it was found that 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.⁴⁸

The SWEAT survey⁴⁹ of over 1000 sex workers across the country revealed that 55% of sex workers have experienced violence from the police in the previous year and over 80% had been subjected to police violence.⁵⁰⁵¹

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 condoms as evidence of intention for sex work.⁵²

⁴⁵ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 12.

⁴⁶ SWEAT (2009) Submission to the South African Law Reform Commission, 15 July 2009.

⁴⁷ Gould C. and Fick N. (2008) *Selling sex in Cape Town: Sex work and human trafficking in a South African city*, Pretoria/Tswane, Institute for Security Studies.

⁴⁸ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 12.

⁴⁹ SWEAT (2013a) *National Sex Worker Programme Evaluation- Beginning to Build the Picture: South African National Survey of Sex Worker Knowledge, Experiences and Behaviour*.

⁵⁰ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 12.

⁵¹ Scorgie, F et al. (2013a) *Human rights abuses and collective resilience among sex workers in four African countries: a qualitative study*. *Globalization and Health*. 9.33.<http://www.globalizationandhealth.com/content/9/1/33>.

⁵² Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 12.

On the rare occasions that sex workers do seek recourse for justice, they generally report a negative experience and further trauma due to humiliation and abuse suffered at the police stations.⁵³

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.⁵⁴

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.⁵⁵

Most 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. The most common human rights violations from police that were reported by sex workers were:

- a) Being forced to pay a bribe or perform sexual favours to be released from custody;
- b) Violence and discrimination;
- c) Unlawful fines and arrests, and violations of procedures and standing orders and
- d) Being denied access to justice.⁵⁶

⁵³ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 12-13.

⁵⁴ UNDP (2012) Risks, Rights & Health. Global Commission HIV & Law.

⁵⁵ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 13.

⁵⁶ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 13.

Sex workers are frequently victims of police brutality. They are beaten, 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. 414 reported cases: various types of violence against sex workers at the hands of police between 2011 and 2015: reported to WLC- 60% of cases were where police officers were identified as the perpetrators. Mostly cases of harassment & verbal abuse, but there were also cases of physical and sexual abuse.⁵⁷

8.3 Types of abuse

8.3.1 Verbal and psychological abuse

The police are seen by sex workers as being relentless. One result of such open discrimination from police is that many sex workers choose to work away from their communities 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.^{58,59}

8.3.2 Physical abuse and harassment

Almost 20% of sex workers requesting assistance from WLC reported having been physically assaulted by police.⁶⁰

⁵⁷ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 13-14.

⁵⁸ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 13-14.

⁵⁹ Scorgie, F et al. (2013a) Human rights abuses and collective resilience among sex workers in four African countries: a qualitative study. *Globalization and Health*. 9.33.<http://www.globalizationandhealth.com/content/9/1/33>.

⁶⁰ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 14.

8.3.3 Sexual violence

Sex workers report horrific stories of sexual abuse from policemen.⁶¹

8.3.4 Unlawful arrests and abuse of the law/ violations of procedures

725 reported cases at WLC of sex workers- have been in conflict of the law between 2011 and 2015. Of all the sex workers that 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.

Sex workers reported unlawful profiling by Police. Police officers allegedly targeted sex workers, chased them and took their photographs of them while under arrest so that other policemen could identify them as sex workers. Illegal not allowed to be taken of anyone without their consent- unless legally arrested.⁶²

Profiling makes sex workers susceptible to victimisation and harassment by the police. Some reported being arrested while 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.⁶³

About a third of sex workers who approach WLC with cases, report having experienced violations of procedure and due process. 2011-2015 a third of sex workers did not experience formal procedures being followed, and/or were

⁶¹ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 15.

⁶² Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 15-16.

⁶³ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 16.

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)⁶⁴

The fact that less than half of the sex workers presenting at WLC who reported being arrested were charged with any crime fits in with sex worker's 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 also often forced to perform sexual acts on the corrupt policemen as a condition of release.⁶⁵

Police officers are bound by the South African Police Act, 68 of 1995 (hereafter referred to as the SAPS Act) and they are required to abide by regulations set out in standing orders. Standing Order G36(1) and (6) of the SAPS Act 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.⁶⁶

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.⁶⁷

⁶⁴ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 17.

⁶⁵ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 17.

⁶⁶ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 17.

⁶⁷ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 17.

8.4 Inhumane conditions of detention

Even though section 35(2)(e) of the Constitution of the Republic of South Africa, 108 of 1996, 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. Dirty cells without food, water and adequate toilets or blankets. They were deprived of medical treatment and had importance medicine withheld. Often their property was confiscated and not returned to them once released.⁶⁸

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 to WLC 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.⁶⁹

Police Officers per 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 include one 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.⁷⁰

⁶⁸ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 18.

⁶⁹ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 18.

⁷⁰ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 18.

Of the 203 arrests: 2011-2015, 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.⁷¹

A Sex worker from Limpopo told WLC that: “When I got arrested last December I said ‘I need a lawyer and I have the right to that.’ The policeman told me that ‘You don’t have any rights because you are makgoshu, and government won’t pay for you to sell dibunu (bum)’.”⁷²

8.5 Inadequate recourse to justice

Art 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. Art 2.3 of ICCPR 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.^{73,74}

⁷¹ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women’s Legal Centre between 2011 and 2015*; Women’s Legal Centre, 2016 at page 18.

⁷² Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women’s Legal Centre between 2011 and 2015*; Women’s Legal Centre, 2016 at page 18.

⁷³ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women’s Legal Centre between 2011 and 2015*; Women’s Legal Centre, 2016 at page 19.

⁷⁴ Scorgie, F et al. (2013a) Human rights abuses and collective resilience among sex workers in four African countries: a qualitative study. *Globalization and Health*. 9.33.<http://www.globalizationandhealth.com/content/9/1/33>.

However, since Police Officers are often perpetrators of violent crimes against sex workers, access to legal or police services is viewed with suspicion.

On the rare occasions that sex workers also seek recourse for justice they report a generally negative experience and further trauma due to humiliation and abuse a police stations.⁷⁵

Frequent complaints received by the WLC:

- a) Police officers failing to take complaints seriously,
- b) Refusing to lay charges for them;
- c) No sufficient avenue for sex workers to make complaints against the Police.⁷⁶

The WLC receives recurring reports from sex workers that 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.⁷⁷

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.⁷⁸

⁷⁵ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 19.

⁷⁶ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 19.

⁷⁷ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 20.

⁷⁸ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 20.

8.6 Impact of police violence and criminalisation on health and HIV

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.⁷⁹

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.⁸⁰⁸¹

8.7 Decriminalisation to reduce human rights violations and abuse of the law

The WLC are of the opinion 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 of the proceeds of sex work etc.) needs to be decriminalised.⁸²

⁷⁹ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 22.

⁸⁰ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 22.

⁸¹ UNDP (2012) Risks, Rights & Health. Global Commission HIV & Law.

⁸² Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 23.

8.7.1 Reasons to decriminalise in SA⁸³:

- a) It would assist towards ameliorating the full range of health and human rights limitations experienced by sex workers⁸⁴;
- b) It is focused on human rights;
- c) It is built on a public health model that minimises harm;
- d) It allows for a cooperative relationship between sex workers to reduce violence;
- e) It allows for the dignity of sex workers to be built, facilitates movement-building, solidarity and the building of social capital.⁸⁵
- f) It will assist in the work being done to reduce HIV transmission.

8.7.2 The implications of decriminalising sex work in South Africa⁸⁶:

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

Research conducted by the WLC shows that decriminalisation would reduce stigma and violence, increase access to health and legal services, ensure less exploitation from controllers, ensure that sex workers can engage in fair labour

⁸³ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 23.

⁸⁴ Richter M, Cherisch M, Temmerman M and Luchters S. (2013) Characteristics, sexual behaviour and risk factors of female, male and transgender sex workers in South Africa. **SAMJ: South African Medical Journal**, 103(4): 246-251.

⁸⁵ From Asijiki Network Communications material, written by Dr Dean Peters.

⁸⁶ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 23.

practices, and assist with prosecuting those involved in driving under-age sex work and trafficking.⁸⁷

8.8 Call for action

The WLC calls for action from state actors, independent institutions promoting democracy, action required from police authorities, action required from civil society partners and action required for International Human Rights Institutions, so that sex work be decriminalised in South Africa for good.⁸⁸

8.9 Recommendations by the WLC

Police could play a role in enhancing sex worker's access to their rights and police cooperation with sex workers enhances security, which is in the interests of both sex workers and law enforcement.⁸⁹

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.⁹⁰

⁸⁷ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 23.

⁸⁸ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 24-25.

⁸⁹ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 20.

⁹⁰ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 26.

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.⁹¹

9. Findings and Recommendations

The SAPS have clearly indicated that they have concluded their investigation in the above regard and the above is accepted by the Commission in light of the thorough investigations conducted and the evidence of the investigations including the case numbers and admission of guilt fines, and statements obtained.

The SAPS's attempts to get a hold of the Women's Legal Centre bore no fruit, as a result, there was no communication with the complainants to get detailed statements and interviews.

Nonetheless, it is evident from the Commission's investigation, that SAPS is utilising by-laws and other means to justify the arrest of sex workers. This raises the question of whether SAPS can justify the need to curtail sex workers when they are not being apprehended for sex work but rather violation of minor bylaws.

A host of interrelated and aggravating factors prove that such investigations are limited in nature, as Complainants do not hold specific facts, the time delay in reporting same and the fear of reprisal. The South African Law Reform Commission (hereinafter referred to as "the SALRC")

⁹¹ Rangasami, J; Konstant, T; Manoek, S, *Police Abuse of Sex Workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015*; Women's Legal Centre, 2016 at page 26.

published a discussion paper in 2009 which outlined various issues concerning sex work within the South African context⁹². The said paper delineated four policy frameworks that may be adopted to address the issue of sex work: -

- a) total criminalisation;
- b) partial criminalisation;
- c) non-criminalisation (decriminalisation);
- d) regulation (legalisation).

It must be highlighted that the Commission has formally engaged with the SALRC since 2014, wherein the Commission was advised that the report is with the Minister of Justice and Correctional Services. The SALRC, in essence, could not engage the Commission further on this matter. The report has however subsequently been released on the 26th May 2017 by the Minister of Justice and Constitutional Development, Mr Michael Masutha.

This report was released after various entities placed submissions before the SALRC, such as SWEAT and Sisonke who called for the decriminalisation of sex work.

The SALRC report concludes that sex work should remain criminalised and diversion to rehabilitate sex workers be offered in the process. The Commission does not agree with this position.

In 2013, the Commission embarked on a process of conducting a consultative dialogue on legislative reform and concluded that the current

⁹² In 2009

legal regime that criminalises sex work has failed sex workers. The Commission therefore still posits the view that total decriminalisation of sex work is the correct route and will uphold the values enshrined within the Constitution.

Decriminalisation would protect a host of rights guaranteed in the Constitution including:

- ✚ the freedom and right to form unions (freedom of association) and challenge unfair labour practices;
- ✚ Freedom from unfair discrimination;
- ✚ The right to health;
- ✚ Freedom and security of the person, which includes the right to be free from arbitrary arrest and detention;
- ✚ The right to just administrative action, and
- ✚ The right to bodily and psychological integrity.

According to the SALRC report, the decriminalisation and legitimising of brothels will not protect sex workers, nor will it provide the health and safety of persons engaged in sex work, nor recognise the services of sex workers as legitimate labour or their right to freedom of economic activity within the industry, nor empower them to remain or leave the industry.

The report does not support the idea of that engaging in sex work is a choice; agency is said to be a myth that “allows buyers and pimps to obscure the abuse involved and confers a form of right on the abuser”. The contention therefore is that the sex work industry cannot regulate itself because of the harms involved.⁹³

⁹³ South African Law Reform Commission Report, Project 107, Sexual Offences Adult Prostitution. 2017, page 385-386.

Although SAPS have guidelines and processes in place in relation to handling of sex workers, abuse still happens daily, as is evident in media reports and the various research studies cited within the lodged complaint⁹⁴.

Based on the above, the Commission recommends the following: -

1. A high-level delegation meeting to be convened at the Commission's Head Office with the following attendees: -
 - Minister of the Department of Justice and Correctional Services.
 - Chairperson of the South African Law Reform Commission.
 - Acting National Commissioner of South African Police Services.
 - The Women's Legal Centre, SONKE and SWEAT.
 - U.N Women.

Said meeting to take place before the end of the current financial year 2017/2018. The meeting shall focus on the following pertinent issues: -

- 1.1 Measures, ways and means, to eliminate violence against sex workers.
- 1.2 The ban of seizing condoms from sex workers by any state official.
2. SAPS to convene sex work sensitisation workshops with the assistance from the Complainants to train its Station Commanders on the rights of sex workers and to refrain from human rights violations. SAPS to convene the said workshops before the end of June 2018.
 - 2.1 The Commission must be kept abreast in writing addressed to the office of the Chairperson of all developments in this regard monthly. The

⁹⁴ <http://www.timeslive.co.za/local/2016/07/22/Abuse-of-sex-workers-by-police-rife> .

National Commissioner of SAPS is to report to Commission's Chairperson in this regard.

- 2.2 The Commission to send a firm directive to the Acting National Commissioner of SAPS to instruct all members to immediately cease in arresting or following outreach workers for carrying out their work and to cease the harassment of outreach workers. This also extends to the confiscation of condoms from sex workers.
3. Pursuant to the release of the SALRC report which supports continued criminalisation of sex work and which view the Commission opposes, the Commission will be placing a substantial position paper before the SALRC citing its dissatisfaction with their stance.

Signed at Johannesburg on the 18th day of December, 2017.



Ms Keketso Maema
Chief Executive Officer
Commission for Gender Equality
2 Kotze Street
Women's Jail, East Wing
Constitution Hill
Braamfontein
Johannesburg
Tel: 011 403 7182