



POLICE SENSITISATION TRAINING MANUAL

**A Guide for South African Police Service (SAPS) Officers
to the Rights of Sex Workers and the LGBTI Community**

Extended version



Police Sensitisation Training Manual: A Guide for South African Police Service (SAPS) Officers to the Rights of Sex Workers and the LGBTI Community
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Acknowledgement and Thanks

This manual was initiated on 15 August 2012 when the Deputy Minister of Police attended a meeting with SWEAT to discuss sex workers' complaints about police harassment and the ill treatment of transgender people in detention. The Western Cape Provincial Commissioner was instructed to address these issues, to implement procedures to curb the harassment and ill treatment of sex workers and transgender people who are the subjects of law enforcement officers' actions, and to ensure their safety during detention. We would like to thank the South African Police Service for supporting this initiative and for its ongoing commitment to the human rights and dignity of all those its officers serve.

We would also like to thank the following individuals and organisations for the information and support they contributed to this manual and for their continued work in the struggle for equality: Gender Dynamix; the Women's Legal Centre (WLC); the Sex Workers Education and Advocacy Taskforce (SWEAT); Triangle Project; and the SISONKE sex worker movement.

We also thank the Open Society Foundation for South Africa for its support of this initiative.

This manual is the result of a positive collaboration between SAPS and civil society. We hope it will serve as a resource and guide to all those serving to uphold and enforce the rights of sex workers, LGBTI people, and the community at large in South Africa.



Contributors and Organisations

Jacqueline Mbwana – Jacqueline Mbwana is the Training Co-ordinator and Capacity Builder at SWEAT (Sex Workers Education and Advocacy Taskforce). She has an Honours Degree in Psychology from Rhodes University. Prior to working at SWEAT she worked as a Counsellor, Trainer and Supervisor at a Cape Mental Health Project: Athlone Workshop. She is currently volunteering at Rape Crisis as a Counsellor and is also a part-time lecturer at the South African College of Applied Psychology. Jacqueline has an interest in Sexual Health Therapy, specialising on working with survivors of sexual violence. She aims to complete her studies by obtaining her Masters and Doctorate in Clinical Psychology.

Stacey-Leigh Manoek – Stacey-Leigh Manoek earned a bachelor of law degree from the University of the Western Cape, completed a Winter Law School Programme at the University of the Witwatersrand in conjunction with Seattle University, and completed her articles at the Legal Resource Centre. Stacy-Leigh joined the Womens' Legal Centre (WLC) in June 2009 as an attorney, and has since worked extensively in WLC's sex work project, and in advocacy, education, training, paralegals, and peer education. She has also successfully represented individual sex workers in court.

Sharon Cox Ludwig – Sharon Cox Ludwig is the Health and Support Services Manager at Triangle Project, where she oversees the emotional health, physical health and victim support programmes. She has an Honours Degree in Criminology. Triangle Project is a human rights organisation advocating for the rights and wellbeing of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community by working towards a society free of discrimination, prejudice, victimisation, heterosexist violence and the oppression of gender and sexual minorities.

Sibusiso Kheswa – Sibusiso Kheswa is currently working for Gender DynamiX. He is a passionate advocate on behalf of the most marginalised in society, with a strong background in advocacy at a number of human rights-based organisations. He has been working in the South African LGBTI sector since 2002 in positions at Gay and Lesbian Memory in Action (GALA), Forum for the Empowerment of Women (FEW), and the Lesbian and Gay Equality Project. He has experience in gender-based work in South Africa and abroad and has presented on different local and international platforms. He has worked on a range of research, public education and oral history projects. Sibusiso is also a skilled audio-visual historian. He is the co-author of a chapter in the book *Tommy Boys, Lesbian Men, and Ancestral*

Wives: Female Same-Sex Practices in Africa and co-directed *Breaking out of the Box*, a documentary film on black lesbian lives.

Benjamin Brown – Benjamin Brown is the division manager for the men’s research unit at the Desmond Tutu HIV Foundation. He oversees HIV prevention research studies and programming on community engagement with hard-to-reach populations, including men who have sex with men (MSM). His work has focused on biomedical HIV prevention, health worker sensitisation training, and policy work on behalf of key populations in South Africa. Ben has served as lead editor for multiple health care worker sensitisation training manuals, including with respect to sex workers, MSM, and people who use drugs.

Sisonke – Sisonke is a national sex worker movement, run by sex workers for sex workers in South Africa. The movement was formed in 2003 after sex workers met at a national meeting and decided that they wanted to take responsibility for bringing about change and standing up for their rights. Sisonke is the only movement that is managed by sex workers themselves. Membership of Sisonke is made up of men, women and transgender people from around the country. Sisonke is supported by SWEAT. Sisonke’s aim is to bring sex workers together to improve their living and working conditions, unite sex workers in the fight for their human rights, and to get sex work decriminalised. Sisonke is committed to uniting to change laws with regards to sex work, challenging the existing laws on sex work, exercising human rights, and campaigning for sex work to be recognised as work. All sex workers are welcome to be part of the movement regardless of area of work, race or sexual orientation.

SWEAT – SWEAT (Sex Workers Education and Advocacy Taskforce) was founded in 1994 by Shane Petzer, a male sex worker, and Ilse Pauw, a Clinical Psychologist, who together sought to establish a safe sex education project for adult sex workers. SWEAT’s Integrated Approach to sex work is sex worker-informed, peer-driven, and empowers sex workers to speak on their own behalf, make informed choices, and develop a collective consciousness. SWEAT addresses contextual and structural barriers to health care and the problems of stigma, discrimination and criminalisation of sex work.

Gender DynamiX – Gender DynamiX is the first African based organisation solely focusing on the transgender community. The aim of the organisation is to provide help, advice and information for those who seek to adjust their lives to live in the opposite gender role to that assigned to them at birth, or who are working to come to terms with their situation

despite their genetic background. Gender DynamiX provides resources, information and support to trans folks, their partners, family, employers, and the public.

The Women’s Legal Centre – The Women’s Legal Centre (WLC) is a non-profit law centre that seeks to achieve equality for women, particularly black women, through impact-based litigation, the provision of free legal advice to women, legal support to advocacy campaigns by gender and other organizations, and training that ensures that people know and understand the impact of the judgments of the courts around women’s rights. The WLC also provides legal advice to other non-governmental women’s organizations nationally and in Africa. The WLC has won several precedent setting cases that have improved women’s access to justice in South Africa. The WLC is staffed by attorneys and a legal advisor who specialise in gender law and have extensive litigation experience.

Significant sections of this manual have been taken from, or are based on, a 2012 publication by the Desmond Tutu HIV Foundation entitled *Sex Workers: An Introductory Manual for Health Care Workers in South Africa*, which was written by Benjamin Brown, Zoe Duby, and Linda-Gail Bekker.

Glossary of Terms

Androgyny – Not having clear masculine or feminine physical characteristics or appearance.

Asexual – Lack of sexual feeling or attraction. Used also to refer to a person who does not have an interest in and desire for sex.

Bisexual – A person who has romantic and/or sexual feelings toward both males and females. This attraction may be felt on various levels: emotional; physical; intellectual; spiritual; and sexual. Bisexuality is a sexual orientation and identity.

Discrimination – The unjust or unequal treatment of different categories of people on the grounds of race, age, sex, sexual orientation, gender and gender identity and presentation, or another immutable characteristic or status.

Female to Male (FTM)/Transman – A transman, or female-to-male transgender (FTM), starts his life with a female body, but his gender identity is

male. It is most respectful and appropriate to use male terms of address (sir) and male pronouns (he, him) when referring to someone who is a transman.

Gay – A man who identifies his sexual identity and orientation as homosexual. Gay men are attracted to other men on various levels: emotional; physical; intellectual; spiritual; and sexual.

Gender – The product of widely held views about what are male and what are female characteristics. Gender is a socially constructed set of characteristics and roles that are assigned to women or men; these may vary from one society to another and from one period of time to another. Gender is a broader concept than the biological differences between men and women.

Gender-based violence – GBV encompasses various forms of violence directed at women, because they are women, and men, because they are men, depending on the expectations of each in a given community. For LGBTI people the violence is directed towards them because of their challenging notions of sexuality and gender identity and presentation.

Gender identity – This refers to a person’s sense of self, as being male or female. While most people’s gender identity matches their biological sex, some people identify with a different gender than the one that matches the sex they were assigned at birth. For instance, a person may be born biologically male, yet have a female gender identity.

Gender roles – Ideas held by society and learned by members of that society about which activities, responsibilities and opportunities are “masculine” or “feminine”.

Heteronormative – A way of thinking that views all human beings as either male or female, that assigns static, inflexible roles based on gender, and that regards sexual and romantic thoughts and relations as “normal” only when they are between people of opposite sexes, and holds that all other behaviour is “abnormal”.

Heterosexual/Straight – A person who is sexually or romantically attracted to people of the opposite sex. This is a sexual orientation and identity. The attraction may be felt on various levels: emotional; physical; intellectual; spiritual; and sexual.

Homophobia – Fear or hatred of homosexual people or homosexual feelings, thoughts or behaviours. Homophobia and an undervaluing of homosexual identities can lead to discrimination and bias against homosexuals.

Homo-prejudice – Prejudice against people of diverse sexual identities.

Homosexual – A person who has sexual or romantic feelings toward people of the same sex. Attraction between two people of the same sex may be on various levels: emotional; physical; intellectual; spiritual; and sexual. Homosexuality is a sexual orientation and identity.

Human rights – The fundamental rights and freedoms that all people are entitled to regardless of nationality, sex, age, ethnic origin, race, religion, language, sexual orientation, gender identity, or other status. The other status may refer to a person’s HIV status, for example.

Internalised homophobia – When a homosexual feels ashamed of his or her sexual orientation as a result of the hatred projected onto gays, lesbians and bisexuals by a homophobic society.

Intersex people – Previously referred to as “hermaphrodites,” this refers to individuals who are born with a combination of both male and female reproductive organs, chromosomes, and/or hormones that are either fully or partially developed.

Lesbian – A woman who has sexual or romantic feelings toward other women. Such attraction may be on various levels: emotional; physical; intellectual; spiritual; and sexual. Being a lesbian is a sexual orientation and identity.

LGBTI – Lesbian, gay, bisexual, transgender, intersex.

Male to Female (MTF)/Transwoman – A transwoman, or male-to-female transgender (MTF), starts her life with a male body, but her gender identity is female. It is most respectful and appropriate to use female terms of address (miss) and female pronouns (she, her) when referring to someone who is a transwoman.

MSM – Men who have sex with men, including not only men who self-identify as gay or homosexual and have sex only with other men, but also bisexual men, as well as men who self-identify as heterosexual but have sex with other men.

Sex – The biological distinction between male and female. The sex assigned to a person at birth is based on certain biological characteristics, namely the person’s genitalia, hormones and chromosomes. A person’s biological sex may be male, female or intersex.

Sex work – An occupation in which a person exchanges sex with a client for money.

Sex worker – A person who sells sex. The term sex worker is intended to be non-judgemental and to focus on sex work as a type of work. Other terms, such as prostitute or hooker, can be disparaging and should not be used when addressing or referring to a sex worker. Sex workers can also be referred to as women/men/people who sell sex. Sex workers include consenting female, male and transgender adults and young people over the age of 18 who receive money in exchange for sexual services, either regularly or occasionally. Children under the age of 18 who sell sex are considered to be victims of sexual exploitation.

Sexuality – How people experience and express themselves as sexual beings.

Sexual identity – A person’s sexual self-identity, including how the person identifies as male, female, masculine, feminine, or some combination, and the person’s sexual orientation.

Sexual minority – A group whose sexual identity, orientation or practices differ from the majority of those in the surrounding society.

Sexual orientation – The set of emotional, physical and romantic feelings an individual has toward others. These feelings and behaviours are usually directed toward men or women, or both men and women.

Sexual practices – All behaviour that creates sexual pleasure, practiced by one or more than one person, individually, or together.

Stereotype – An unfounded or oversimplified view of a person based on one characteristic or one aspect of a person’s identity.

Stigma – Shame or disgrace that is directed toward something regarded as socially unacceptable. Stigmatisation takes place when some people in society regard a characteristic or identity of a person as shameful and reject or disapprove of that person as a consequence.

Street work – Sex work that takes place on the streets.

Torture – The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. (UNCAT, article 1)

South Africa’s own Torture Act no 13 of 2013 defines torture similarly, with the statement: “For the purposes of this Act, ‘torture’ means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted, by a public official or any person acting on behalf of a public official, on a person—

(a) *in order to—*

- (i) obtain information or a confession from him or her or a third person;
- (ii) punish him or her for an act he or she or a third person has committed, is suspected of having committed or is planning to commit; or
- (iii) intimidate or coerce him or her or a third person to do, or to refrain from doing, anything; or

(b) *for any reason based on discrimination of any kind, but does not include pain or suffering arising from, inherent in or incidental to lawful sanctions”. (Act No. 13 of 2013: Prevention of Combating and Torture of Persons Act, 2013, section 3)*

Transgender – A person who experiences their gender identity as being different from their sex at birth. For example, a transgender woman’s gender identity is female, while her body at birth is male. Transgender is an umbrella term that is often used to describe a wide range of identities and experiences, including transsexuals, FTMs, MTFs, transvestites, cross-dressers, drag queens and kings, two-spirits, gender-queers, and others.

Transphobia – Fear of, and/or hostility towards, people who are transgender or who otherwise transgress traditional gender norms. Transphobia is often expressed in the form of stigmatising attitudes or discriminatory behaviour toward transsexuals, transgender people and transvestites.

Transsexual – A transgender person who is in the process of, or has undertaken, surgery and/or hormone treatment in order to bring his or her body into better alignment with his or her preferred gender. Not all transgender people undergo sex reassignment surgery or hormone therapy.

Transitioning – The process of changing one’s gender presentation to align with one’s internal sense of one’s gender. For transgender people this may sometimes include sex reassignment surgery or hormone therapy, but not always.

Transvestite – A person who wears clothes associated with the opposite gender in order to enjoy the temporary experience of membership of the opposite gender. A transvestite does not necessarily desire a permanent sex change or other surgical reassignment.

Venue-based sex work/Brothel – Sex work that takes place within an established structure or building, as opposed to street-based sex work.

WSW – Women who have sex with women, including not only women who self-identify as lesbian or homosexual and have sex only with other women, but also bisexual women, as well as women who self-identify as heterosexual but have sex with other women.

Pre-Course Assessment

As a first step to using this manual, please answer the following questions. At the end of this training, you also will be asked a series of questions as part of a post-course assessment (this can be found at the end of this manual). If you are using this manual as part of an in-person training then your responses will be collected from you. Your answers are anonymous and confidential and will only be used to evaluate and improve this training. Please give your honest opinions.

Please select one response to each of the questions or statements below:

1. Arresting every sex worker I encounter:

- a. Is important and part of my job.
- b. Is a waste of time because I have more important issues to deal with.
- c. Doesn’t make any difference.
- d. I don’t know.

2. Police officers should discourage sex workers from working by:
- Conducting regular surveillance of the areas where they work.
 - Arresting them on the spot.
 - Taking their condoms so they can't have sex.
 - Telling them to stop or issuing a verbal warning.
 - Leaving them alone, I don't believe it is our role to discourage them.
 - I don't know.

3. I believe that sex work should:

- Continue to be a crime.
- Be decriminalised.
- Be regulated.
- I have no opinion.

4. Sex workers:

- Deserve human rights.
- Do not deserve human rights.
- May or may not deserve human rights, I am unsure.

5. My religious or moral beliefs:

- Inform how I treat sex workers.
- Do not inform how I treat sex workers.
- May or may not inform how I treat sex workers, I am unsure.

6. I think action should be taken against police officers who harass sex workers:

- Yes.
- No.
- I don't know.

7. I think a transgender person is:

- Gay.
- A man who dresses like a woman or a woman who dresses like a man.
- A person who feels he or she was born with the wrong body.
- A sex worker.
- I don't know.

8. I believe that transgender people break the law by using the wrong public toilets:

- a. Yes.
- b. No.
- c. I don't know.

9. I believe cross-dressing is illegal:

- a. Yes.
- b. No.
- c. I don't know.

10. I believe it is illegal to change your sex:

- a. Yes.
- b. No.
- c. I don't know.

11. Sex work is:

- a. A profession.
- b. Immoral.
- c. Victimisation of women.
- d. I don't know.

12. Sex workers are responsible for the spread of HIV:

- a. Yes.
- b. No.
- c. I don't know.

13. Have you ever dealt with a transgender person in your position as a police officer?

- a. Yes.
- b. No.
- c. I don't know.

14. I am aware of police harassment towards sex workers:

- a. Yes.
- b. No.
- c. I don't know.

15. I know of police officers who are harassing sex workers:

- a. Yes.
- b. No.

16. I have arrested a sex worker:

- a. Yes.
- b. No.

17. If your answer is yes to the question above, what were the reasons for the arrest?

- a. Violation of municipal by-laws (loitering or another by-law).
- b. Violation of the Sexual Offences Act.
- c. Another crime.
- d. I don't know.

18. Have you ever given a sex worker a fine?

- a. Yes.
- b. No.

19. Have you ever paid for sex?

- a. No.
- b. Yes.

20. Have you ever received or asked for a sexual service from a sex worker in exchange for releasing him or her?

- a. No.
- b. Yes.

Training Introduction and Overview

Why and how was this manual developed?

This manual was developed for South African law enforcement officials as a resource to support the better understanding of the laws and regulations involving sex work in South Africa. Sex work is a common practice in South Africa. In fact, sex workers exist in every community across the country. Many law enforcement officials engage with sex workers regularly, but enforcing the law can be challenging because South African laws relating to sex work are complex and may not always support the Constitution and human rights of sex workers. In response, this manual was developed in order to help law enforcement officials to more efficiently enforce the law while also supporting the legal and human rights of sex workers. The manual is meant to be used as part of an in-person training programme, but is also designed to be a stand-alone resource. It has been developed based on the feedback and lessons learned from numerous trainings conducted

with South African police services and with input from the sex worker community.

What are the aims and objectives of this training?

The overall aim of this manual is to support law enforcement officials to uphold South African law in ways that prevent the violation of sex workers' constitutional and human rights. After completing this manual, law enforcement officials should be able to:

1. Understand sex work and sex workers in South Africa, and explain common sex work practices, as well as myths and misconceptions about sex work.
2. Understand the differences between biological sex, gender, sexual orientation, and sexual behaviour; and understand the importance of these concepts in law enforcement.
3. Understand how stigma and discrimination exist within law enforcement, how sex workers are affected by stigma and discrimination, and strategies that can be used to reduce stigma and discrimination while enforcing the law.
4. Understand the laws that pertain to sex work and how these laws are applied to sex workers, their clients, and their managers, including brothel owners.
5. Understand the responsibilities of law enforcement to uphold South African law as well as to support the constitutional, legal, and human rights of sex workers.

Terminology and Names

There are different terms used to refer to people who sell sex. This manual will refer to this community of individuals as sex workers, rather than prostitutes or hookers, because these terms may offend some people. Sex worker is also the term that the majority of sex workers use to describe themselves and prefer others to use.

Individuals will be referred to in case studies and exercises in this manual, but all names have been changed.

Section 1: Introduction to Sex Work

1.1 Section Introduction

If sex work is illegal why is this training needed?

Yes, sex work is illegal in South Africa. However, South Africa is currently in a state of law reform, in which many of the apartheid-era laws that make sex work illegal are being reviewed. This review is in line with trends in many places around the world to decriminalise or legalise sex work.

Despite the illegality of sex work in South Africa, there are still many laws that protect a sex worker's rights. Enforcing the laws against sex work and the laws protecting sex workers' rights can be a difficult balance for law enforcement. Many of the laws relating to sex work are complex and often challenging to enforce effectively while supporting sex workers' rights under the Constitution and international human rights instruments.

It is understandable that some law enforcement officials may be unaware of the common practices and behaviours of sex workers. It is important, however, to understand these practices and to know the terminology related to sex work. This understanding can be important when interacting with sex workers and to understanding the ways in which South African law affects sex workers, which will be discussed in later sections. This first section provides you with information about the facts and realities of sex work in South Africa.

1.2 Learning Objectives

After completing this section, you should be able to do the following:

- Define sex work and its difference from trafficking or transactional sex.
- Describe sex workers in South Africa and explain why people do sex work.
- Explain common practices of sex workers.
- Describe myths about sex workers and explain why they are incorrect.

1.3 Overview

What is sex work?

Sex work is the act of providing some type of sexual service in exchange for money. Selling sex is a regular income-generating practice for many people in South Africa. You may be familiar with the type of sex work that involves a man paying a woman to have sex with him. This is one example of sex work, but there are also many others. Many, but not all, sex workers define their service as penetrative sex with a condom in exchange for cash. Sex workers consistently emphasise that they perform a service and a job for the sexual pleasure of their clients. Sex workers clearly identify their actions as legitimate work because they are providing a good or resource to their clients and receiving compensation in exchange. There is also an expectation that the sexual exchange will take place within a particular time frame and include certain agreed-upon standards between the sex worker and the client. Sex work should not be confused with transactional sex, which occurs when some type of sexual service is exchanged for gifts, shelter or drugs.¹

Exercise 1: Mind Map

When you hear the term sex worker, what is the first thing that comes to your mind? Write down a brief description of what you think of as a typical sex worker and consider the following questions:

- Is the sex worker a man or a woman?
- What is he or she wearing?
- Where does the sex worker work?
- Does the sex worker live in a city or a rural community?
- How old is the sex worker?
- Why did that person start sex work?²

Who does sex work?

Sex workers are a diverse community. Most sex workers in South Africa are women, this includes sex workers who were born female and those who were born male but who live as females. Men also do sex work. Male and female sex workers may accept male or female clients, or both. There are sex workers of every race and ethnicity, cultural background, sexual orientation, and gender identity. Many sex workers are migrants from other places within South Africa or from other countries.²

Why do people do sex work?

People become sex workers for many different reasons. Typically, they are motivated by economic need. For example, a significant number of women in South Africa have difficulty finding employment or supporting their families. Many sex workers say that sex work has allowed them to survive and “put food on the table” for themselves and their families. Education and training are other factors that can influence a person’s decision to go into sex work. Sex work does not require the formal education or training that may be required to do other types of work. The reality is that there is a financial incentive for doing sex work; sex workers often can earn more money than if they were engaged in other forms of employment.³

Exercise 2: Why People Do Sex Work

Read the following descriptions of three sex workers and their reasons for doing sex work. Consider how their personal stories differ.

Georgia is a 24-year-old transgender woman who migrated from Kwa Zulu Natal when she was 18 years old. Georgia started doing sex work while she was a first-year student at UCT. She has since completed her degree in education and is a primary school teacher. Georgia retained a professional relationship with her clients over the years. She sees at least two clients a week from her house in Cape Town.

Lindiwe is a 50-year-old single mother of four. Originally from the Eastern Cape, she now lives in Cape Town. Her daughters range in age from 10 to 25 years old. Lindiwe has never had access to formal education. She grew up as an orphan and ran away from home at the age of 15. She started working as a domestic worker in Cape Town, but when her employer moved overseas, she struggled to find a job. With two small girls to raise, Lindiwe turned to sex work as a survival strategy.

Tendai is a 19-year-old Ugandan who now lives in South Africa. Tendai is a male sex worker based in Port Elizabeth. He moved to SA as a result of the persecution that LGBTI people suffer in his country. He sells artwork at his day job but does not earn enough to meet his expenses. At night he sells sex on the beachfront. He is also pursuing accounting through part time studies at the local college.

Consider the following questions:

- Why do these three people do sex work, even though one has a university education?

- What are the advantages and disadvantages to doing sex work?

An expert study on sex worker rights found that there are often a complex range of reasons and circumstances behind a person's choice to do sex work:

“Most people choose sex work because they see it as the best option among a limited range of economic opportunities. In this regard, sex workers make calculations and weigh choices – just as all people do who need to make money to care for themselves and their families. For example, many people choose sex work because it offers flexible working hours. This is a significant factor for people who want or need to spend time caring for their children. Sex workers are often self-employed and can choose when, where and how to work. Sex workers can often earn more money in less time than when engaged in other types of work, such as domestic work or manual labor. Finally, for some, earning money from sex work feels more empowering and dignified than cleaning someone's house or performing backbreaking physical labor. Regardless of why people do sex work, they have the right to self-determination, should be treated with dignity and deserve equal protection under the law”.⁵

Exercise 3: Nazli

Take a moment to read the following personal statement from Nazli, a sex worker, and consider the questions that follow.

I was born in a better family and I went to school and I got married to a good husband and had three children. But God separated us with death. I looked for a job, and worked as a receptionist. Economically things started to be bad every day, [and] the money I earned was too small for me to look after my children. So I decided to come to Port Elizabeth for green pastures, so that my kids could enjoy their standard of living. When I got there I looked for a job, but found nothing. So, I had to spend one week sleeping outside, and struggling to find money for food. I met a friend who told me she was working in a hotel, but she didn't specify what kind of job she is doing. We got together because I was in need of a job – so she told me this is the job. I had no choice because I needed shelter, food – that is when I started to be a sex worker. But my kids never died with hunger because I was providing them with food, clothing and schooling. I can't say this job is bad because you don't need qualifications or experience, you learn it in the field. Being a sex worker doesn't mean you don't do anything – God gave us brain[s] to think, eyes to see, hand to touch, and legs to walk.

- How is Nazli different from or similar to the idea you had in your mind about what a sex worker is like?
- Consider why Nazli started sex work. Did she have other options?
- Would you have made the same decision she did?
- Briefly describe what you think Nazli's experience is like as a sex worker.⁶

Should sex workers be considered victims of trafficking?

There are victims of human trafficking who are forced to engage in sex against their will but this differs from sex work. Victims of human trafficking (including child trafficking) are coerced and/or forced to travel from one place to another, usually by a syndicate. Sex work, on the other hand, is a deliberate choice that people make. While it is true that some people who are trafficked are then forced by the traffickers to do sex work, it is not the case that all people who do sex work were first trafficked or were forced into sex work.

Sex work vs. Trafficking

Many people mistakenly conflate sex work with human trafficking. This complicates matters for sex workers in their engagements with police officers. Read the following dialogue between Natalie and a police officer. This will better explain the difference between sex work and human trafficking.

Natalie, a Zimbabwean sex worker has been working in Hillbrow for the last four years. Her run-in one evening with a police officer and a worker from a nongovernmental organisation working with victims of trafficking leads to this dialogue:

Police officer: *“Hey we’ve got one from Zimbabwe here. Do you know her? She’s been on these streets for a few years at least”.*

NGO worker: *“I don’t know her, but you know she may have been trafficked over the border, at Musina”.*

Police officer: *“Good point, I bet that’s what we’ve got here. You know we see more and more of these trafficking cases every day down at the station. We’ve been told to keep an eye out”.*

NGO worker (making conversation with Natalie): *“How long have you been here in South Africa my dear?”*

Natalie: *“I have been in South Africa for four years”.*

NGO worker (condescending): *“Do you remember any details of your trafficking?”*

Natalie: *“I will tell you like I’ve told the police a hundred times before: I have not been trafficked to South Africa! I came here as a char [domestic worker]. I left that job because I earn more doing sex work. I decided on my own to do sex work. I have not been trafficked into it. I know some girls from Harare who work in Johannesburg who were trafficked. They should be helped, but we’re not all the same. You can’t confuse the situation, because then you aren’t helping any of us!”*

1.4 Common Practices of Sex Workers

Where is sex work practiced?

Sex work happens in every village, every town and in every city in South Africa. In fact, sex work exists in every culture around the world and has occurred throughout history. It is estimated that there are between 132,000 and 182,000 sex workers in South Africa.⁷ A common image of a sex worker in South Africa is a woman who is paid by a man to have sex. This exchange usually occurs at night in a dark alley or car. While some sex work in South Africa does fit this description, there are actually many different settings where sex work is practised.⁸

Street-Based

Some sex workers practise street-based sex work. This means that they wait or walk along certain streets or highways and engage with clients from the street. Sex work does not require a specific location, although many sex workers have identified locations within their community where it is easier for them to find clients and for the clients to locate them. While this may be an established meeting place, sex workers may travel with the client to other locations.⁹

Venue-Based

Not all sex workers work on the street. There are also sex workers who work from establishments such as “massage parlours”, bars or clubs. This is referred to as venue-based sex work. Often sex workers who work in clubs will be forced to pay a cover charge for working there. Some sex workers may work within an established venue for sex work, sometimes referred to as a brothel. A brothel is an establishment or building where multiple sex workers live and can host clients. In some cities, brothels may also be referred to as hotels. Often brothels are overseen by a manager who also coordinates the clients for the sex workers.¹⁰

Advertisement

Some sex workers work privately, using the Internet to advertise their services and find clients, or placing advertisements in newspapers’ classifieds

sections. These sex workers are sometimes referred to as call girls, and they tend to visit a client at his or her home or hotel room.¹¹

Do sex workers work alone?

Some sex workers work alone, but others may work in association with some type of manager who is responsible for organising clients for them. The term manager should be used instead of pimp because pimp is a term commonly associated with violence and drug use. Managers are responsible for attracting clients and negotiating with them for the sex workers' services. Sex workers, in turn, are compelled to pay the manager a portion of the money they earn from each client. For sex workers in brothels, this manager – sometimes called a madam if the manager is female – is responsible for running the brothel and organising clients for the sex workers who are based there.¹²

How is sex work practiced?

Sex work begins when a sex worker identifies a client. After meeting, the sex worker will determine what activities the client is interested in and will negotiate a price with that client. If both the sex worker and client agree to the activity and the price, the client will pay the sex worker and they will then engage in the agreed-upon activity. Different sex workers sell different types of sexual activities. Some sex workers may only perform certain types of sex – the most common types being penile-vaginal penetrative sex, manual masturbation, and penile-oral sex. Some sex workers, both male and female, also engage in penile-anal sex with their clients. The majority of sex workers have a set of services that they provide and services that they refuse to provide. Many sex workers refuse to perform anal sex or group sex, for example. Others specialise in non-penetrative sex.¹³

What do sex workers get paid?

Most sex workers get paid in cash and not with items (for instance, clothes, gifts, cell phones). The amount that sex workers get paid varies greatly, and depends in part on where the sex worker works. For example, a sex worker who works on the side of the road in a small town may get paid very little, whereas a “high class” sex worker who visits clients in their hotel rooms in a big city may get paid a large amount.¹⁴

Exercise 4: Ntombi

Please read the following description of Ntombi, a young sex worker from a major city. Afterward, answer the questions that follow.

Ntombi is a 26-year-old woman who lives in Berea in Durban with her boyfriend Thabo and their 3-year-old son, Lindo. Thabo has a job as a

fuel attendant at a nearby fuel station. Ntombi is studying at college. On weekends Ntombi works in a brothel called Happy Endings. The madam at Happy Endings has an agreement with a few of the local hotels. When a businessman from the hotel requests a sex worker, the madam sends one of her girls. The madam agrees on a price with the client beforehand, when the client specifies what kind of girl he wants, and what kind of sex he wants. The madam then tells Ntombi what the client wants, and it is Ntombi's job to provide this to the client's satisfaction. Sometimes the client demands things that he has not paid for or agreed to with the madam. For example, the client may ask Ntombi not to use a condom, offering to tip her generously. Ntombi knows that she only gets paid a portion of what the client pays the madam, and the cut that goes to the hotel, so it is very tempting to take the tip and not use a condom. Ntombi is on the contraceptive pill, so she doesn't worry about getting pregnant.

- How does Ntombi practise sex work? Is it different than what you expected?
- Why do you think Ntombi became a sex worker?
- What alternatives would Ntombi have if she were not a sex worker?
- What risks do you think Ntombi faces in her work?¹⁴

1.5 Common Misconceptions about Sex Workers

Do sex workers use drugs?

Not all sex workers use drugs, but some do. Many sex workers find themselves in circumstances where illegal substances are readily available. Sometimes managers (pimps) will encourage sex workers to take drugs so that they become addicted and easier to control. In such situations sex workers become dependent on pimps for drugs since the pimps can control their supply. In this situation, sex workers will often become more compliant with the pimp's demands, even if those demands put their health at risk. In addition, some sex workers take drugs as a coping mechanism; they use drugs as a way to forget about their difficult circumstances, to numb themselves to traumatic events they have faced, or to ease the shame or depression they may feel about what they are doing.¹⁶

Do all sex workers have HIV?

Not all sex workers have HIV, but the HIV prevalence among sex workers is significantly higher than in the general population. People engaged in sex work are at increased risk for acquiring HIV through exposure to more sexual partners, higher threat of violence in sexual encounters, riskier sex,

the use of substances during sexual encounters, and because of limited access to health care services.¹⁷

While many sex workers are committed to using condoms with clients, following through on this commitment requires the cooperation of clients and this is not always easy to achieve. Sometimes clients offer more money for sex without a condom, including riskier sexual practices such as anal sex without a condom, or threaten to go to other sex workers who will agree to sex without a condom. Sex workers are forced to weigh their need for clients and income against the risks to their own health. This means sometimes immediate survival needs take precedence over safer sex practices. For many sex workers, ensuring that they are able to provide for themselves or people who depend on them at the end of the night can be more important than their long-term health.¹⁸

Sex workers can also be put at risk for HIV if their boyfriends and husbands do not use condoms. Compounding these other risks, sex workers are also vulnerable to violence by clients and partners, and have difficulty accessing protection from the state or holding their attackers accountable when they experience violence.¹⁹

Are sex workers mentally ill?

Not all sex workers are mentally ill. Many sex workers, just like many people in the general population, are affected by mental health issues such as anxiety, depression, and substance dependency. Mental health issues can affect sex workers for many reasons. For instance, many sex workers experience traumatic situations such as a rape by a client or physical assault. A single violent attack can have serious mental health consequences for the victim, but many sex workers have repeated exposures to such traumatic events. Because sex work is illegal in South Africa, it is challenging for sex workers to seek justice for these crimes or access mental health treatment.

Separating Myths from Facts about Sex Workers

1. *All sex workers were abused as children.* Many people believe that child abuse is the primary reason that people engage in sex work, but this is untrue. Most sex workers engage in sex work for economic reasons.
2. *Sex work and human trafficking are the same thing.* While some victims of human trafficking are forced to sell sex, not all sex workers are victims of trafficking.

3. *Sex workers are all drug addicts.* Some sex workers do use drugs, but not all sex workers engage in drug use or are drug addicts.
4. *All sex workers are immigrants.* Some sex workers are migrants from other places in South Africa or other countries, but not all sex workers are immigrants.
5. *Sex workers do not use condoms.* Sex workers are put under many pressures to engage in sex without condoms, but not all sex workers engage in unprotected sex. In fact, many sex workers use condoms with all their clients.
6. *Sex workers are all uneducated.* Sex workers have a wide variety of education backgrounds. Some sex workers may have received little formal education, but many others are formally educated.
7. *Sex workers are not parents.* Many sex workers have families and engage in sex work in order to support their children.
8. *Sex workers are victims of post-traumatic stress disorder (PTSD).* While some sex workers do experience PTSD, not all sex workers do sex work because of it.
9. *Sex workers are all teenagers.* Sex workers span a variety of ages.
10. *Sex workers are not able to have stable, loving relationships.* Many sex workers form long term relationships and partnerships.²⁰

1.6 Summary and Key Messages

- Sex work is practiced throughout South Africa. More than one hundred thousand men and women in the country earn their income by doing sex work.
- Sex workers engage in sex work for a variety of reasons, mostly because sex work allows them to earn income in order to provide for themselves and their dependants.
- Sex workers may work alone or with managers. Sex work can be practiced in brothels, through the Internet, or on the street.

- Sex workers are at increased risk for HIV, but it is a misconception that all sex workers are HIV-positive.
- Sex workers may experience traumatic events that lead to mental health issues, but not all sex workers are mentally ill.

Section 2: Stigma and Discrimination

2.1 Section Introduction

If sex work is illegal, why worry about stigmatisation of sex workers?

All people, including those who do work that is not legally sanctioned, are entitled to respect for their fundamental rights and dignity. Unfortunately, sex workers are often discriminated against and disrespected, in part because of the criminalisation of sex work in South Africa. Members of SAPS often stigmatise and discriminate against sex workers. Sex workers have reported that they have been harassed, manipulated, assaulted, and even raped by SAPS members. These actions harm sex workers, poison SAPS members' relationship with the sex worker population, and are in violation of the South African Constitution and human rights law. Understanding what stigma is and how it negatively affects sex workers is an important step to improving interactions with them and more justly upholding the law. This section will explore the types and sources of stigma and how stigma and discrimination towards sex workers can influence the way in which law enforcement officials undertake and fulfil their duties.

2.2 Learning Objectives

After completing this section, you should be able to do the following:

- Define stigma and discrimination and describe how they develop.
- Understand the ways in which stigma and discrimination affect sex workers.
- Provide examples of how stigma and discrimination can violate the rights of sex workers.
- Explain methods to reduce stigma and discrimination in your workplace.

2.3 Overview

What is stigma?

Stigma refers to strong negative feelings or significant disapproval of a specific person, group, or trait. For example, in the past stigmas have developed towards individuals with mental illness or diseases such as HIV. For example, because of the stigma associated with HIV and AIDS people felt fear, hostility or disapproval of anyone who was HIV positive. Stigmatisation is when you connect negative feelings, specifically feelings of disapproval, with something or someone. Stigmatisation, or disapproval, of a person by others is called external stigmatisation. When a person is ashamed of himself or herself because of some characteristic or trait that the outside world disapproves of, that is internalised stigma.

How is stigma developed?

Stigma, the idea or feeling that something or someone is shameful, often develops as an expression of a society's beliefs and values; some traits or actions are held up as marks of honour and others are stigmatised and regarded with disapproval. When a person in a group is different from what the group generally considers to be "normal" or desirable, then that person may be stigmatised by others.

Exercise 5: Identifying Values, Attitudes, and Beliefs

It is important to learn to recognise and address the ways in which you or your co-workers stigmatise other people. This is a process that begins with identifying the strongly held values and beliefs that may lead you to feel intolerance or disapproval of others. Take a moment to reflect on the following questions:

- What are the five most important beliefs that you have? List them.
- Can you identify, for each of these five values and beliefs, when you developed them, and why?²¹

What is discrimination?

Disapproval of a person or a group often leads to discrimination, which is when a person or group is treated differently or unfairly because of a specific immutable characteristic or status, such as their race or gender. For example, consider the following situation: Siphso, who is 25 years old, and Bongsi, who is 40 years old, are both being interviewed for the same job. Even though Bongsi has more experience, the boss offers the job to Siphso because the boss thinks that Bongsi is getting "too old". In this circumstance, Bongsi is being discriminated against because of his age.

What are stereotypes?

Stereotypes are characteristics that become associated with certain groups or individuals, often because of their race, nationality, culture, religion, or sexual orientation. Stereotypes are usually negative and often inaccurate. For example, consider some of the common stereotypes about both men and women: Women are not as smart as men in math and science. Men are aggressive and violent.

Exercise 6: Sex Worker Stereotypes

List all of the characteristics and stereotypes you think of, or have heard, when you hear the term sex worker. Based on what you have learned thus far, can you identify the characteristics and stereotypes that are untrue?

What is Prejudice?

A prejudice is a preconceived idea or opinion about a person or group because of a personal trait or characteristic. Prejudices are usually negative and generally connected to significant characteristics, such as sex, age, ethnicity, or religious background.

Why are sex workers stigmatised?

Sex workers experience stigmatisation by others in society who disapprove of them for selling sex. They also experience stigmatisation for a variety of other reasons, for instance because they are female or because they are HIV positive. Many sex workers experience multiple layers of stigma; and it is this overlapping stigmatisation that can make sex workers an extremely vulnerable population. The majority of sex workers in South Africa are female.²² As women they face gender-based stigma; as women with unlawful status, sex workers are further marginalised and at increased risk for physical violence, including rape and murder. Some sex workers may face additional layers of stigmatisation and vulnerability to violence because of their status as migrants or their sexual orientation or gender identity.

Sexual frequency and sexual taboos

Sex workers may be stigmatised and discriminated against because they engage in frequent sexual activity. Many societies have conservative views or taboos about sexual behaviour. For instance, people may consider sex workers to be immoral because they engage in sex outside of marriage or because they have sex with many different people. These beliefs about what is “acceptable” or “unacceptable” sexual practice affect how people view sex workers and how they treat them.²³

The associations with HIV and fear of transmission

Sex is the most common way that HIV is spread. Since sex workers engage in frequent sex, they are seen as carriers and spreaders of HIV. This is even

the case when sex workers are HIV negative. In some cases, health care workers or police may stigmatise sex workers after assuming that they are HIV positive.²⁴

Stigma as women

Most sex workers are women, and women often experience prejudice and discrimination in many places around the world. In certain cultures, both within and outside South Africa, women are not seen as being equal to men and are expected to willingly consent to the men's directions. Some cultures perceive female sex workers to be "cheap" women who do not deserve respect or who have given up their right to dignity by becoming sex workers. Such stigmatisation of female sex workers can lead people to treat them badly and increases their vulnerability to physical violence and rape.²⁵

Migration and xenophobia

Some sex workers are migrants from other communities in South Africa or immigrants from other countries. Some people may view migrant sex workers as outsiders who do not belong in the community. As a result, some people may shun foreigners or exclude migrants from work and other opportunities.²⁶

The illegality of sex work

One of the most powerful sources of stigmatisation of sex workers is the illegality of sex work in South Africa. The country's laws against sex work mean that sex workers are perceived as individuals who are breaking the law. When people view sex workers only as law breakers, they ignore the complex situations sex workers face, and often fail to consider alternatives to the criminalisation of sex work.²⁷

Homophobia and male/transgender sex workers

Many communities discriminate against same-sex sexual behaviour, and many individuals may have a very strong aversion to homosexuals; this is known as homophobia. Male and female transgender sex workers may engage in sex with male clients, and may therefore experience homophobia and stigma because of this behaviour. Transgender sex workers may display – through their clothing, make-up, hairstyle, and behaviour – a gender identity that is in contrast to the gender role that is expected of them according to their biological sex. When people are intolerant of such gender expression, they may discriminate against transgender people on the basis of their gender identity; this can be referred to as transphobia.²⁸

2.4 Effects of Stigma and Discrimination

Exercise 7: Stigma Self-Reflection

Think back to a time in the past when you were in any way treated differently by people. For example, it may have been a time when you moved into a new area and attended a new school, and the students there teased you for being new to the area. It could have been when you were taken care of by a distant relative and the relative treated you with less love and affection than his or her own children. Try to remember such an experience and what happened. How were you treated differently?

Please answer the following questions about your experience:

- In what way were you treated differently by others around you?
- How did this make you feel?
- How could you have avoided this situation?
- How do you think this experience affected you in the long term?
- What did you learn from this experience?²⁹

Exercise 8: Sex Work and Stigma

Read the description of the experiences of Gloria, a female sex worker, and then answer the questions that follow.

Gloria is a 32-year-old sex worker from Bloemfontein. She lives with her boyfriend in a flat on the outskirts of the city. Gloria has not told her boyfriend that she sells sex, but told him instead that she has a job working in a factory doing night shifts on the other side of town. One night Gloria gets beaten up quite badly by one of her clients who was drunk and was demanding to have sex without a condom. The client ends up raping Gloria, without using a condom. Gloria is in pain and bleeding but she is too scared to go home and tell her boyfriend what happened, because she is scared he will throw her out of the house if he discovers she is a sex worker. Gloria tries to get a room in a nearby hotel, but the doorman of the hotel refuses to let her enter, telling her that they don't allow "filthy prozzies" in the hotel. Gloria instead finds a place to sleep behind some empty crates. In the morning Gloria goes into a clinic to see a nurse. There is a long queue at the clinic and many people waiting to see the nurse. After waiting for a long time, Gloria is called in to see Sister Penny. Sister Penny arrived at work today to find that two of her co-worker nurses had called in sick, so Sister Penny has to see all the patients at the clinic on her own this morning. As a result, she is feeling stressed and tired by the time

Gloria comes to see her, and is hungry as she hasn't had time for her tea break. Gloria begins to tell Sister Penny what happened to her, and Sister Penny starts shouting at her, telling her that she is just a "dirty whore" and she deserves what she gets. Gloria runs out of the clinic crying and feeling lost and hopeless.

- What types and forms of stigma and discrimination can you find in this case?
- Can you identify the ways in which stigma affects Gloria?
- How would you provide appropriate support for Gloria if she came to you for help?³⁰

Stigma can often lead to a person being excluded from society, feeling devalued and shamed. Both internal and external stigma can gravely affect the health and well-being of sex workers. Sex workers may experience abuse by their clients or pimps, but because of past experiences of discrimination they may not expect that others are likely to help them, and because of internalized stigma (shame) they may also not feel worthy of seeking justice. When sex workers do seek justice, but then are stigmatised or discriminated against, it causes them suffering and may discourage them from seeking help in the future. For example, a police officer may use insulting language toward a sex worker or blame a sex worker for being raped. In many reports from South Africa, sex workers have detailed the lack of support they receive from police, often stating that upon reporting a rape, they are simply laughed at and told that, "that was what you were looking for".³¹

Some sex workers may be identified by the police and regularly interact with them. Since sex work is illegal in South Africa, sex workers are always at risk of being the targets of arrest or other punishment and so are easily forced to adhere to the directions of the police, even when the police officers themselves are acting against the law or are corrupt. Some sex workers may pay police officers to let them continue working; this can take the form of a so-called fine, when in reality the money that is paid to the police is simply pocketed. Some sex workers are coerced or forced to have sex with police officers in order to avoid getting arrested. Sex workers can also experience high levels of violence and abuse by police who stigmatise sex workers, or if sex workers refuse to cooperate with officers. Various studies have reported the reluctance of sex workers to report rape and abuse to authorities because they fear the police or expect they will receive unsympathetic treatment by the police. Street-based sex workers (as opposed to those who are mainly based in brothels or hotels) are

particularly vulnerable to crime and violence by clients or thugs, as well as police harassment.³²

Exercise 9: “that’s what you get”

Read about the experience of a sex worker from Cape Town and then please answer the questions that follow.

I was working in Cape Town. So this client came and he said that he wants to take me to [...] Road in [...]. I got into the car. And while we were driving, he said that we are going to go to his house in [...] rather. So we went to [...]. I didn’t even know this area existed; it was new at the time. So he got out of his car and went to the back of the boot. I think he took out his gun. Then he got back into the car. Then while we were sitting there, he asked me “Why are you selling your body?” I didn’t answer. I just got cold. I was thinking, ok he is going to shoot me and then he is going to throw me in the sea. I thought that was it, I am dying now. So then I don’t know what changed his mind. Then he said, “Go out, I am giving you 5 seconds”. So I got out and I ran. I saw that he was driving behind me. I hid myself behind an electric box. He passed me. Another guy picked me up while I was running. His wife was in labour, so he was rushing to the hospital. He dropped me at the [...] police station. And then I told the officers what happened. They laughed at me and they said, “Magosha, that’s what you get if you sell your body”.

Take a minute to consider this story.

- What role did stigma play in this incident?
- What do you think were the most serious offences committed in this story?
- If you had been an officer at the station that night and this woman came to you with her story, what would you have done or said?

2.5 Addressing Stigma and Discrimination

Discrimination and prejudice can lead to human rights violations against sex workers and challenges to the South African Constitution. The following are accounts by sex workers of their interactions with SAPS officers. These stories illustrate the real-life effects of stigmatisation and discrimination against sex workers by law enforcement. The names of the sex workers have been changed and the names of the police officers or police stations involved have been withheld in order to avoid embarrassment or the risk of negative repercussions.

Sex Worker Voices

“I was arrested for one night by the police officers who work for the South African Police Service (‘SAPS’). On that night, I was at the 711 store in the [...] Road. When I walked into the 711 store, I saw a SAPS police van following me. My friend and I ignored them and we went into the store to buy ourselves something to eat. After we paid for our groceries, the two policemen, whose full names are unknown to me, approached us and told us to get into the police van. The policemen refused to provide me with reasons for my arrest, and they forced me into the police van. They took me to the [...] Police Station. When I got to the police station, the policemen asked me questions about my sexuality, and when I told them, they made fun of me. The policemen put me into a cell with other males, and the inmates also ridiculed me about my sexuality. The police cells were filthy. The policeman arrested me only because they knew that I work as a sex worker. At no time was I told that I had a right to remain silent or of the consequences of not remaining silent. I was also not told of my right to choose and to consult with a legal practitioner. I did not receive a Notice of Rights, and I was not taken to court, or provided with a Notice to Appear in Court”.

— **Amber – a transgender female (MTF)**

“I received a fine from SAPS. I was standing in [...], the police officer named [...] in a SAPS police van came to me and told me that I am a nuisance and that is why he is arresting me. He said that I was being a nuisance and an annoyance to other people as they claim. They took me to the [...] Police Station. I was kept at the police station for 4-5 hours. I was treated badly at the police station because I am transgender, they were telling me to take off my wig and make-up, which I did, and asked if I had real breasts. They told me to pay a fine at the police station and they said that I would go to court. While I was there I did not get food or water. The cell was dirty. The toilet could not flush and it was filled with poo. They did not allow me to make a phone call or for people to visit me. I didn’t go to court. They said that I must appear in court but didn’t give me a court date. I want the police to treat us as human beings”.

— **Bernadine**

“In February 2011, I was standing in the [...] area when I was approached by a female police officer and arrested for prostitution. I was taken to the [...] Police Station after driving in the police van for approximately two hours. Then, the police officers tried to force me to have sex with the superintendent for free. The police took pictures of me while I was in their custody. The pictures were later published in a newspaper”.

— **Cathy**

“I was chatting with a friend in [...] Road, [...], when a white Quantum van approached me. There were approximately 2-3 female officers and 2-3 male officers, who told me to get into the van. They searched my bag for drugs and asked me a range of questions, such as my full name, address, telephone number, if I use drugs, and an address for a next of kin. Then the police officers took two pictures of me, one of the front of my face, and the other of the side of my head. I asked them why they have to take the pictures and they told me that in the event of my death or if I am reported missing they will be able to identify me and contact my next of kin. They then told me to leave the streets and if they see me then I am going to get a fine”.

— Dianne

It is helpful to consider how a law enforcement approach that treats every person equally would have resulted in different behaviour by the officers in the above stories.

It is the responsibility of every police officer to uphold and support the constitutional and human rights of others. Even though a single police officer is just one part of a much larger system, he or she has the potential to considerably influence the way in which laws are enforced and how the justice system is upheld. There are a number of ways to minimise stigma and discrimination both individually and within your unit.

Understand and recognise stigma and discrimination

Exercise 10: Examples, Causes, and Effects of Stigma

In order to address stigma, it's important to first recognise its signs, causes, and effects. Follow the instructions below:

Fold a blank piece of paper into three parts. Label the left column **Examples**, the middle column **Causes**, and the right column **Effects**. Under **Examples**, think of every time you or someone else in your police unit has discriminated against or otherwise mistreated a sex worker. For each of these examples, identify the potential cause or reasons for the discrimination, including stigmatising attitudes or prejudice, and write this under **Causes**. Conclude by considering what the effect of each of these cases of stigma and discrimination had on the sex worker and list these under **Effects**.

Once you have finished, compare your list to the following table:

Examples	Causes	Effects on sex workers
<ul style="list-style-type: none"> · Name calling/calling someone a whore · Gossiping about detainees · Refusing to file a person's complaint · Telling a sex worker to go away/chasing a sex worker away · Telling a sex worker she deserved what she got · Refusing a sex worker food while giving others in custody food · Assaulting a sex worker · Killing a sex worker 	<ul style="list-style-type: none"> · Lack of knowledge or understanding about sex workers or transgender people · Lack of information about procedures · Religious or cultural beliefs · Society's norms and expectations · Fear · Anger · Competition with other officers for promotion or reward from senior officers · Trying to impress co-workers or not appear weak or soft in front of co-workers · Repulsion or negative feelings about sex or certain sex acts · Discomfort with overt sexuality 	<ul style="list-style-type: none"> · Lack of access to justice and the protection of police · Lack of access to services · Distrust of police · Distrust of state authorities generally · Depression, sadness, loneliness and isolation · Anger · Feelings of hopelessness · Low self-worth · Substance abuse · Self-destructive behaviour (self harm or not looking after one's health)³⁰

Be informed about sex worker behaviour

It is important to be aware of the different types of people involved in sex work, and not to make false assumptions about their behaviours. Not all sex workers are the same and, as mentioned throughout this manual, there are a wide variety of behaviours and actions in which sex workers can engage. All questions addressed to sex workers should remain professional and related to potential violations.

Enforce the law fairly and equally

Officers should make a positive effort to treat everyone they interact with fairly and equally. An approach that treats everyone equally adheres to the

constitutional legal requirement to practice non-discrimination, creates an environment of orderly professionalism, and reinforces mutual respect among members of SAPS and the general community.

Follow a rights based approach and treat sex workers with respect

Police officers should always use a rights-based approach during their interactions with sex workers; that is, officers should keep in mind the fundamental rights of each person as they go about enforcing the law. Even though a sex worker may be breaking a law, that action does not nullify his or her rights – people who are in violation of the law are entitled to respect for a whole range of rights. At all times, the human rights of sex workers should be respected and they should be accorded dignity.

Do not use demeaning or stigmatising language towards sex workers

It is common for sex workers to be described as “whores” or “sluts” and “magosha”. This type of language is offensive and should not be used when engaging with sex workers.

Lead by example or challenge stigmatising attitudes

Police officers can influence their colleagues by leading by example, by treating sex workers respectfully and not engaging in abuse or discrimination. Additionally, if comfortable doing so, police officers can actively point out the stigmatising attitudes of their colleagues, provide them with correct information, and remind them about the ethical responsibility they have when upholding their position.

Engage with sex worker organisations

Partnerships with sex worker-led organisations can greatly benefit law enforcement by providing opportunities for exchange of knowledge, and access to trainings, and because these organisations can be a resource to answer questions regarding sex workers and stigma.

2.6 Summary and Key Messages

- A stigma is something that people consider shameful. When you strongly disapprove of another person because of a certain quality or attribute that he or she has and you conclude that the person himself or herself is therefore shameful, that is stigmatisation.
- Sex workers often experience stigmatisation and it can affect them in multiple ways.
- People’s feelings of disapproval toward sex workers can lead them to discriminate against sex workers.

- Sex workers experience emotional suffering and damage to their health and well-being as a result of being stigmatised.
- Stigma and discrimination can be addressed by: understanding and recognising disapproving attitudes and discriminatory actions; learning about sex worker behaviour; enforcing the law fairly and equally; following a rights-based approach to law enforcement; leading by example; and engaging with sex worker organisations.

Section 3: Human Sexuality

3.1 Section Introduction

What is sexuality and why is it important?

Human sexuality can be broadly broken down into three distinct concepts: sex, gender, and sexual orientation. These concepts play an important role in how every person lives and experiences their life. The South African Constitution, Section 9(3), specifically states that it is unfair to discriminate against anyone on the grounds of their gender, sex, or sexual orientation. These concepts are also particularly important in understanding sex work and in engaging with sex workers.

Section 9(3) of the South African Constitution says: “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”.

3.2 Learning Objectives

After completing this section, you should be able to do the following:

- Understand the difference between gender and biological sex.
- Describe how, according to the law, police should treat people who are gay, lesbian, bisexual or transgender.

3.3 Sex

Sex is a concept according to which people are classified in terms of their biological characteristics. Anatomically, most women have breasts, a vagina,

uterus and ovaries. Most men have a penis and testes and do not have enlarged breast tissue. The general body shape of most men is more masculine than that of most women with men having broader shoulders and more muscle tissue.

The manner in which a person's body develops is influenced by the levels of hormones that are secreted in the person's body from the time that the foetus starts growing in the mother's womb until adulthood, as well as by the person's genes.

Most males have XY genes and most females have XX genes. These genes are called the sex genes because they usually determine the person's sex. However, it does sometimes happen that there is a discrepancy between a person's genes and anatomy, which can be caused by hormonal imbalances, the inability of the person's body to react to the hormones, or non-typical genetic patterns.

As a result of genetic and hormonal variations, and for other reasons, many people have bodies that do not develop in the typical male or female manner. Not only the general body shape but also the sexual organs of some people are to some degree not typically male or female and there is some degree of ambiguity. People whose bodies are ambiguous and do not follow the typical male or female pattern are called intersex people. This is a completely normal variation of human anatomy.

There is no legal definition of "sex" in South African law.

3.4 Gender

Gender refers to the common characteristics or traits that a society associates with a biological sex (i.e. what we expect a man to be like or what we expect a woman to be like). Unlike sex, which is a biological concept, gender is a social concept, so ideas about men and women vary from one society to another. That means that gender is not determined by "nature," but rather by the standards and culture of a specific community.

Exercise 11: Who decides what a man is and what a woman is?

List the characteristics you associate with being a man, including the types of jobs men typically have. Then list the characteristics you associate with being a woman, including the types of jobs women typically have.

Men:
Women:

Please answer the following questions:

- Was your list easy or hard to write? Why?
- Can you think of examples of women who have some of the traits or jobs you listed under “men”? Does that mean these women are men?
- Can you think of examples of men who have some of the traits or jobs you listed under “women”? Does that mean these men are women?
- Can you think of traits or characteristics that you have that are similar to traits of someone of the opposite gender from your list above?
- How was it decided which jobs/characteristics men should have and which jobs/characteristics women should have? Are those traits permanent?

Gender Identity describes how people perceive their own internal sense of maleness or femaleness. It is also the manner in which people project themselves in order for other people to perceive their gender.

A person’s gender identity is not always the same as their biological sex. A person who is anatomically male, for example, may identify as female and project themselves as female in the way that they act and dress. A person whose gender is different from their anatomical sex is called a transgender person.

Some transgender people are uncomfortable with their bodies and may decide to have their bodies surgically altered in order for their anatomy to reflect their gender identity. People who have undergone sex re-assignment surgery are called transsexual people.

There is no definition of “gender” in South African law.

Eyona is a 24-year-old black transgender woman from the Eastern Cape of South Africa. She was assigned male at birth and grew up with a single mom in the rural part of the province. Fellow students harassed and sometimes violently assaulted Eyona in high school. She played netball on the girls’ team until she was kicked off the team for not being “a real woman”. Eyona dropped out of high school in grade 10. After a year at home, she moved to East London to stay with a friend. With no income and little education, Eyona turned to sex work. Eyona was arrested numerous times

while working as a sex worker. Police, perceiving her as male, locked her up with men. She was raped by male detainees numerous times. It was in police custody that she contracted HIV. At some point, her CD4 count dropped very low and she needed to go onto antiretroviral treatment. The nurses kept referring to Eyona as Mr. despite her clearly identifying as a woman. Eyona felt this violated her sense of gender identity. Many times she has sought medical care for minor ailments related to HIV from the primary healthcare clinic in her area but has ended up leaving the facility because of the staring, laughing and humiliation she faced from healthcare workers and other patients in the waiting room.

3.5 Sexual Orientation

A person's sexual orientation refers to who they are sexually and romantically attracted to.

Heterosexual people are people who are sexually and romantically attracted to people of the opposite sex.

Homosexual people are people who are sexually and romantically attracted to people of the same sex. Homosexual people are also called gay people and homosexual women are also called lesbians.

Bisexual people are people who are sexually and romantically attracted to both sexes.

Asexual people are people who are not sexually attracted to anybody and who do not engage in sexual activities with other people.

3.6 Managing sexuality in law enforcement

Although there are no definitions for "sex" and "gender" in South African law, the following definitions are contained in the Alteration of Sex Description and Sex Status Act No. 49 of 2003:

"Sexual characteristics" means primary or secondary sexual characteristics or gender characteristics. "Primary sexual characteristics" means the form of the genitalia at birth; "secondary sexual characteristics" means those which develop throughout life and which are dependant upon the hormonal base of the individual person. (*Please see Appendix 1 for additional information on how to apply the Alteration of Sex Description and Sex Status Act*).

In terms of South African law, each person needs to be classified as either male or female. At birth, this is done in terms of the person's anatomical sex. Intersex infants, who are born with ambiguous genitalia, should be classified as either male or female based on the information available and a best guess as to which gender the person is likely to identify with as he or she grows up.

Intersex, transgender and transsexual people are able to officially change their classification in accordance with the terms of the Alteration of Sex Description Act. There is no requirement for people to undergo surgery in order for their classification to be changed, although some people choose to undergo sex re-assignment surgery.

While enforcing the law, it is important to keep the following facts in mind:

1. Being lesbian, gay, bisexual, transgender or intersex is not a crime. In fact, the South African Constitution explicitly protects the rights of LGBTI individuals.
2. LGBTI people are often targeted by people with homophobic feelings and beliefs and may be the victims of hate-based violence, i.e. anti-gay hate crimes. Police officers and other law enforcement personnel have an obligation to protect LGBTI people from hate crimes and can play an important role in maintaining community safety.
3. It is very important for police to treat people with respect, including by using the correct pronouns and names to refer to them. Officers can model ways to politely ask how a person would prefer to be addressed, for example, "Would you prefer to be listed in my report as Ms. Smith or Mr. Smith?" or "Are you more comfortable with male or female pronouns?"
4. It is not appropriate or accurate to assume that all LGBTI people are sex workers. In addition, transgender people should not be detained just to see if they are sex workers. Officers should also not assume that all male sex workers identify as gay.
5. Transgender people should not be asked about their surgical or genital status unless it is absolutely necessary in order to accurately complete a report of a crime; for example, if the person was sexually assaulted.
6. If a transgender person has been arrested, that person's safety should be the number one priority in determining his or her placement in

detention. Transgender people in detention are at risk for sexual assault and bias-motivated violence, so steps should be taken to mitigate this risk.

7. LGBTI people may be fearful or distrustful of law enforcement personnel because of past experiences of abuse or discrimination or because of community perceptions of police. These negative attitudes toward police can be overcome when police treat people fairly and respectfully and demonstrate through their actions that they are there to protect everyone in the community.

3.7 Summary and Key Messages

- Human sexuality can be broken down into three distinct concepts: sex, gender, and sexual orientation.
- Sex is determined by the biology of the person, while a person can decide what their gender will be, i.e. whether they identify as male or female.
- Being a lesbian, gay, bisexual or transgender person is not a crime.
- All people should be treated with dignity and respect.
- If an officer arrests a transgender person and detains the person in a police cell, the officer should be mindful that transgender people in detention are at risk for sexual assault and bias-motivated violence, so the officer should take steps to mitigate this risk.

Section 4: Sex Work and the Law

4.1 Section Introduction

Sex work is currently criminalised in South Africa. It is an offence to sell sex, buy sex, and to engage in certain sex work related behaviour. Many of the laws are challenging to enforce and can complicate police interactions with sex workers. The criminalisation of sex work also has a significant impact on the lives of sex workers. Unfortunately, these laws can be conducive to the violation of sex worker's human rights, including their right to freedom from violence, equality before the law, access to justice, health, fair labour

practices, privacy, dignity, the right to not be detained without a trial, and the right not to be tortured or treated in a cruel and degrading manner. Through exploring the laws against sex work and the laws that protect the rights of all people, including sex workers, you will gain a better understanding of the legal framework around sex work, your legal obligations, and how these laws should be shaping your interactions with sex workers.

4.2 Learning Objectives

After completing this section, you should be able to do the following:

- Describe the sections of the Constitution that relate to sex worker rights.
- Understand the responsibility of police and other law enforcement to protect the rights of sex workers.
- List the laws that criminalise sex work.

4.3 Legal Rights of Sex Workers

Sex workers, like all people living in South Africa, are entitled to universal human rights and are granted numerous constitutional rights. The Constitution is the supreme law of South Africa. This means that the rights that are granted by the Constitution must be respected and abided by everyone, including government officials and police. People who break laws still retain their rights under the Constitution. Therefore, even though sex work is illegal in South Africa, a sex worker's constitutional and human rights should always be upheld.

How does the Constitution support sex workers?

Sex workers are entitled to enjoy the constitutional rights listed in Chapter 2 of the Bill of Rights, which outlines the fundamental human rights that must be respected, protected, promoted, and fulfilled. Any law or action that conflicts with these rights and other rights in the Constitution is unlawful and invalid.

When engaging with sex workers, the following sections of the Bill of Rights should be particularly considered:

Section 9 - Equality

“Everyone is equal before the law and has the right to equal protection and benefit of the law”.

The right to equal protection under the law means that when sex workers experience violence or abuse, report a crime, or file a complaint, they are entitled to receive the same legal protection and treatment as any other person. It is unconstitutional to deny sex workers protection and assistance simply because they are sex workers.

“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”

The sex worker community in South Africa is very diverse. It includes men and women of all races, nationalities, and ages. When engaging with sex workers, it is unconstitutional to discriminate against sex workers based on any of these characteristics.

Section 10 - Human Dignity

“Everyone has inherent dignity and the right to have their dignity respected and protected”.

As discussed above, some people hold negative opinions about sex workers. Regardless of these opinions and beliefs, officers responsible for upholding the law are obligated to respect a sex worker’s dignity and take steps to protect it. The Constitution acknowledges and supports the dignity of all people, including sex workers.

Section 12 - Freedom and Security of the Person

“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; not to be detained without trial; to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way”.

It is unlawful to abuse or punish sex workers when engaging with them. If an arrest is being made, sex workers must not be treated cruelly.

Section 14 - Privacy

“Everyone has the right to privacy, which includes the rights not to have their person or home searched; their property searched; their possessions seized; or the privacy of their communications infringed”.

Sex workers are entitled to privacy and respect for their property. Sex workers have reported the seizure of their possessions, including condoms, by police and other officials. Condoms are an important means for sex workers to protect themselves against HIV and other STIs. Possession of condoms is not sufficient evidence that someone is engaging in sex work. It is unconstitutional to confiscate them or any other possessions of sex workers without due cause.

Section 35 - Arrested, Detained and Accused Persons

“Everyone who is arrested for allegedly committing an offence has the right ...to be brought to court as soon as reasonably possible, but not later than 48 hours after the arrest; the right to be informed of the reason for their arrest and detention; and to be released from detention if the interest of justice permits”.

Exercise 12

Frank is a male sex worker who works on the docks at the Cape Town Harbour. One Saturday night, there was a police raid of the docks and Frank was arrested for allegedly doing sex work on the docks. During the arrest, the police sprained Frank's arm and sprayed pepper spray in his face. The police found two condoms in Frank's wallet and decided they will use this as evidence against him. On the news that Frank was arrested, Simphiwe, who is a paralegal at a sex worker organisation in Cape Town, made his way down to the Central Police Station and requested to see Frank. Simphiwe spoke to a police sergeant who (1) refused to let him see Frank and (2) refused to identify himself to Simphiwe. Frank was released three days after the arrest with a fine of two hundred rand (R 200).

- Do you think the raid and arrest of Frank was lawful?
- If any part of it was unlawful, what were the unlawful moments?
- Which legal acts are relevant to Frank's case? Why?

How are sex workers supported by regional and international treaties?

There are many regional and international legal instruments that highlight South Africa's obligation to uphold the rights of all people, and its particular commitment to protect women from violence. The legal instruments

guarantee that all people have the rights to be free from exploitation, to equality, dignity, health, and work under equitable and satisfactory circumstances. (*Please see Appendix 4 for details about regional and international legal instruments on human rights*).

4.4 Laws that Criminalise Sex Work in South Africa

There are a number of South African laws that address sex work. Many of the laws are complicated to enforce, but police are required to do so. In addition to enforcing these laws, police and other law enforcement officers are also obligated to protect the constitutional and human rights of sex workers that were discussed above.

It is important to have a strong understanding of the laws that pertain to sex work in order to effectively enforce them while also protecting the constitutional and human rights of sex workers. In particular, the conduct of an accused sex worker must qualify as an offence as defined by the law before a police officer has authority to carry out an arrest. Notably, municipal by-laws should not be used to arrest sex workers if they have not committed the offence in question.

The relevant laws criminalising sex work in South Africa include:

- The Sexual Offences Act 23 of 1957
- Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
- Municipal by-laws
- Business Act

(*Please see Appendix 3 for details regarding these laws and information about how offences are properly defined*).

4.5 Summary and Key Messages

- Sex workers are entitled to the same constitutional and human rights as everyone else.
- Police and other law enforcement officers are obligated to uphold the Constitution and, in so doing, protect the rights of sex workers.

- Sex workers are entitled to receive the full protection and benefit of the law and to not be discriminated against.
- Sex workers have the right to have their dignity respected and protected.
- It is unconstitutional to arrest a sex worker without due cause and it is unlawful to abuse or torture a sex worker.
- The possession of condoms is not sufficient evidence to charge a sex worker with an offence.
- Condoms should not be confiscated because they provide protection from HIV and STIs.
- Sex workers have the right to be informed about the reason for their arrest and to be brought to court no later than 48 hours after the arrest.
- It is an offence to sell sex, buy sex, and to engage in certain sex work related behaviour.
- Various laws are used to criminalise sex work, including the Sexual Offences Act 23 of 1957, Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, municipal by-laws, and the Business Act.
- Municipal by-laws should not be used to arrest sex workers if they have not committed the offence in question.

Section 5: Addressing Violations and Supporting Sex Worker Rights

5.1 Section Introduction

Every South African is granted certain rights by the Constitution, including the right to dignity, to freedom from violence, to bodily integrity, and to choose one's profession. Unfortunately, for many sex workers these rights are violated daily. Reports from many cities throughout South Africa show that sex workers experience significant harassment, not only by clients or managers, but also by the police. Police harassment and abuse of

sex workers has been well-documented and includes arrest without just cause, rape, verbal abuse, and physical abuse. When sex workers attempt to pursue their right to justice to address these violations, many are simply laughed at in police stations and refused any help.³⁴

5.2 Learning Objectives

After completing this section, you should be able to do the following:

- Understand the ways in which sex workers are affected by South African law.
- Describe how to properly enforce municipal by-laws and the criminal procedures act.
- Explain how to conduct searches of sex workers and seizing of their articles.
- Describe the best practices for enforcing the law so as not to violate the rights of sex workers.

5.3 Protecting the rights and safety of sex workers

How can police officers protect sex workers from violence?

Sex workers across South Africa can have varied relationships with managers. Although many managers can be abusive and controlling, it is important to note that not all managers or pimps are bad. They can also play a positive role, assisting sex workers to get medical care, supporting the sex workers in getting clients, as well as providing security and protection from violence. However, it is also the case that managers will often organise clients for the sex worker and negotiate rates and actions without the sex worker's consent.³⁵ Police should keep the complexity of these relationships in mind when interacting with sex workers. Should abuse be suspected it is important to question a sex worker alone without his or her manager present. Conditions of brothels can also vary greatly from place to place and an assessment of the situation should be made in each case.

If a sex worker reports rape, what should happen?

An officer needs to take the matter seriously and assist any sex worker who reports rape, without prejudice. The officer should ensure that she feels safe and at ease. Then the officer should ensure the following steps are taken in accordance with the law:

1. Assist her with the complaint. Take her statement in the language that she understands. Double-check the facts in the statement that she has given you. Provide her with a copy of the statement.
2. Issue her with a J88 form and transport her to the doctor for the physical examination.
3. Give her the name and details of the investigating officer and provide her with a case number.
4. Regularly report on the progress of the investigation.

How can police protect the health and well-being of sex workers?

The provisions of the Constitution dictate that when sex workers are detained they have a right to access medication. This includes access to ARV medication. It is important that police officers assist detainees to gain access to their medication, so that they do not fall ill and become susceptible to infections. A police officer should not confiscate condoms from sex workers. This increases sex workers' vulnerability to infection and jeopardises public health.

What are the rights of arrested, detained, or accused sex workers?

Everyone who is detained, including convicted prisoners, has the right to conditions of detention consistent with the right to human dignity.

Based on Section 35(1) of the Constitution, when a police officer arrests someone:

1. The officer must inform the person that he or she is under arrest and why.
2. The police officer must inform the person being arrested of his/her right to remain silent and the consequences of not remaining silent.
3. The person must be given the opportunity to appear in court within 48 hours of his/her arrest.
4. The person must be released on bail, either police or court bail, if the interests of justice permit.

Based on Section 35(2) of the Constitution, police officers should be aware that:

1. Sex workers must be taken to the police station right away, as soon as possible.
2. When sex workers are detained, they must be informed of the reason for the detention.
3. A detained sex worker must be allowed to make a phone call, even to a cell phone.
4. Detained sex workers must get medication, if they need it.
5. The cell that sex workers are kept in must be clean.
6. Police station personnel must provide food and water to detained sex workers.

The rights of those arrested

The Alteration of Sex Description and Sex Status Act, 2003 spells out the specific requirements regarding how police must handle arrests and the rights of those arrested.³⁶

Appendix 4

Section 35(1): “Everyone who is arrested for allegedly committing an offence has the right:

- (a) To remain silent;
- (b) To be informed promptly of the right to remain silent; and the consequences of not remaining silent;
- (c) Not to be compelled to make a confession or admission that could be used as evidence;
- (d) To be brought before a court within 48 hours....to be released from detention if the interests of justice permit.

Section 35(2): “Everyone who is detained, including every sentenced prisoner, has the right –

- (a) To be informed promptly of the reasons for being detained;
- (b) To choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
- (c) To have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (d) To challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;

- (e) To conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (f) to communicate with, and be visited by, that person's –
 - (i) spouse or partner;
 - (ii) next of kin;
 - (iii) chosen religious counsellor; and
 - (iv) chosen medical practitioner”.

When and how should a police officer interact with sex workers?

Officers should adhere to the following guidelines when interacting with sex workers:

1. A police officer should not arrest a sex worker without just cause.
2. A police officer should not initiate contact with a sex worker who is not violating the law; being a “known” sex worker does not qualify as being engaged in a violation of the law.
3. Police officers should treat sex workers and transgender people as they would any other citizen.
4. Police officers should not insult sex workers or transgender persons, and should use words and actions that communicate respect.
5. If a sex worker or transgender person is in custody, his or her HIV status should be kept confidential, including when a detainee tells an officer that he or she needs medication, for instance if the detainee is being held over the weekend.
6. Officers should take all necessary steps to use only the minimum force necessary to perform their duties. In all cases, police must refrain from taking any action that constitutes cruel, inhuman or degrading treatment of a person. The use of excessive force or police actions aimed at punishing detainees or people they interact with and causing them harm can amount to cruel, inhuman or degrading treatment or torture; such acts are illegal.
7. Police must treat a sex worker politely when a sex worker comes to a police station and expresses the wish to lodge a complaint against police

officers for wrongdoing; the sex worker's complaint must be registered and processed as the complaint of any other person would be.

Further, with regards to the treatment of transgender sex workers, Standing Order (G) 341 and Standing Order (G) 361, as well as section 9.3 of the Standard Operating Procedure apply. Section 9.3 of the SOP relating to the detention of transgender prisoners provides:

1. Officers must always act in a professional manner when dealing with transgender people.
2. Officers should refrain from ridiculing or using abusive or insulting language when interacting with transgender people and should refrain from revealing a person's sexual orientation to other detainees.
3. Officers should refrain from using unnecessary force, including the use of pepper spray, when arresting transgender people. Only minimum force should be used which is reasonable in the circumstances as stipulated in Section 49 of the Criminal Procedure Act and Section 13 of the South African Police Service Act.
4. Officers must refrain from victimising or discriminating against transgender people because of their gender identity.
5. Arrested transgender persons are to be transported in terms of SOP (G) 341 par 8(7), which states:

“(1) In terms of section 50(1) of the Criminal Procedure Act, 1977, a person who has been arrested must as soon as possible be brought to – (a) a police station, or (b) in the case of an arrest by warrant, to the place stipulated in the warrant. (2) The member transporting the arrested person must drive carefully and must take the safest and shortest possible route to the police station or any other place specified in the warrant”.

6. Officers must refrain from removing a person's wigs and prosthetics, unless the removal is required for purposes of searching the person. Any removed item should be returned to the person unless it cannot be returned for their own safety during the period of detention or in the event of the items being required for purposes of evidence, as stated in terms of SOP (G) 361 par 11(4):

- “(a) Articles of clothing may only be seized if there are reasonable grounds to believe that –
- (i) the person in custody may use such articles to cause physical injury to himself or herself or any person (for example his or her belt), damage property or assist him or her to escape, or
 - (ii) they may afford evidence of the commission of an offence”.

What is the standard operating procedure for engaging transgender individuals?

In the Western Cape, SAPS introduced a Standard Operating Procedure (SOP) regarding the detention of transgender sex workers. The purpose of the SOP is to provide guidance to SAPS members about how to treat transgender persons who are in conflict with the law with dignity as stipulated in the Constitution. The objectives of the SOP are:

1. To ensure the safety of transgender people who are in conflict with the law and to ensure that they are treated with dignity and respect by members of SAPS.
2. To ensure that command and control monitoring mechanisms are in place in terms of compliance to directives on the treatment and detention of transgender people.
3. To provide that all Cluster Commanders designate at least one detention facility of transgender prisoners within the cluster in order to ensure that transgender people are detained separately.
4. To enhance partnership with stakeholders.

Exercise 13

Pretty is a street based sex worker. One evening, just after she got out of a client’s car, Pretty was picked up by police, taken to the police station, and locked up without any explanation for her arrest. She was not charged under any law. Her situation was made more complicated by the fact that Pretty is HIV positive with a fairly low CD4 count (indicating compromised immunity), but she did not have access to her ARVs while she was locked up. When she requested her medication, an officer at the station instead sprayed her with pepper spray. While in detention, Pretty was searched for evidence that she had been doing sex work. Since there was no female officer on duty, a male constable searched her. Nothing incriminating was found on her. Police kept Pretty in detention at the station for two days and then released her with a warning not to “prostitute” herself again.

- Do you think that police violated Pretty’s human rights? What is the basis for your opinion?
- Which laws, if any, do you think were violated? Which specific provisions of the law?
- What do you think can be done differently in order to ensure that sex workers like Pretty are better protected by the laws of South Africa in such situations?

5.4 Enforcing the law

Can a sex worker be arrested if he or she is not working but is known to be a sex worker?

No, if a person has not been caught in the act of breaking a law and there is not likely sufficient evidence of a violation to support prosecution, then no arrest should be made. In the case *SWEAT v Minister of Safety and Security*, the High Court stated that, “Having regard to the aim behind arresting a person, the court found that the arrest of sex workers where the arresting officers knew that no prosecutions would result was unlawful”.

There must be a high degree of probability that an arrest will result in prosecution of the sex worker for the arrest to be lawful. Even if the sex worker is known to the police, it would not be sufficient to arrest him or her for being a sex worker; for instance, if someone known to the officer to be a sex worker is walking down the road, that is not a criminal act, there needs to be evidence that corroborates the accusation that he or she is a sex worker, and that evidence must be sufficient to support a prosecution. Failing this, an arrest would be unlawful and a claim for unlawful arrest and detention can be brought against the Minister of Safety and Security on the basis of the actions of the police officers. As a result of the above-mentioned case, the High Court issued an interdict “preventing police officers from arresting sex workers within the relevant area, unless with the intention of bringing them before a court of law”.

Section 20(1)(aA) of the Sexual Offences Act of 1957 effectively prohibits the core function of the sex worker’s work, selling sex, but it does not penalise “being” a prostitute. A person cannot be arrested for being known to the police as a sex worker – if you carry out an arrest without a warrant, there has to be at least a reasonable suspicion that he or she had engaged in sexual intercourse or had performed an indecent act for reward (at a specific time with a specific person).

Further, to apply Section 20 of the Sexual Offences Act, there must be reasonable suspicion that a person engaged in sexual intercourse or performed

an indecent act for reward. In order for a person to be considered guilty of contravening this section a person must have unlawful carnal intercourse, which is defined as sexual intercourse other than that between a husband and wife, and there must have been a reward. The reward could be financial or in kind. This act of unlawful carnal intercourse must have been intentional.

Can sex workers be arrested and charged for prostitution if they have condoms in their possession?

No, possession of condoms will not satisfy the elements of the offence required to conduct a successful prosecution. Nonetheless, many sex workers report that police confiscate and destroy their condoms, that police have cited possession of condoms as justification to detain or arrest people on charges related to sex work, and that police harass and abuse sex workers who carry condoms and use the threat of arrest on the grounds of condom possession to extort and exploit them. In addition, there are reports that police harass and arrest outreach workers, limiting their ability to distribute condoms and educate sex workers about safer sex practices.

Police treatment of condoms as contraband forces sex workers to make a choice between safeguarding their health and staying safe from police harassment or detention. By hindering sex workers' ability to carry and use condoms, police actions increase sex workers' risk of exposure to HIV and other sexually transmitted infections, as well as unwanted pregnancies, compromising sex workers' health and the health of their sexual partners. Sex workers whose condoms are taken by police are more likely to have unprotected sex and to be at risk for HIV.

Police actions, such as confiscation and destruction of sex workers' condoms and reference to condom possession to justify detention, arrest and extortion, make sex workers afraid to carry condoms. Sex workers express fear about being "caught" with condoms by police and the risk that police will use their possession of condoms as a pretext to take them into custody or demand a bribe.

Police officers should remember that carrying condoms itself is not an offence.

Can police use pepper spray on sex workers?

Section 49 of the Criminal Procedure Act says:

- Police officers should try to control a situation by using the minimum amount of force necessary.

- Police officers must not use pepper spray if they are able to achieve compliance through less violent means

Can police use force when arresting a sex worker?

Section 49 of the Criminal Procedure Act says:

1. If a suspect resists and/or flees an officer's attempted arrest and the arrest cannot be made without force, the officer can use the degree of force reasonably necessary and proportional in the circumstances to overcome the suspect's resistance or to prevent him or her from fleeing.
2. The use of deadly force is only justified if the officer has reasonable grounds to believe that:
 - a) The use of deadly force is necessary for the officer to protect himself or herself or another person from imminent or future death or grievous bodily harm;
 - b) There is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the officer delays;
 - c) The offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

What do standing orders say about handling people in custody?

Standing orders for officers say:

1. Police officers must not torture sex workers in custody.
2. Police officers should not punish sex workers by withholding food, water and/or medical attention.
3. Police officers have a duty to ensure that people are safe when they are detained.
4. Officers must write down any injuries to detained persons in their official books (Standing Order (G) 341). All steps taken with regard to the obtaining of medical treatment for a person in custody as provided for in Standing Order (G) 349, including the steps taken to allow such person to consult with a medical practitioner of his or her choice, must be fully recorded in the Occurrence Book.
5. If someone is injured, a police officer has a legal and constitutional duty to ensure that the person receives medical attention (Standing Order (G) 349.2).

6. Police cells must afford detainees a sufficient amount of light and fresh air (Standing Order (G) 361).
7. Police cells must be clean (Standing Order (G) 361.2 (d)).
8. Officers must take blankets, mats and other bedding out during fine weather to be aired thoroughly. Folded articles must be opened up and inspected closely before being returned to the cells. Standing Order (G) 361.2 (e).

In addition to Standing Order (G) 341 and Standing Order (G) 361, section 9.2 of the SOP relating to the Detention of Transgender Prisoners, mentioned above, states that, "All arrested persons must be detained in terms of SO (G) 361; however the following additional principles apply in respect of transgender persons:

- a) all transgender persons should be detained in separate detention facilities at the police station where the person was arrested;
- b) in the event of a separate detention facility not being available at the police station where the arrest was effected the transgender person must be transported and be detained at the identified detention facility within the cluster;
- c) an arrested transgender person must be recorded in the gender column of the Custody Register (SAPS 14) with a red pen as 'T'".

How should police conduct searches and seizures with sex workers?

Standing orders for officers say:

1. Police officers must only seize articles of clothing if there are reasonable grounds to believe that the person in custody may use such articles to cause physical injury to her/himself or any other person, damage property or assist escape (Standing Order (G) 361). Police officers may also seize articles if it will be evidence in the commission of an offence – Standing Order 361 (G) (4) (a) (i) and (ii).
2. Police officers must tell the person in custody why an article is being seized (Standing Order 361 (G) (4) (b)).
3. When an article of clothing is seized in terms of Standing Order 361 (G) (4) (a), the community service center commander must ensure that the person in custody is issued with suitable replacement clothing. Standing Order 361 (G) (4) (c).
4. A search of a person in custody must be conducted with strict regard to decency (Standing Order 361 (G) (11) (1) (c)).

5. A person in custody can only be searched by a person of the same gender. If no police officer of the same gender is available, the search must be conducted by any person of the same gender designated for that purpose by a police officer (Standing Order (G) 361, Clause 11 (c).
6. Intimate searches can only be conducted by a registered medical practitioner/nurse or if the station commissioner authorises (Standing Order 361 (G) (11) (2) (b).
7. The station commissioner can only authorise police officers to conduct an intimate search if there are reasonable grounds to believe the person in custody is concealing a dangerous weapon or is concealing an article which may afford evidence of the commission of an offence (Standing Order 361 (G) (11) (2) (a).

With regards to the search of transgender sex workers, in addition to Standing Order (G) 341 and Standing Order (G) 361, section 9.1 of the SOP relating to detention of transgender prisoners mentioned above states that, "All searches must be conducted in terms of Section 29 of the Criminal Procedure Act 51/1977 with strict regard to decency.

- a) To determine from the transgender detainee in a sensitive manner what is his/her sex and gender;
- b) the member must explain to the detainee that a biological male person will be searched by a male police officer and a biological female person will be searched by a female police officer;
- c) the member will proceed to conduct the search in a decent manner having due regard for the status of the person;
- d) transgender persons should not be subjected to unnecessary undressing and that in the event a transgender person needs to be subjected to an intimate search the provisions of SOP (G) 361 par 11(2) [apply] that states that : '(a) an intimate search may only be authorized by a Station Commander, if he or she has reasonable grounds to believe-
 - (i) *that a person in custody has concealed a dangerous weapon on his or her person;*
 - (ii) *that such a person has concealed on his or her person an article which may afford evidence of the commission of an offence;* or
 - (iii) *that such person has concealed on his or her person an article which may be used in attempt to effect an escape. (b) an intimate search must be conducted by a registered medical practitioner or a registered nurse"*.

When and how should municipal by-laws be implemented?

The municipal by-laws set out the steps officers should take when a sex worker allegedly violates one of the by-laws and clarify procedures to follow related to arrest for an alleged violation. The by-laws say:

1. The appropriate response to a violation would be for the officer to give such person a written notice to stop the offending activity. Only if he or she fails to adhere to the terms of the notice can the person be fined or given a notice to appear in court.
2. The remedy that is available to a person who has been fined is that he or she will have an opportunity to make representations if he or she feels that such fine was incorrectly levied against him or her, similar to the current system allowed for traffic fines.
3. Where a fine has not been paid after it becomes due, arrest would be allowed only as a last resort, if necessary to be able to secure a person's attendance in court. In most cases a summons would be sufficient to ensure attendance in court.

Exercise 14: Identifying and Upholding Rights

Please read the story of Ellie, a sex worker, and answer the questions that follow.

It is 1:30 am and a transgender woman named Ellie is walking home from the bar to her friends' house. She does not live in [...], but went to the pub there. Because she was at a pub partying, she is wearing a short skirt and revealing top. She is a transgender female sex worker who often works in the [...] area. Two male police officers in a police van see her walking along the road. They pull up next to her and the driver tells her to get into the van. She asks the officer why she should get into the van. The officer tells her to "shut up", stop asking him questions, and get in. She tells him that what he is doing is unfair. He grabs her by the arm and tries to force her into the van. Ellie struggles with him, and then he punches her and pushes her into the van. During the struggle Ellie's top gets torn. The police officers drive around with her for about 30-60 minutes looking for other sex workers. They arrest 5 other women. Ellie and the other women are talking loudly in the van, because they are upset that they were just rounded up. The driver stops the car, gets out and pepper sprays into the back of the van. When they get to the police station. Ellie is called aside. The police officers mock the way she is dressed, one police officer says, "why are you wearing a skirt, where is your pie!"³⁷ Ellie feels embarrassed and does not know what to say. A police officer hands her a notice of rights and he tells her to sign it. He does not explain it to her and she is very confused about what she signed. She asks to make a phone call to call her friend to bring her ARVs because it is Thursday night and she is worried about when she will be released. The police officer says that she cannot make cell phone calls and sends her to the cell. Ellie is placed in a dirty cell. The toilet is dirty and has faeces in it. The toilet does not work.

The cell, blankets and mattress are all wet. She wants to go home and asks to speak to the station commander to be released on police bail. She gave the arresting officer her permanent address, and explained that she will come to court. They did a background check and she has no previous convictions or pending warrants. The police officer tells her that there is no one on duty to assist her and she must not ask any more questions. While she is detained, Ellie hears the police officers making jokes about the way she is dressed, and the officer she spoke to about her ARV's tells the others. She is embarrassed. Throughout her detention she is not informed of the reasons for her being taken into custody and held there. On Friday morning an officer comes to get her and takes her to a room where pictures are taken of her. She is detained until Monday morning, and only receives food and water on Saturday and Sunday. On Monday morning the police release her from detention and she is not taken to court.

- Please describe which of Ellie's rights were violated and how.
- Explain what the officers in this case could have done differently at various moments in order to uphold Ellie's rights.

5.5 Summary and Key Messages

- Sex workers' human rights are often affected by police officers who implement the law incorrectly, particularly when officers fail to see sex workers as people with the same human rights as other citizens. Often when sex workers are arrested, they are not informed of the reasons for their arrest, the arrest is used as a form of punishment or harassment, they are assaulted, detained for long periods, and receive fines when they have not committed the alleged offence.
- Police officers should always be mindful of the ways in which to enforce the law appropriately. Even when an officer knows a person is a sex worker, that does not mean that the officer can arrest her without evidence to prove that she has committed an offence.
- Police officers should conduct searches of sex workers in private and in a way that respects the sex workers' dignity.
- The best practice for policing sex work is for an officer to treat sex workers with respect and dignity, to ensure that he or she has sufficient evidence before carrying out an arrest, and not to use arrest or detention as a form of punishment or harassment.

Exercise 15

Using the Criminal Procedure Act and other legal provisions as background material, talk with colleagues in your group and see if you can come up with ideas for what you will do differently in order to ensure that the rights of sex workers are upheld. Write down your ideas about what constitute the best practices for police when dealing with sex workers.

Conclusion

Human rights are fundamental rights and freedoms that are enshrined in our country's Constitution and that all people are entitled to.

In the Code of Ethics of the South African Police Service, there are 5 principles. The second of the principles is respect for diversity, which states:

Application: *Employees of the SAPS acknowledge the diversity of the people of our country and treat every person with equal respect.*

Explanation: *In performing our duties, we will always show respect for the cultural and other diversities in the community. We will treat every person with equal respect and honour their rights as inhabitants of South Africa. We will not unlawfully discriminate against any person.*

Whatever SAPS members may feel about sex workers, sex workers are human beings and, like everyone else, they have inherent dignity and the right to have their dignity respected.

Concluding Message

As a final exercise, consider the reasons you became a police officer. By joining SAPS you took on the responsibility to enforce the law and protect people from harm. Consider how the things you have learned today about sex workers can be applied in your work and made part of your commitment to law enforcement.

Police officers witness and face situations that many others in society never see or even know about. During the course of your work you come into contact with people who are rich and poor, people of every race and ethnicity, people of different gender identities and gender expressions, people of different sexual orientations, and people who engage in many different kinds of work. Understanding these differences, expecting them, and tolerating

them will make you a more effective officer, better able to connect to the community, solve crime, and protect those who need your help.

In places where police have begun to engage with sex workers in increasingly respectful ways, they have found that they are also increasingly met with trust and cooperation from the sex worker community. The benefits to all are clear and the potential for more harmonious police and sex worker relations is there.

Thank you for taking this first step with us.

Post-Course Assessment

Please answer the questions below. Remember, there are no right or wrong answers and your responses are anonymous. Please provide your honest opinions.

For each question below, please circle the number that represents your opinion. (PLEASE NOTE: 1 is STRONGLY AGREE; 2 is AGREE; 3 is NO OPINION; 4 is DISAGREE; and 5 is STRONGLY DISAGREE with the statement):

The workshop was relevant to my work.

1	strongly agree	2	agree	3	no opinion
4	disagree	5	strongly disagree		

I feel confident that I can apply what I have learned in my work.

1	strongly agree	2	agree	3	no opinion
4	disagree	5	strongly disagree		

I feel that I am more able to identify a transgender person now than before the workshop.

1	strongly agree	2	agree	3	no opinion
4	disagree	5	strongly disagree		

I feel that I understand better what my role is in the protection of both the rights of sex workers and transgender people.

1	strongly agree	2	agree	3	no opinion
4	disagree	5	strongly disagree		

My opinion of sex workers has changed.

1	strongly agree	2	agree	3	no opinion
4	disagree	5	strongly disagree		

I would like more training on (please circle all that are relevant):

Transgender issues	Sex work	Human rights
The law and sex work	Nothing else	

Please use this space to write down anything else you would like to add:

Endnotes

- 1 Benjamin Brown, Zoe Duby, Linda-Gail Bekker, *Sex Workers: An Introductory Manual for Health Care Workers in South Africa* (Desmond Tutu HIV Foundation, 2012), 6, 14.
- 2 Brown, Duby, and Bekker, 6.
- 3 Brown, Duby, and Bekker, 27.
- 4 Brown, Duby, and Bekker, 7.
- 5 Corinne Goldenberg, Sarah Gunther, Anne Lieberman, Jesse Wrenn, Gitta Zomorodi, *Sex Worker Rights: (almost) Everything You Wanted to Know But Were Afraid to Ask* (American Jewish World Service, 2013), 4.
- 6 Brown, Duby, and Bekker, 8.
- 7 The South African National Aids Council (SANAC), *National Sex Workers Report: Estimating the Size of the Sex Worker Population in South Africa, 2013*. http://www.sanac.org.za/resources/cat_view/7-publications/9-reports
- 8 Brown, Duby, and Bekker, 14 -15.
- 9 Brown, Duby, and Bekker, 15.
- 10 Brown, Duby, and Bekker, 15.
- 11 Brown, Duby, and Bekker, 15.
- 12 Brown, Duby, and Bekker, 15 -16.
- 13 Brown, Duby, and Bekker, 14.
- 14 Brown, Duby, and Bekker, 17.
- 15 Brown, Duby, and Bekker, 16
- 16 Brown, Duby, and Bekker, 18.
- 17 Brown, Duby, and Bekker, 9.
- 18 Brown, Duby, and Bekker, 9.
- 19 Brown, Duby, and Bekker, 9.
- 20 Brown, Duby, and Bekker, 11.
- 21 Brown, Duby, and Bekker, 24.
- 22 Chandre Gould and Nicole Fick, "Selling Sex in Cape Town: Sex Work and Human Trafficking in a South African City" (Pretoria, Institute for Security Studies, 2008), 24, 27. This study on sex work in Cape Town highlighted the gender profile of sex workers, determining that 88% of street-based and 90% of indoor workers were female.
- 23 Brown, Duby, and Bekker, 26.
- 24 Brown, Duby, and Bekker, 26.
- 25 Brown, Duby, and Bekker, 27.
- 26 Brown, Duby, and Bekker, 27.
- 27 Brown, Duby, and Bekker, 27.
- 28 Brown, Duby, and Bekker, 27.
- 29 Brown, Duby, and Bekker, 23.
- 30 Brown, Duby, and Bekker, 28.
- 31 Brown, Duby, and Bekker, 29.
- 32 Brown, Duby, and Bekker, 18.
- 33 Brown, Duby, and Bekker, 30.
- 34 Brown, Duby, and Bekker, 9 -10.
- 35 Brown, Duby, and Bekker, 17.
- 36 Government Gazette Volume 465 Cape Town 15 March 2004 NO. 26148.
- 37 Piel is Afrikaans for penis.

Appendix 1

A Short Guide to the Alteration of Sex Description and Sex Status Act, 2003

The Alteration of Sex Description and Sex Status Act, 2003 (Government Gazette Volume 465 Cape Town 15 March 2004 NO. 26148)

To apply this act, please pay special attention to the definitions below.

Who may apply to amend the gender in their ID book?

“...any person whose sexual characteristics* have been altered by surgical or medical treatment resulting in gender reassignment** may apply to the DG of NDHA for the alteration of the sex description on his or her birth certificate”. (Section 2, paragraph 1)

Definitions

*Sexual characteristics

These include primary or secondary sexual characteristics. Secondary sexual characteristics are those that develop throughout life and which are dependent upon the hormonal make up of an individual.

**Gender reassignment

A process that is undertaken for the purpose of reassigning a person’s sex by changing physiological or other sexual characteristics.

What is the process of application?

- A) A person must provide reports from two medical professionals explaining that gender reassignment has taken place. The first report should be from the person’s primary doctor. The second report only has to confirm the first.
- B) A person must provide one copy of his or her birth certificate.

Appendix 2

Laws Related to Brothel Keeping

Sexual Offences Act 23 of 1957

Appendix 3 specifies those to whom this law applies:

- a) Any person who resides in a brothel, unless he or she proves that he or she was ignorant of the character of the house or place.
- b) Any person who manages or assists in the management of the brothel.

- Therefore if one oversees the general business, books clients and assists in the running of the brothel in any way, one will be guilty of an offence.
- c) Any person who knowingly receives the whole or any part of any money taken in a brothel. This could be the managers or staff, or a sex worker who works in the brothel and who accepts the money. This subsection is also aimed at people who may not be in the brothel to accept the money, but who receive a share of the income of the business.
 - d) Any person who, being the tenant or occupier of any house or place, knowingly permits the same to be used as a brothel. This would apply to any occupant or tenant who allows unlawful carnal intercourse and indecent acts for reward to occur on the premises.
 - e) Owners of premises (houses or places) who uses the premises as a brothel, or rent out the premises with the knowledge that it will be used as a brothel. An owner is defined in section 1 as including “any person who lets or sub-lets or permits the occupation of any house or place whether in his own right or that of another”.
 - f) Any person found in a brothel who refuses to disclose the name and identity of the keeper or manager thereof. This is aimed at staff or clients in the brothel.
 - g) Spouses of managers or owners of brothels. This section provides that a spouse who is aware that his or her partner manages or assists in the daily management of a brothel will be guilty of an offence.

Sections 2, 3, and 5 through 8 of the Sexual Offences Act detail actions to be taken by police with respect to suspected brothel keeping.

Section 2

“Any person who keeps a brothel shall be guilty of an offence”.

This section specifically criminalises brothel ownership. A house or a place is considered a brothel if it is used with the intent to conduct unlawful carnal intercourse or for indecent acts.

What is a Brothel?

Section 2 of the Sexual Offences Act defines a brothel as *“any house or place kept or used for purposes of sex work or for persons to visit for the purpose of having unlawful carnal intercourse or for any other lewd or indecent purpose”*. A house includes a dwelling – house, building, room, out-house, shed or tent or any part thereof — and a place is any field, enclosure, space, vehicle, or boat, or any part thereof.

Section 3

This section is aimed at people who manage and own brothels. Section 3 has 7 subsections (a-g) that provide the circumstances in which people will be deemed to have kept a brothel. The textbox below summarises who can be charged with keeping a brothel.

Who can be charged for keeping a brothel?

Owners, managers, or staff of a brothel. Anyone who oversees or assists the general business, books clients and assists in the running of the brothel in any way (subsection b). Anyone who receives money taken in the brothel (subsection c).

Spouses of owners, managers, or staff of a brothel. Applies to spouses who are aware their partner manages a brothel or who assist with the management of a brothel (subsection g).

Sex workers in the brothel. If they reside in the brothel and are aware of its function (subsection a). If they accept money in the brothel (subsection c). If they refuse to disclose the name and identity of the manager or keeper of the brothel (subsection f).

Other individuals in the brothel. If they refuse to disclose the name and identity of the manager or keeper of the brothel (subsection f).

Owners of the premises. If they use it as a brothel or rent out the premises with the knowledge that it will be used as a brothel (subsection e).

Occupant or tenant in the brothel. Anyone who occupies a house or place and knowingly permits it to be used as a brothel (subsection d).

Section 5

This section makes any lease agreement or contract related to brothels null and void. For example, if A enters into a lease agreement with B wherein B agrees that A can use the premises as a brothel and if A fails to pay the rent, B will have no recourse because the contract of lease is null and void, which means that it does not exist and it cannot be enforced.

Section 6

This section nullifies and voids any lease agreement or contract related to a house or place that later becomes a brothel. This means that if B rents out his property to A and later A converts the premises into a brothel, as of the date that A converted the premises into a brothel, the contract of

lease will no longer exist and it will not be able to be enforced. However, the section further provides that if an owner is able to prove his or her ignorance regarding the brothel, then the owner is able to recover rent up to the date that he or she became aware.

Section 7

Provides that if the owner of the premises becomes aware that the tenant or occupant has used the house or place as a brothel, he or she may apply to the Magistrates in the area where the house is situated to evict the tenant from the premises. The Magistrate will have to hold an enquiry and therefore both parties have to appear before the court.

Section 8

Provides that if at least two complaints have been received from reputable persons living within the vicinity of a house or place that is suspected of being a brothel, that the police may apply to a magistrate for a warrant to arrest the person who is deemed to keep a brothel or a warrant to search the premises.

Section 8(2)

States that anyone who is found in the house or place when the police have conducted a search and who is asked for his or her personal details, and either provides the incorrect information or refuses to give the information of the manager or owner, and/or refuses to hand over any information in the form of books or receipts to the officers, will be guilty of an offence and upon conviction will be liable to a fine not exceeding R1000 and in default of such payment to imprisonment for a period not exceeding six months.

Appendix 3

Additional Laws Related to Sex Work

The Sexual Offences Act 23 of 1957

In 1957, various laws regulating sexual acts or relations were repealed and re-enacted in a consolidated law entitled Immorality Act 23 of 1957. This Act, subsequently renamed the Sexual Offences Act, is still in force and contains the current provisions regulating various aspects of sex work. This Act penalises sex work, the keeping of brothels, the procurement of women as sex workers, soliciting by sex workers, and living off the earnings of sex work. Some key sections of the act are summarised below:

Section 10

This section states that anyone who procures persons to have unlawful carnal intercourse or conduct indecent acts for reward is guilty of an offence. It includes 5 subsections (a – e):

- Subsection (a) provides that anyone who recruits a woman to have unlawful carnal intercourse, or in any way assists this, will be guilty of an offence.
- Subsection (b) creates two offences, 1) it is an offence to persuade by means or deception or flattery, or otherwise to entice a female to work in a brothel and 2) it is an offence to conceal any female from authorities in a brothel.
- Subsection (c) states that it is an offence to recruit a woman to work in a brothel to provide sexual intercourse for reward.
- Subsection (d) states that it is an offence to recruit a woman to live in a brothel.
- Subsection (e) states that it is an offence to give a female alcohol or drugs in order to overpower her so that a procurer or other third party can have unlawful carnal intercourse with her.

Section 12

This section provides that it is an offence to detain any female against her will with the intention that another male will have unlawful carnal intercourse with her, or keep her against her will in a brothel.

Section 12A

This section is aimed at persons who assist third parties to conduct unlawful sexual intercourse or indecent acts with women. For example, if A assists B (female) in obtaining clients or communicating with clients with the intention that B will have sexual intercourse or commit an act of indecency for reward, then A can be held to account under this law. If one is convicted for contravening this section, the penalty is imprisonment for a period not exceeding five years.

Section 17

This section states that any person who manages, owns, occupies or assists with regards to a particular premises and knowingly allows a third party to use the premises to commit any offence that is listed in this Act, shall be guilty of an offence. If one is convicted for contravening this section

the penalty is imprisonment for a period not exceeding six years with or without a fine not exceeding R12000.

Section 19 (1)

Provides that it is an offence to solicit third parties or clients in order to have unlawful carnal intercourse or to commit an indecent act for reward. This section does not allow sex workers to advertise their services. If one is convicted for contravening this section the penalty is a fine not exceeding R4000 or imprisonment for a period not exceeding two years, or both such fine and imprisonment.

Section 19 (2)

Provides that it is an offence to wilfully and openly dress in an indecent manner in the public view. Public view in this section refers to any door or window or within view of any public street or in any area the public may have access to. If one is convicted for contravening this section the penalty is a fine not exceeding R4000 or imprisonment for a period not exceeding two years, or both such fine and imprisonment.

Section 20

Section 20 (1)(a) provides that it is an offence for someone to knowingly live wholly or in part on the earnings of sex work and (c) that it is an offence for anyone, in public or in private, to in any way assist in bringing about, or receive any consideration for, the commission by any person of any act of indecency with another person. If one is convicted for contravening this section the penalty is imprisonment for a period not exceeding three years with or without a fine not exceeding R6000 in addition to such imprisonment.

Section 20 (1A)

This is the primary prohibition against sex work, and states that it is an offence for any person to have unlawful carnal intercourse with a person for reward or to commit an act of indecency with a person for a reward. The legislation provides as follows:

“1A) Any person 18 years or older who-

- (a) has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward; or*
- (b) in public commits any act of indecency with another person, shall be guilty of an offence”.*

Section 21(1)

States that if one is charged under the Act and the question is whether the sexual intercourse is considered unlawful carnal intercourse, the accused

shall be deemed to have been unmarried at the time that the sexual act occurred. The onus is on the accused to prove that he or she was married to the other person.

Section 21(2)

States that if one is prosecuted under this Act and one resides in a brothel or is constantly in the company of a sex worker, and the court cannot see that one can provide for oneself, then one shall be deemed to have been living wholly or in part on the earnings of sex work. The onus is on the accused to prove that he or she has received an income from a reputable employer and that the amount is enough for him or her to live on.

Section 21(4)

States that whenever in any prosecution for an offence under Section 12 A of this Act, it is proved (a) that the accused has performed any act for reward which was calculated to enable any person to communicate with any other person who is a sex worker; or (b) that the person with whom communication was made as a result of such act has had unlawful carnal intercourse, or has committed an act of indecency, with such person for reward, the accused shall be presumed to have performed such act with intent or while he reasonably ought to have foreseen the possibility that such other person may have unlawful carnal intercourse, or commit an act of indecency, with such person for reward, unless the contrary is proven beyond a reasonable doubt.

Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

The recently enacted Sexual Offences Amendment Act addresses the criminality of clients. Section 11 of the Act criminalises the actions of clients of adult sex workers by providing that a person who engages the services of a person 18 years or older for financial or other reward, favour, or compensation for the purpose of engaging in a sexual act, irrespective of whether the act is committed or not - or by committing a sexual act with the person - is guilty of the offence of engaging the sexual services of a person 18 years or older.

Municipal By-laws

Often municipal by-laws, instead of the Sexual Offences Act, are used to arrest sex workers. This is because it is difficult to prove elements of the offence under the Sexual Offences Act, particularly in relation to the client. For example, one of the few ways to convict a client is if a sex worker testifies against him, thereby also implicating herself.

The most common by-laws used to arrest sex workers are those that outlaw loitering, drunken behaviour, and soliciting for the purposes of prostitution. It is a violation of a sex worker's rights to cite violation of municipal by-laws as the reason for an arrest if the sex worker has not in fact committed the violation in question.

Municipal By-Laws

Regulation 2 of the Western Cape By-Laws PG 6469 of 28 September 2007 provides that: "No person, excluding a peace officer or any other official or person acting in terms of the law, shall – (a) when in a public place - (i) intentionally block or interfere with the safe passage or free passage of a pedestrian or motor vehicle; or (ii) intentionally touch or cause physical contact with another person, or his property, without that person's consent". Regulation 2(3)(f) provides that, "No person shall in a public place, perform any sexual act". Regulation 2(3)(j) provides that "No person shall in a public place solicit or importune any person for the purpose of position or immorality".

Section 12 of the City of Johannesburg Metropolitan Municipality's Road and Miscellaneous By-Laws, states the following about loitering: "No person may – (a) lie, sit stand, congregate, loiter or walk, or otherwise act, on any public road in any manner that may obstruct traffic; (b) jostle or loiter at or within twenty meters of the entrance of any place of public worship during the time of divine service or during an assembly at the place of worship or departure from such place of the congregation so as to obstruct or annoy any person going to, attending at, or leaving such place of worship".

Riotous Assemblies Act 17 of 1956

Section 18

Attempt, conspiracy and inducing another person to commit offence.

- (1) Any person who attempts to commit any offence against a statute or a statutory regulation shall be guilty of an offence and, if no punishment is expressly provided thereby for such an attempt, be liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.
- (2) Any person who—
 - (a) conspires with any other person to aid or procure the commission of or to commit; or
 - (b) incites, instigates, commands, or procures any other person to commit, any offence, whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable

on conviction to the punishment to which a person convicted of actually committing that offence would be liable.

Section 18(2)

Provides that the customer of a sex worker is liable to the same punishment to which the sex worker is liable. Thus, a man who pays for sex and the woman who receives the payment are equally guilty of criminal conduct and liable to the same penalties. Both at common law and in terms of the Riotous Assemblies Act, the customer commits an offence; and in terms of the Riotous Assemblies Act the customer is liable to the same punishment to which the sex worker is liable.

Appendix 4

Regional and International Legal Instruments Related to Human Rights

South Africa has signed and ratified many international treaties pertaining to human rights. This means that the government of South Africa has taken on the obligation to respect, protect and fulfil the fundamental human rights spelled out in these treaties. These laws dictate that sex workers be treated with dignity and afforded the same rights as others in society

The African Charter on Human and People’s Rights of 1986

The African Charter is a regional human rights instrument designed to reflect the history, values, traditions and development of Africa. Although it makes no specific reference to sex workers, the African Charter guarantees the rights of all individuals to equality, dignity, work under equitable and satisfactory circumstances, health, and freedom from exploitation. South Africa ratified the African Charter in 1995.

The Protocol to the African Charter on Human and People’s Rights on the Rights of Women of 2005

The Protocol on the Rights of Women builds off of the African Charter to focus on the need to promote and protect women’s rights. It calls for an end to violence against women, and specifically recognises protection from sexual violence as inherent in the right to dignity. Article 3 obligates Parties to protect women from all forms of violence “particularly sexual and verbal violence”. Similarly, Article 4(2) calls for the enactment and enforcement of laws prohibiting all forms of violence against women “including unwanted or forced sex whether the violence takes place in private or public”.

Addendum to the 1997 Declaration on Gender and Development by SADC Heads of State or Government of 1998

Adopted by members of the Southern African Development Community (SADC), the addendum strongly condemns all forms of violence against women and children. Paragraph 5 of the addendum makes specific reference to sexual abuse, sexual harassment and intimidation, trafficking in women and children, and forced prostitution.

SADC Protocol on Gender and Development of 2008

The SADC Protocol calls for the empowerment of women, the elimination of discrimination, and the achievement of gender equality. Article 7 requires Parties to take action, including the enactment of legislation, to promote and ensure equality for women — including measures aimed at ensuring equality for women in the criminal justice system and addressing gender bias and stereotypes.

The International Covenant on Civil and Political Rights of 1966 (ICCPR)

The ICCPR guarantees certain civil and political rights to all people. These fundamental rights include the right to life, which must be protected by law (Art. 6); the rights to liberty and security of the person, and the right not to be subject to arbitrary arrest or detention (Art. 9); the right to equality before the law and equal protection under the law (Art. 26); and 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 (Art. 2.3). South Africa ratified the ICCPR in 1998.

International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR)

Parties to the ICESCR are obligated to take steps towards the progressive realisation of the rights set out therein. These include the right to work, including the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, with appropriate safeguards for this right (Art. 6.1); and the right to enjoy just and favourable conditions of work, including a fair wage and decent living, and safe and healthy working conditions (Art. 7). South Africa has signed but not yet ratified the ICESCR.

Convention on the Elimination of All Forms of Discrimination against Women of 1967 (CEDAW)

CEDAW calls on States to eliminate all forms of discrimination against women, defined in Article 1 as “Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women [...] of human

rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". CEDAW entails a number of specific obligations aimed at achieving this end. Article 6, for example, states that Parties must take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women. Article 21 of CEDAW empowers the UN Committee on CEDAW to make suggestions and general recommendations with regards to the Convention's implementation.

In General Recommendation 19, the Committee specifically addresses the issue of violence against women, including sex workers, stating "Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalise them. They need the equal protection of laws against rape and other forms of violence". South Africa has signed and ratified CEDAW.

Declaration on the Elimination of Violence against Women of 1993

The Declaration defines gender-based abuse as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. The Declaration provides that Parties ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women. These clearly have relevance for women sex workers.

Beijing Declaration and Platform for Action of 1995

The Beijing Declaration identifies the issues and concerns of the world's women at the end of the 20th century, including women's human rights, women and poverty, women and decision-making, the girl-child, and violence against women. Governments and the UN agreed to promote "gender mainstreaming" in policies and programmes and to undertake other concrete actions in an effort to eliminate all forms of discrimination against women in both public and private life.

