

KNOW



RIGHTS!

PUBLISHED BY



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A POCKET RIGHTS BOOKLET FOR SEX WORKERS

THE SEXUAL OFFENCES ACT, 1957

South Africa's Sexual Offences Act criminalises sex work and all associated activities including:

- keeping a brothel,
- participating in the management of a brothel,
- obtaining sexual partners for others
- soliciting,
- selling sex,
- and living off the earnings of a sex worker.

Because it is almost impossible to arrest people in terms of the Act, police rely on municipal by-laws relating to public nuisance, and target mainly street-based sex workers in this regard.

BY-LAW RELATING TO STREETS AND PUBLIC PLACES

This law governs behaviour in public places and bans anyone from:

- sitting, standing or hanging around in a street or public place.
- intentionally harassing any person for the purpose of prostitution.

- starting or keeping a fire in a public space without permission.
- appearing in the nude or flashing.
- performing any sexual act.
- consuming any liquor or drugs.
- being under the influence of alcohol or drugs.
- using abusive or threatening language.
- fighting or acting in a riotous or physically threatening manner.
- urinating or defecating, except in a toilet.
- bathing or washing except in a public facility.
- shouting and screaming.

RIGHTS OF ARRESTED OR SENTENCED PEOPLE

Everyone who is arrested, including every sentenced prisoner, has the right to:

- be informed immediately of the reason for your arrest.
- be informed immediately by your arresting officer of your right to remain silent and the consequences of not doing so.

- to see a lawyer. If the police tell you that you can only see a lawyer after you have been charged they are acting against the law.

- not be forced to make any confession or admission that could be used as evidence against you. It is best not to say anything other than to give your name and address to the police until you speak to a lawyer.

Any evidence the police gets against you by going against your rights will NOT be allowed in court.

- to have a lawyer assigned to you by the state, and at state expense, if you don't have one. Remember to get this lawyer's name and number in case you need to contact him/her.

Do not try to defend yourself in court. Ask for Legal Aid- it is free if you earn below a certain amount each month. Your case will be postponed in order for you to apply for and consult with a Legal Aid attorney. If you are unsure or unhappy with the way the Legal Aid lawyer handles your case, contact SWEAT or the Legal Aid Board.

- to be taken to the nearest police station as soon as possible, unless the warrant of arrest

says you must be taken to some other place.

- to conditions - at the expense of the state - that respect human dignity while you are locked up in a cell. These include:
 - *having proper accommodation*
 - *having family visits*
 - *seeing a minister of religion (usually this is a minister working for the government)*
 - *wearing your own clothes*
 - *seeing a doctor (usually this is a government doctor, the district surgeon or a prison doctor)*
 - *exercising for at least one hour a day in the open air*
 - *writing and receiving letters*
 - *getting enough proper food and drink*
- to be taken to court within 48 hours of your arrest. If the 48 hours end on or after:
 - *4 p.m on a weekday, you must be taken to court before 4 p.m the next day.*
 - *a weekend, you must be taken to court before 4 p.m on the Monday, unless that Monday is a public holiday.*
 - *a public holiday, you must be taken to court on the first court day.*

If this does not happen you can sue the police for keeping you in prison unlawfully.

WHAT CAN YOU DO IF THE POLICE VIOLATE YOUR RIGHTS WHILE YOU ARE IN THEIR CUSTODY?

You should complain to the station commander. If the station commander is unresponsive, contact *SWEAT, The Independent Complaints Directorate* or *The Human Rights Commission*.

You will need the following information:

- names of the police officers
- the police station where you were taken and where the officers are based
- date and time of the incident
- names of any witnesses to the incident

POLICE POWERS

THE POWER TO QUESTION

These powers are as follows:

- The police may order any vehicle to stop, ask the occupants for personal information such as their names and addresses, and to see the licence of the driver. You *must* give them this information. If you don't, you can be charged. The police *can* question anyone

without arresting them. But whether you have to answer such questions depends on the situation.

- The police may ask you to produce your I.D book at *any time* and you must do this.
- The police may ask you to give your full name and address if they suspect you of committing or of trying to commit a crime, or if they think you can give them information about a crime. It is a criminal offence not to do so and the punishment is a fine of R2 500 or 3 months in prison.

However, you have the right to ask the police officer for his or her identity document. If the officer refuses, you need not give your name and address.

- If the police officer asks you any other questions you have the right not to answer these unless your lawyer is present. However, you might feel it is safe to answer some questions so that you can be released quickly. The police may also ask you to accompany them to a police station to make a statement. You have the right to refuse to go, but the police may then decide to arrest you.

THE POWER TO SEARCH AND SEIZE

You have a right to privacy but in cases where the police need to collect evidence against criminals they may be allowed to search you or your home. They can also take things away from you. This is called *seizing* your property.

SEARCH WITH A SEARCH WARRANT

The police may enter any place if they believe that an offence was committed or planned there, but they must have a search warrant in order to *search* the premises. This is a legal document giving them permission to do so. It must be signed by a magistrate and must describe the person, the place to be searched and the items which the police may seize.

- If the police are about to search your home and/or seize your property, *you can demand to see the search warrant.*
- The police must carry out the search during the day unless the warrant says they can search at night.
- The police may only search the people and property mentioned in the warrant, and only seize those items described in the warrant.

SEARCH WITHOUT A SEARCH WARRANT

The police may lawfully search without a search warrant if:

- you agree to let them search you
- you are arrested
- they have reasonable grounds for thinking that a magistrate would issue a warrant, but that the delay in getting one would give you time to get rid of any evidence.
- the search is at a roadblock. But they must still have reasonable grounds for thinking that a magistrate would have issued a warrant.
- they suspect that you have drugs or dagga, illegal liquor, guns, ammunition, stolen crops or animals with you.
- they reasonably suspect you have information that can help in an investigation. They can then enter your property to question or search you, but they must always first ask for your consent to do so.

The police can use force to enter the premises if you refuse to allow them in after they asked you if they could enter.

A male police officer may only search men, NOT

women. Women can only be searched by a female police officer, or by any other female that the police appoint to do so. The same principle applies to men.

If your premises are unlawfully searched or if you are abused during a search, you can sue the *Minister of Safety and Security*.

If the police get evidence against you by going against any of your rights, the court may refuse to hear that evidence.

POWERS OF ARREST

The law says that the police can only make an arrest if they have reason to charge you and take you to court, or if you are a suspect in a police investigation. Arrest is unlawful if the police do not obey the rules about arrest.

- If you are under arrest you must go to the police station with them, but the police may not assault you for not answering questions or for refusing to make a statement.

You have the right to refuse to make a statement or to answer any questions if you do not have a lawyer present.

- If you are arrested, you can usually pay bail money to the court, and go home until the date of your court case.

ARREST WITH OR WITHOUT A WARRANT

A *Warrant of Arrest* is a legal document that gives the police the power to arrest you and take you to court. You must ask the police to show you the warrant and also ask for a copy of it for yourself.

You can be arrested without a warrant if:

- you escape, or try to escape, after you had been arrested.
- the police catch you while you are committing a crime.
- the police suspect you committed a serious crime like murder, rape, serious assault, housebreaking, and so on.
- the police think you committed a drug or liquor offence
- the police find you - particularly at night - acting in a way that makes them think that you are about to, or may have, committed a crime.

- the police think you have not paid a fine which a court ordered you to pay.
- if you try to stop the police from doing their duty.
- if the police think you have guns or ammunition without a licence.
- if you are carrying any other dangerous weapon and you can't give a good reason to the police for doing so.
- if the court said you must go to prison for certain periods, for example every weekend, and you do not go.
- if the police think you broke the conditions of a suspended sentence.

LAWFUL ARREST

There are three things the police must do for an arrest to be lawful:

- **The police must tell you that you are under arrest.** If they ask you to go with them to the police station without saying that they are arresting you, and you go with them voluntarily, then they do not have to arrest

you. It is your right not to go with them unless they say that they are arresting you.

- **The police must have physical control over you when they arrest you.** This means they must make sure you can't get away. If you try to run away, the police can use reasonable force (as much force as is necessary) to keep control of you.
- **The police officer must tell you why you are under arrest.** The police must tell you what offence they think you have committed. But if they catch you while you know you are committing an offence, then they do not have to give you details.

UNLAWFUL ARREST

Some examples of unlawful arrest are if:

- there was no good reason for the police to suspect that you committed an offence.
- the purpose of the arrest was not to charge you but simply to scare you.
- you were not told that you were under arrest, and you were innocent of any offence.

UNLAWFUL USE OF FORCE

Examples of unlawful use of force are when:

- the arrest itself is unlawful, then any force that the police use is unlawful.
- you did not try to fight or run away, and the police used force in making the arrest.
- if the police used more force than necessary.

Where there has been unlawful use of force, you can lodge a complaint with the *Independent Complaints Directorate (ICD)*.

WHAT TO DO IF YOU ARE ARRESTED

Do not struggle with, or swear at the police - even if they have made a mistake.

- You must give your name and address and show your identity book if the police ask you. *But you have the right to remain silent.* Do not discuss your case with anyone and do not sign any statements except in the presence of your lawyer if you have one.
- As soon as possible after you arrive at the police station, ask to see your lawyer. If you do not have one, ask to see a family member

or a close friend. Ask that person to get you a lawyer or to apply for Legal Aid on your behalf.

- Ask for your lawyer to be present if you are questioned or told to attend an *identity parade*. An identity parade is when you (amongst other people) are called to appear in front of a witness and/or victim in order for them to identify the person who committed the crime.
- If you are released on bail, ask for your bail receipt and find out when you are due in court. *Never be late for, or miss, a court hearing.* If you do not arrive in time, a warrant for your arrest may be issued. You may also lose your bail money if you do not go to court on the day of the court hearing.

HOW DO YOU MAKE A CRIMINAL CASE AGAINST SOMEONE ELSE?

The example we use here is when you want to make a criminal case against a someone who assaulted you. You would not need the help of lawyers or paralegals, unless you also wanted to make a civil claim.

GO TO A DOCTOR

If you were injured in any way, go to a doctor (either your own or a government doctor - called a district surgeon) for a medical check-up. If you need medical treatment it will be good for your case to have medical records to prove your injuries. It is important to go as soon as possible, because the marks from the injuries may go away after a few days.

REPORT AT THE CHARGE OFFICE

Go to the charge-office at the nearest police station to make a complaint. You may want to take someone with you - such as a friend, priest, teacher, social worker or a SWEAT staff member - to help you.

STATEMENT TO POLICE

The police will take a statement from you, but you must be very careful what you say because you have to swear under oath that you are speaking the truth. Do not sign your statement if you are not happy with the way the police wrote it down. Ask to change it before you sign.

The police in the charge office *must* take a

statement from anyone who comes in to make a complaint, but it is not up to them to decide whether a complaint is serious enough to be investigated.

COPY OF STATEMENT

After you have made your statement, ask for a copy of it before you leave the charge-office. You have the right to get a copy.

GET THE POLICE REFERENCE NUMBER

Ask for the police reference number. This is the police register number where they must keep a record of all complaints made at the charge office. It is your proof that you reported the crime. The reference number is also called an *OB number* (Occurrence Book number) or a *VB-nommer* (Voorvalleboeknommer).

GET A MEDICAL REPORT

If you are injured or raped and you need medical treatment, the police will ask you to get a medical report form filled in. This form is called a *J88 medical report*.

You can go to your own doctor, or to a district

surgeon to get this form filled in. Then you must take the filled-in form back to the police in the charge office. It is a good idea to make a copy of the filled-in form to keep for yourself.

CASE DOCKET

After you have made a statement to the police they must open a case docket and investigate a criminal charge against the person or people who committed a crime against you.

CHECK ON PROGRESS

You should check up a week or two after you made the statement to see what is happening with your case. Get the name of the investigating officer and then ask to speak to him or her directly.

Ask the investigating officer for the case docket number. This is called a *CR number* (Criminal Register number) or *MR nommer* (Misdaadregisternommer).

Keep phoning the police to find out whether any progress has been made with the case. Give the CR/MR reference number whenever you phone to check up.

If there is no progress with a serious case, and you are not satisfied that the police are doing everything they are supposed to, you could ask a paralegal or a lawyer to take this up on your behalf.

If you suspect that the police are deliberately not investigating your case because, for example, you had laid a charge of assault against a particular officer at the same station where he is posted and you feel that his colleagues may be protecting him, you can make a complaint to the *Independent Complaints Directorate*.

WHAT HAPPENS IF SOMEONE LAYS A CRIMINAL CHARGE AGAINST YOU ?

THE INVESTIGATION

If someone makes a charge against you with the police, or if the police suspect that you have committed a crime, they will *investigate*. This means that they will ask people questions, visit places, conduct a search etc.

CHARGE AND ARREST

When the police have enough reason to think that you did commit the crime, they will *charge* you. The *charge* is what they say you have done. The police may arrest you when you are charged. but you may also be arrested before they charge you. If you are arrested you have rights as an arrested person (see page 2-5).

LEGAL AID

If you do not have a lawyer then you can ask for legal aid (see page 3).

STATEMENTS

When you are charged with a crime, the police usually try to take a statement from you. You must give your name and address, but you do not have to give any other information to the police if you do not want to, (see page 3).

BAIL

After your arrest there are two ways in which you can be released before you appear in court:

- with a warning to appear in court on a certain date or

- on *bail*, with or without certain conditions (for example, you must report to the police station once a week)

Bail is money paid to the court or the police so that you can go home until the date of your court case. Anyone can pay the bail - a husband, wife, relative, friend or even an organisation. A receipt must be given to the person who pays the bail, as the money will be paid back to that person at the end of your court case, even if you are found guilty.

But, you will not get your bail money back if:

- you do not come to court on the day of your court case
- you interfere with any witnesses
- you break any of the conditions of bail

When you are released on bail you get a written notice that tells you which court you will appear in; the day and time that you must be in that court; and what, if any, the bail conditions are.

BAIL GRANTED BY THE POLICE

You can ask the police for bail after you have been arrested and taken to the police station,

but only a police officer with the rank of sergeant or higher can release you on bail and he/she can decide how much bail you must pay.

Bail must be paid in cash and you must get a receipt saying how much you paid and when you must appear in court. You must also then be released immediately.

But, the police cannot grant bail if you were arrested for a serious crime such as:

- rape or murder
- robbery or house breaking
- severe assault
- dealing in, or being in possession of drugs
- theft of more than R200

If you are arrested for any serious crime you can still ask the prosecutor or the court for bail.

BAIL GRANTED BY PROSECUTORS

A prosecutor can agree to bail for some serious crimes. Ask the police to phone the duty prosecutor to check whether you can get bail. If the prosecutor agrees, you must pay in cash, get a receipt and be released, but you must appear in court on the next court day (see page 4).

BAIL GRANTED BY THE COURT

A court case usually does not finish on the same day. If the police and prosecutor have refused bail you or your lawyer have the right, at any time on or after the first day in court, to apply to the court for bail. If you do not do so, you will be kept in prison until your next court appearance.

The court will only grant bail if the judge or magistrate is satisfied that you:

- will not run away
- are not a danger to other people or will not commit further crimes
- will not frighten or threaten any witnesses into saying what you want them to say

In addition, for the court to see that you will not run away you or your lawyer must also give details of:

- *where you live and how long you have lived there*
- *what work you do and how long you have worked in that job*
- *if you are married and living with your husband or wife and if you have a family to support*
- *how much you earn and how much you can afford to pay for the bail*