Context analysis and needs assessment to guide sensitisation training of police on appropriate services for key populations in South Africa

Report

December 2016

Year of Publication: 2016

Published by:

COC Netherlands

This report was authored by Andrew Scheibe and Alexandra Müller, with contributions from Hayley Galgut[i]. Report edited by Trevor Sacks.

Suggested citation: Scheibe A & Müller A (2016). Context analysis and needs assessment to guide sensitisation training of police on appropriate services for key populations in South Africa: Project report. Amsterdam: COC Netherlands.

Disclaimer

The opinions expressed in this document do not necessarily represent the official position or policy of COC Netherlands.

[i] Hayley Galgut contributed expert input at the initial workshop, and wrote the literature review on sex work(ers), HIV and law enforcement (Appendix 2).

ACKNOWLEDGEMENTS

The project was made possible by commitment and support from several people from the South African Police Service, not limited to: Brig. Busi Ndlovu; Col. Onicca Tlhoaele; Lt. Col. Motha Thoko; Cpt. Vries and Lt. Col. Morris. Additional support for the project was also provided by Gen. Mkhwanzi and Gen. Buthelezi as well as National Office Quality of Worklife: Employee Health and Wellness; Public Order Policing Unit at Marion Hill; Point Police Station; Pretoria Central Cluster; Pretoria Central Station; Western Cape Provincial Office; Western Cape Quality of Work Life: Employee Health and Wellness; Western Cape Central Cluster, and the Woodstock Police Station.

Several government departments, civil society organisations, academic institutions and technical agencies participated in consultations, workshops and interviews and provided inputs into the literature review including: African Policing Civilian Oversight Forum; Association for Sex Workers Africa; Botswana Network on Ethics and Law; Centre of Criminology at the University of Cape Town; Centre for the Study of Violence and Reconciliation; Gender DynamiX; Impact Consulting; Lambda Mozambique; Pathfinder Mozambique; South African National Department of Health; FHI360; OUT LGBT Wellbeing; SafAIDS; Sex Worker Education and Advocacy Taskforce; Sisonke Sex Workers Movement; TB/HIV Care Association; Rights not Rescue Trust Namibia; The Triangle Project; The Durban LGBT Center; the United Nations Office on Drugs and Crime; the Open Society Foundation of Southern Africa; the Urban Futures Centre at the Durban University of Technology, and the Women's Legal Centre. Additional direction and support was provided by Eldred de Klerk, Lillian Artz, Taryn Husband, Monique Marks, Shaun Shelly and Simon Howell.

Particular thanks go to individuals who participated in the interviews and focus group discussions.

This assessment would not have been possible without guidance and support from Munyaradzi Katumba and Bram Langen (COC). Support for this work was enabled through the Hands Off! programme, funded by the Ministry of Foreign Affairs of the Netherlands through Aids Fonds.

CONTENTS

ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
APCOF	African Policing Civilian Oversight Forum
ART	Antiretroviral Therapy
CPF	Community Police Forum
CSO	Civil Society Organisation
FGD	Focus Group Discussion
GDP	Gross Domestic Product
HIV	Human Immunodeficiency Virus
IDI	In-depth Interview
LEA	Law Enforcement Agency
LEAHN	Law Enforcement and HIV Network
LEO	Law Enforcement Officer
LGBT	Lesbian Gay Bisexual Transgender
MSM	Men Who Have Sex With Men
NGO	Non-governmental Organisation
PWID	People Who Inject Drugs
PWUD	People Who Use Drugs
SANAC	South African National AIDS Council
SAPS	South African Police Service
SARPCOO	Southern African Police Chiefs Cooperation Organisation
STI	Sexually Transmitted Infection
SW	Sex Worker
TB	Tuberculosis
UN	United Nations
UNAIDS	The Joint United Nations Programme on HIV/AIDS
UNODC	United Nations Office on Drugs and Crime
WHO	World Health Organisation
WSW	Women Who Have Sex With Women

GLOSSARY OF TERMS

Cannabis	An illicit drug in South Africa, from the hemp plant. Also known as dagga or marijuana.
Drug	In this report, a 'drug' is a substance that is under international control and is produced, trafficked and/or consumed in a way that is not supported by law.
Gender identity	A person's concept of self as male, female, a blend of both or neither. One's gender identity can be the same or different from their biological sex.
Key populations	Key populations are groups that are disproportionately affected by HIV when compared with the general population, and subject to stigma and discrimination. Some of their practices may be criminalised. While this may vary according to local epidemic dynamics, in the context of this report, they include sex workers, lesbian, gay, bisexual and transgender people and people, who use drugs.
Nyaope	Local term for low-grade heroin mixed with cannabis, and usually smoked.
People who inject drugs	The term 'people who inject drugs' is preferable to 'drug addicts' and refers to people who regularly inject drugs either intravenously, intramuscularly, subcutaneously or by some other route.
Sex worker	Sex workers include consenting female, male and transgender adults and young people aged 18 or older who receive money or goods in exchange for sexual services, either regularly or occasionally. The term 'sex worker' is preferred to 'prostitute' and denotes that the services sex workers provide are considered 'work'.
Sexually transmitted infection	Sexually transmitted infection (STI) refers to an infection that is transmitted or acquired through sexual contact.
Sexual orientation	An inherent or immutable enduring emotional, romantic or sexual attraction to other people.
Tik	Local term for methamphetamine.
Whoonga	Local term for low-grade heroin mixed with cannabis, and usually smoked.

EXECUTIVE SUMMARY

Background

The South African Constitution is built on principles that have resulted in great advances in safety, human rights and health for people in South Africa. However, the country has the largest HIV epidemic in the world, and lesbian, gay, bisexual and transgender (LGBT) people, sex workers (SWs) and people who use drugs (PWUD) are at particularly high risk for HIV due to a combination of factors. Apart from some behaviours that may be associated with HIV risk, their well-being is threatened by limited access to appropriate health care as well as social marginalisation and exclusion. The criminalisation of sex work and drug use, as well as stigma and discrimination, contribute to their exclusion from society. This, in turn, increases their vulnerability to HIV and the likelihood of engaging with law enforcement. While key populations, as part of the larger community, rely on police to keep them safe, at times they also experience human rights violations by law enforcement officers.

Rationale and objectives

Policies, standing orders and national instructions inform, shape and govern the decisions, actions and performance of police. These policies can either facilitate or prevent effective and human rights-based HIV responses. Therefore, enhancing policies and actions that improve the safety and well-being of all people, including key populations and police, in line with the Constitution, is critical. Training that addresses knowledge gaps and existing attitudes within police can contribute to a more effective police service, while improving health and safety outcomes of all people. This study sought to:

1. Describe relevant laws, mechanisms and practices that guide or are used to enforce laws influencing the rights and health of LGBT people, SWs, and PWUD
2. Summarise evidence of human rights violations (including violence) and actions taken to reduce rights violations among LGBT people, SWs, and PWUD
3. Develop a prioritised list of needs, and potential interventions to address these needs, for law enforcement agents to better support the rights and health of LGBT people, SWs, and PWUD

Methods

A key population and police stakeholder consultation took place in July 2015 to guide the project. Thereafter, a literature review was undertaken to collect and synthesise information around the intersection between key populations, the law and law enforcement. During September and October 2016, six commissioned police officers were interviewed and 32 non-commissioned police officers and six community members (including three members of a community police forum, two PWUD and a person experienced in working with PWUD) participated in focus group discussions (FGDs) in Pretoria, Cape Town and Durban. Findings were presented at a key population and police stakeholder consultation in November 2016, and the report finalised. The study received ethical approval from the University of Cape Town Health Sciences Faculty and was authorised by the South African Police Service (SAPS).

Findings

The South African National Strategic Plan on HIV, STIs and TB (2012 – 2016) recognises the need to address structural factors that increase the HIV risk among key populations.[1] The South African government's White Paper on Safety and Security recognises that securing the safety and well-being for all people requires a human rights framework that protects and includes the most vulnerable members of society.[2]

Contrary to these principles, the literature review reflects the frequent exclusion of key populations and a worrying number of rights violations. These have been documented quantitatively and qualitatively, and many are reported to have been carried out by police. Participants in the Hands Off! programme partners meeting, representing organisations working to reduce violence and HIV affecting key populations, confirmed these findings. Emerging initiatives to foster partnerships between police and key populations, and information exchange around these issues, are taking place on a national level and in pockets within the three cities of focus.

The FGDs and in-depth interviews (IDIs) revealed a diverse range of knowledge, attitudes and practices related to key populations among participating police members.

Gender diversity, sexual orientation and LGBT people: Generally speaking, police acknowledged the limited understanding of sexual orientation and gender identity within the service. The existence of stigmatising attitudes towards LGBT people were hinted at, but overt discriminatory police practices were denied. One commissioned officer noted a current LGBT sensitisation training programme for police that was being piloted in Pretoria. Training was seen as important to improve relationships with LGBT people, both within SAPS and with the wider LGBT community. Training was also identified as necessary to help implement existing protocols around handling transgender people. Few police were aware of the proposed hate crime legislation, which has recently been opened to public comment.

Sex work and sex workers: The interviews and discussions revealed discordant and at times erroneous understandings of the current legislative framework and how it relates to sex work, but also an awareness of the decriminalisation debate. There was little recognition of the rights of SWs. Most police understood that sex work was done primarily for financial reasons. In FGDs, police often conflated sex work with trafficking and exploitation. Most police associated sex work with crime, particularly theft, and a few pointed to the relationship between criminalising legislation and organised crime syndicates. One commissioned officer supported the decriminalisation of sex work to address organised crime, increase access to labour protection and health services for SWs, and to improve police operating efficiency. One non-commissioned officer from Social Crime Prevention reported distributing condoms as an HIV-prevention intervention for SWs in one of the cities. Many non-commissioned officers reported that they arrested SWs from time to time, but all denied a desire to arrest SWs categorically. One commissioned officer noted how he encouraged the arrest of SWs in order to reach arrest targets and to keep the SW population down. Few police were aware of or acknowledged reports of human rights violations towards SWs by police.

Drug use and people who use drugs: Police in all cities recognised drug use as a priority concern in the communities they worked in. Some police reported noticing an increase in the use of drugs during their careers, and concerning levels of drug use among youth. Very few of the participants felt confident that their actions had reduced drug use or drug-related crime in the cities they worked in, and many revealed how people they had arrested for drug-related reasons were frequently back on the streets soon after. A few police acknowledged drug use by police members, and several openly revealed how drug use affected their families and communities. Understanding of drug use was simplistic and very little was known about relative risks of drugs or about drug treatment. None of the non-commissioned officers knew about the term 'harm reduction', and only one female non-commissioned officer knew of the needle and syringe programme in Pretoria. Several of these officers acknowledged stigmatising attitudes towards PWUD. Several non-commissioned officers highlighted how moral views and personal opinions influenced police attitudes towards PWUD (and other key populations). One commissioned officer pointed out a contradiction within SAPS around the internal and external management of people who use illegal drugs: SAPS members (particularly commissioned officers) are supported in accessing substance use disorder treatment services, while people from the broader community who use drugs are arrested and processed within the criminal justice system. This same person expressed his support for the decriminalisation of drug use, and for greater police efforts towards finding more effective ways to address organised crime and increase access to heath services for the PWUD.

The two PWUD who participated in a FGD reported high levels of stigma, discrimination and instances of rights violations, including assault, by police and law enforcement officials as a result of their drug use.

The participants from the community police forum (CPF) had a fairly good understanding of key populations. They noted the role that communities have on influencing policing practice, and that broader community understanding of key populations and underlying factors was poor. CPF members appeared to tolerate key populations, but noted higher levels of community stigma and discrimination towards SWs and PWUD. CPF members were involved in police activities and interested in engaging with key population organisations.

Conclusions

The aim of this study was to identify ways that police can reduce stigma and discrimination faced by key populations while maximising the effectiveness of the police. Understanding the impact of criminalisation, stigmatisation and discrimination faced by key populations is a critical component of being able to work with all groups in a community. This understanding can empower police and law enforcement agencies to fulfil their mandate while also upholding the constitutional principles that should guide the police's daily interactions with all people.

The study highlights a need for police training to address gaps in knowledge, and interventions to shift attitudes to be more empathetic of the realities of key populations. Particular areas of focus include sexual orientation, gender diversity, sex work legislation and SWs' rights, and substance use.

Training is likely to be only one component in improving police practice when engaging with key populations. The development of standard operating procedures, and knowledge sharing and debate among police and stakeholders experienced in working with these populations, is likely to be more effective to change policing practice. Implementation and sustainability will require inclusion of this training within the basic training curriculum, integration into a range of existing modules where appropriate and, potentially, the development of a new training programme. Also essential is the need for CPF members to be included in training and to enhance key populations engagement.

The manner in which police interact with key populations has wide-ranging implications for broader society. These interactions influence community relationships, social cohesion and human rights. Ultimately, these interactions can reinforce or reduce cycles of violence, and can increase or decrease the risk of HIV infection and transmission. Police actions could also promote or prevent access to HIV prevention and treatment services for key populations, their families and the entire community.

Key recommendations

- SAPS should create opportunities for knowledge sharing between police and other partners around the effectiveness of rights-based policing.
- SAPS should engage with stakeholders working with key populations to improve community understanding of human rights.
- Training around LGBT issues is needed to enable non-judgmental service provision by SAPS and effective investigation of crimes related to sexual orientation and gender identity. Training should cover: sexual orientation and gender identity; the proposed hate crime legislation; existing relevant legislation, and case law. Police should also strengthen their support for Hate Crime Provincial Task Teams.
- Training for police around sex work should clarify the status of sex work and the obligations of police under the 2007 Sexual Offences Act, relevant by-laws, SW rights, the decriminalisation debate, and topics around policing of sex work.
- Training for police on drug use should allow the sharing of knowledge and information around drugs (manufacturing, properties, affects, methods of use etc.), increasing drug use despite increased arrests, PWUD rights, and conviction rates.
- Training should include information around HIV and other sexually transmitted infections, as well as viral hepatitis (transmission, prevention, treatment etc.).
- Training should take an integrated approach to address intersecting issues.
- Representatives from community police forums should be included in training around key population issues.
- Key populations training should be included as part of basic and in-service training
- Examples of other countries' alternative policing strategies and approaches to drug policy, experiences working with SWs and managing gender diversity and sexual orientation, and the effectiveness thereof, should be included in local police training.
- Policing protocols, and ideally a National Instruction, should be developed to guide police around the management of marginalised people, including key populations
- SAPS should consider changing the classification of gender from a binary category to one the includes a spectrum of identities.
- SAPS should review the use of output measures (arrest and crime statistics) as a measure of impact (effectiveness of police to improve the safety and security of all).

1. INTRODUCTION

Key populations, rights and HIV

Key populations are those groups of people who are most likely to be exposed to HIV and to transmit it.[3] Globally, laws prohibiting or restricting same-sex practices, sex work and drug use drive these practices into hidden, often dangerous spaces, and inhibit key populations accessing treatment for HIV. This makes lesbian, gay, bisexual and transgender (LGBT) people[ii], sex workers (SWs) and people who use drugs (PWUD) particularly vulnerable to HIV. They also experience high levels of stigma and discrimination because of societal prejudice. As a result, LGBT people, SWs and PWUD are often excluded from social, political and economic opportunities, and experience significantly more instances of human rights violations and violence compared to people in the general population.[4] This prevents LGBT people, SWs and PWUD from accessing health, social and security services. The World Health Organization (WHO), the United Nations Joint Programme on HIV and AIDS (UNAIDS) and other global agencies recognise the importance of removing stigma and discrimination from health care settings to end the HIV epidemic. WHO and UNAIDS recommend the decriminalisation of same-sex practices, sex work and drug use to ensure that all people can achieve the highest attainable standard of health and live safely.[5] However, few interventions globally are working to increase the involvement of police to enhance public health and safety, and to foster enabling environments for an effective HIV response.[6]

Key populations in South Africa

Section 9 of the South African Constitution declares that all people in South Africa have the right to equal protection and benefit of the law, and prohibits discrimination on the grounds of race, sex, gender, ethnic or social origin, and sexual orientation.[7] The South African National Strategic Plan on HIV, STIs and TB (2012 – 2016) outlines the need for increased HIV prevention efforts for key populations.[1] The implementation of the legal and policy framework remains fraught with problems, however, and much work still needs to be done to improve the health and rights of key populations.[8]

***LGBT people**:* The South African Constitution enshrines freedom from discrimination on the basis of gender and sexual orientation under law. However, LGBT people experience high levels of violence, including sexual violence, which increases the risk of HIV transmission.[9] HIV prevalence among gay, bisexual and other men who have sex with men (MSM) ranges between 22% and 48%.[10] High levels of homophobia towards LGBT people have been noted in the community, in health facilities and law enforcement agencies, contributing to secondary victimisation and poor-quality services. [11,12]

SWs: HIV prevalence among South Africa's estimated 153 000 female SWs in the three largest cities ranges from 40 – 72%.[13] One study showed that over half of SWs have experienced physical violence from a client (57%) and experienced police violence in the last 12 months (55%).[14]

[ii] In South Africa, intersex people are frequently included in the grouping LGBTI. However, no data around intersex people in South Africa relating to HIV and engagement with police was identified, neither did any of the study questions explicitly enquire about intersex people. As a result, they have not been included in this report, but this does not preclude their inclusion in future training around sexual orientation, gender identity and gender expression.

Harassment, bribery, extortion, rape, confiscation of condoms, and use of condoms as evidence of sex work by police have been widely reported by SWs.[15–17]

PWUD: There are no accurate figures on the number of PWUD in South Africa. However, more than one in ten South Africans is likely to use substances in their lifetime.[18] The 2016 United Nation's World Drug Report confirms that South Africa is part of global heroin, cocaine and methamphetamine trafficking routes, and drug availability is likely to increase.[19] Evidence from drug-use treatment centres highlights how harmful the use of these substances can be, and that injecting of drugs is increasing in South Africa.[20] A recent multi-city study among people who inject drugs (PWID) confirmed that almost all (93%) had been arrested, and most (70%) had been in prison.[21] In a 2014 community consultation with PWUD, hosted by the United Nations Office on Drugs and Crime (UNODC) in Cape Town, police harassment was identified as the primary health and security concern among PWUD.[22] A formative assessment done in Cape Town, Durban and Pretoria ahead of a planned HIV prevention project for PWUD in 2015 found that law enforcement visited locations where PWUD congregate almost daily, and that law enforcement officers were abusive in more than half of these interactions – often contributing to rushed and unsafe methods of drug injecting, and to risks of overdose and HIV infection.[23] Reports of the confiscation and breaking of needles and syringes by police has been commonly reported. This contributes to needle and syringe re-use and sharing, and the subsequent increased risk for HIV infection.[24]

Law enforcement as partners in public health

The Global Commission on HIV and the Law highlighted the negative consequences that criminalisation of sex work, drug use and same-sex practices has on the health and well-being of people who engaged in these behaviours, on their partners and on society more broadly.[16] As a result, WHO in the 2014 Consolidated HIV Prevention, Treatment and Care Guidelines for Key Populations recommends that such laws should be reviewed and these practices decriminalised.[5] Action on the ground is needed while legal reform takes place. Law enforcement agencies (LEAs) and police play a vital role to improve the health and rights of key populations. Knowledgeable, supportive and appropriately skilled law enforcement officers (LEOs) are able to do their job effectively, while also improving the health and well-being of all people, including key populations.[25]

Globally, partnerships between LEAs and public health organisations are having a positive impact on the health and well-being of key populations, particularly LGBT people, SWs and PWUD. The Law Enforcement and HIV Network (LEAHN)(www.leahn.org) is one such network. LEAHN partners have developed a wealth of experience around best practices and success stories that highlight the positive role police can play in HIV prevention and harm reduction. Sensitisation and competency training for LEOs is one of their recommended interventions.

Law enforcement and key population interventions in South Africa

Even where practices like sex work, drug use or same-sex practices are criminalised, LEAs can play a positive role in improving the safety and health of key populations. Unfortunately, little has been done to increase awareness among LEAs in southern Africa of the positive impact they can have in this regard.

However, efforts to improve the situation within southern Africa have started. The importance of human rights policing has received increasing recognition through the Southern African Police Chiefs Cooperation Organisation (SARPCOO). SARPCOO was established in 1985 to improve policing in the region. Its constitution outlines a range of principles around cooperation and also refers to the observance of human rights, mutual respect and goodwill. In 2000, SARPCOO hosted a workshop around rights-based policing, resulting in recommendations to develop and implement human rights training for police in the sub-region. The following year, a Code of Conduct was developed, including minimum standards of policing outlined in 13 articles. Subsequently, the African Policing Civilian Oversight Forum (APCOF) developed a set of indicators to assist countries to measure performance in relation to the Code of Conduct. APCOF implemented a 10-country assessment (that included South Africa) between 2011 and 2012. The indicator around human rights included an assessment of police actions and training around rights, rights violations and dignity. The resulting report provides a baseline and measure against which countries can measure their progress.[26]

More recently, APCOF have been involved in an advocacy project targeting the African Commission on Human and People's Rights around the declassification and decriminalisation of petty offences. Petty offence laws (like loitering) are commonly used to arrest key populations and other marginalised people.[iii]

The AIDS and Rights Alliance of Southern Africa partnered with APCOF and the Centre for Human Rights Education, Advice and Assistance Organisation to host a regional dialogue with law enforcement officials and correctional services to curb HIV infections among key populations. This dialogue resulted in the adoption of a strategy to promote the rights of key populations, including sensitisation and capacity development of LEOs, strategic litigation, ongoing documentation of rights violations, and enhanced regional coordination.[27]

Interventions to improve the nature of engagement between police and key populations have also started in South Africa. Lessons learnt through the National Department of Health and the South African National AIDS Council's efforts to increase the sensitivity of health workers around issues affecting key populations is being used an example of how civil servants can be sensitised to issues affecting key populations.[28] COC, a Netherlands-based LGBT health and rights organisation, supported this process. Now COC and partners are looking to share these lessons with LEAs as part of the Hands Off! programme to reduce human rights violations affecting SWs, PWUD and LGBT people in the region.

[iii] http://apcof.org/projects/current-projects/

On 8 June 2015, COC and partners hosted a round-table discussion about interventions to improve engagement between LEAs and LGBT people, SWs and PWUD in South Africa. Subsequently, on 16 and 17 July 2015, COC and Aids Fonds convened a stakeholder meeting with civil society organisations working with LGBT people, SWs and PWUD and SAPS to develop an outline for a sensitisation and competency training programme for LEAs. On 20 July 2016, COC in partnership with the International AIDS Society and a range of partners co-hosted the 'Enhancing Partnerships Between Law Enforcement, Criminal Justice and HIV Programmes Working with Key Populations: Opportunities in South Africa' round-table discussion.[29] This meeting coincided with the launch of the Journal of the International AIDS Society's supplement on Law Enforcement and HIV, which included the manuscript, 'Finding solid ground: law enforcement, key populations and their health and rights in South Africa'. It detailed the successes and challenges in engaging with law enforcement generally, including challenges in implementing this study. A summary of key population interventions by LEAs, identified as part of these meetings, follows.

LGBT people: The Department of Justice and Constitutional Development has established a National Task Team (NTT) to build capacity to address violence motivated by sexual orientation or gender identity bias. In addition, the Department has contracted SafAIDS to develop a training curriculum around LGBT issues. Furthermore, SAPS is about to develop guidelines for frontline workers to improve the quality of services provided to LGBT people. Hate crime legislation, which aims to provide a legal framework for bias-motivated violence, including violence motivated by sexual orientation or gender identity discrimination, has recently been released in draft form for public comment. A Hate Crimes Working Group is monitoring incidences of hate crimes, and a rapid response team has been established to respond to reported hate crimes. Ad hoc training with LEAs around issues affecting LGBT people have taken place in several provinces, including Gauteng and KwaZulu-Natal, initiated mostly by non-governmental organisations. Meanwhile, the Western Cape Police have signed a memorandum of understanding outlining standard levels of care for transgender female offenders.

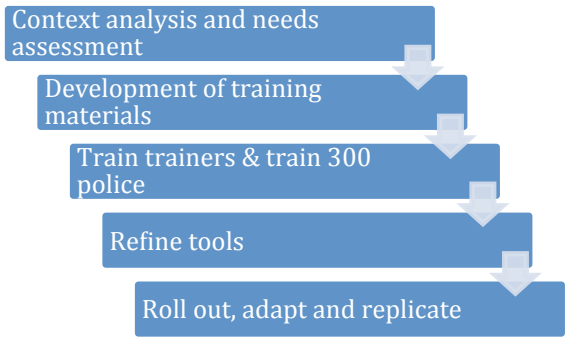
SWs: In 2012, the Sex Workers Education Advocacy Taskforce and the Women's Legal Centre with support from the Open Societies Foundation developed a law enforcement sensitisation training manual around SWs. This work was enabled by support from the National Police Commissioner, and initial LEA sensitisation training has already taken place. Engagement at local and provincial levels to foster relationships between SWs and LEAs has also begun. TB/HIV Care Association has been engaging with LEAs in the Western Cape and KwaZulu-Natal to enable the implementation of their HIV prevention programme for SWs in those provinces. At the 2014 SAPS HIV Symposium, they presented an overview of their HIV prevention programme for SWs. The Reproductive Health and HIV Institute (WITS RHI) at the University of the Witwatersrand has been engaging with police as part of SW health service delivery in Gauteng. At the national level, legislation around sex work is being reviewed, in line with local evidence and global recommendations.

PWUD*:* In 2013, the United Nations Office on Drugs and Crime (UNODC) supported LEA and civil society training around drug use. In 2014, TB/HIV Care Association presented an overview of their HIV prevention programme for PWUD at the SAPS HIV Symposium. TB/HIV Care Association and OUT LGBT Wellbeing have been engaging with LEAs locally and provincially in the Western Cape, Gauteng and KwaZulu-Natal to enable the implementation of HIV programming for PWUD in those provinces. The Urban Futures Centre at the Durban University of Technology has also been engaging with police around improving engagement between LEAs and PWUD. This has included a series of dialogues with police to share information around the links between drug law enforcement and public health, and alternative policing approaches.

Understanding and improving the current situation

This report includes the outcomes of a context analysis and needs assessment study around the issues affecting engagement between law enforcement and key populations, as they relate to health, rights and well-being in South Africa. This was the first step in informing law enforcement training that fosters environments where rights are protected and an effective HIV response can be effected (see Figure 1).

Figure 1 Police Training Programme Overview



Study sites

The context analysis and needs assessment focused on three metropolitan areas in South Africa (see Figure 2). These cities were selected based on the existence of organisations working with each of the key populations of focus in each city.

Pretoria: This is the country's capital and has approximately 2.9 million inhabitants. The city has a diverse economy and contributes about a tenth of national gross domestic product (GDP).[30] The SAPS head office is in Pretoria, along with several police training academies. Overall HIV prevalence is estimated at 12%.[31] HIV prevalence among MSM is estimated at 30%.[32] No HIV prevalence data for SWs in the city exist, and HIV prevalence among PWID is estimated at 16%.[33] Key population-focused HIV services, advocacy and police engagement activities are implemented by OUT LGBT Wellbeing, Sediba Hope Medical Centre, Sisonke Sex Workers Movement and Wits RHI.

Figure 2 Study sites

Durban: South Africa's largest port city has more than 3.4 million residents, about a third of whom are unemployed (30.2%).[34] Overall HIV prevalence is estimated at 14.5%.[31] HIV prevalence is estimated at 48% among MSM[10], 54% among female SWs[13] and 17% among PWID.[33] Key population-focused HIV services, advocacy and police engagement activities are implemented by the Durban Lesbian and Gay Centre, TB/HIV Care Association, Sex Workers Education and Advocacy Task Force and Sisonke Sex Workers Movement.

Cape Town: This is South Africa's second largest metropolitan area, with over 3.7 million inhabitants. Cape Town is the home of Parliament and is the economic hub of the Western Cape Province. The unemployment rate is 24%.[35] Overall HIV prevalence is 5.2%.[31] HIV prevalence is estimated at 22% among MSM[10], 40% among female SWs[13] and 9% among PWID.[33] Key population-focused HIV services, advocacy and police engagement activities are implemented by TB/HIV Care Association, Sex Workers Education and Advocacy Task Force, Women's Legal Centre, AIDS Legal Centre, Sisonke Sex Workers Movement, Triangle Project, Gender DynamiX and Anova Health Institute.

2. RATIONALE, AIM AND OBJECTIVES

Rationale

The effectiveness of training can be improved if it addresses an identified need and is developed and implemented in an appropriate manner. With this in mind, the context analysis and needs assessment was conducted to inform the police training process. The perceived benefits of the training from the perspective of SAPS, as informed by inputs from stakeholders participating in workshops facilitated in July 2015 and November 2016, are included in Table 1.

Table 1 Expected benefits of police training around key populations, rights and health

Benefit for SAPS	Mechanism
Improved SAPS employee wellness	Improved strategies to respond appropriately to sexuality, drug use and gender-based violence
Reduction in HIV infections among law enforcement officers	Training includes overview of HIV risks (violence, safer sex, preventing 'sharps' injuries etc.), and prevention and treatment methods
Reduction in civil complaints and law suits against law enforcement	Improved skills to manage challenging situations (verbal abuse, intoxication, engaging with gender non-conforming people, managing withdrawal, overdose etc.)
Reduction in deaths within police custody	Increased knowledge around drug use and health issues, and the benefits of increasing detainee access to health services
Improved quality of law enforcement services	Deepen understanding of sex work, drug use, sexuality and rights and how these link to everyday police work. Provision of practical skills for addressing gender-based violence and empowering victims.
Improved relationships with community	Improved understanding of rights, of granting respect to all people, and of ways to work towards improving community health and safety
Adaptation to changing legal environment	Knowledge and skills around pending hate crimes legislation, and awareness of efforts around sex work decriminalisation
Networking and capacity building	Linkages with Dutch and other police agencies experienced in working with key populations.

Aim

This context analysis and needs assessment aimed to inform the development and implementation of an integrated LGBT, SW and PWUD sensitisation and competency training programme for police in South Africa, and the wider Southern African region.

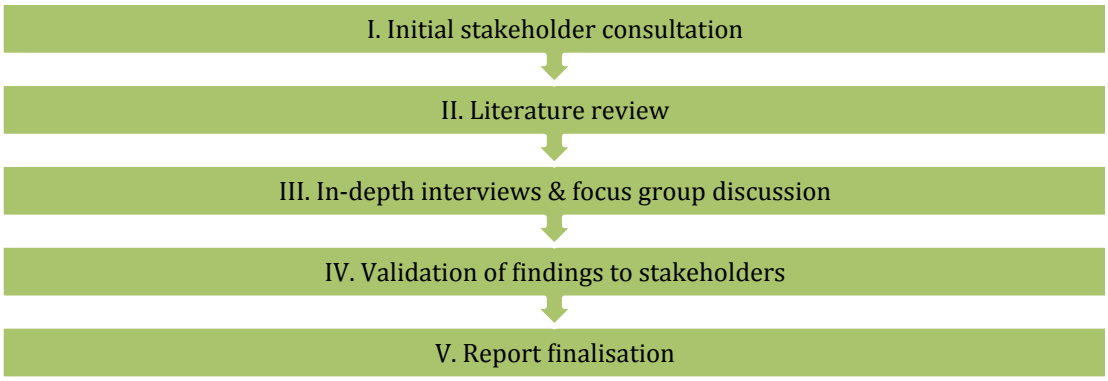
Objectives

1. To describe relevant laws, and mechanisms and practices that guide or are used to enforce laws, that influence the rights and health of SWs, LGBT people and PWUD
2. To summarise evidence of human rights violations (including violence), and actions taken to reduce rights violations among SWs, LGBT people and PWUD
3. To develop a prioritised list of needs, and potential interventions to address these needs, for law enforcement agents to better support the rights and health of SWs, LGBT people and PWUD

3. METHODS

This study included (i) consultation workshops with stakeholders, (ii) a literature review, (iii) in-depth interviews (IDIs) and focus group discussions (FGDs), (iii) validation of findings, and (iv) report finalisation (see Figure 1). Study procedures are outlined in the study protocol, which was approved by the University of Cape Town's Faculty of Health Sciences Human Research Ethics Committee in October 2015, and by SAPS in August 2016.

Figure 1 Overview of study methods



A group of consultants worked with COC and SAPS to plan and implement the activities described in this report. Although an investigation into the knowledge, attitudes and practices of representatives from the other law enforcement agencies (e.g. Metropolitan Police Services), the Department of Justice and Constitutional Development, the Department of Home Affairs, and the National Prosecuting Authority was desirable, it was only feasible for the study to focus on SAPS.

I. Initial stakeholder consultation

An initial stakeholder consultation workshop took place in Cape Town on the 16th and 17th of July 2016. Representatives of South African and regional organisations (including Hands Off! programme partners), who work with key populations around HIV, rights and health, as well as SAPS, technical agencies, donors and researchers participated in this meeting. Its purpose was to highlight priority issues around key populations, rights, HIV and law enforcement. Participants also developed recommendations for further exploration in the context analysis and needs assessment and the subsequent training process.[iv]

II. Literature review

A search strategy and data extraction template was developed and data identified, extracted and synthesised as part of the literature review. The desk review focused on identifying information since 2005 relating to SWs, LGBT people and PWUD in South Africa.

[iv] The report can be accessed from https://www.dropbox.com/s/0w8c34zik24l4cq/Whyle - 2015 - Meeting Report Hands Off%21 Planning Meeting on the Development of an Integrated Manual for Sensitisation of Law Enforceme.pdf?dl=0

The review specifically looked at:

- legislation and policy relating to populations of focus, HIV epidemiology and law enforcement
- human rights violations, including violence, particularly relating to law enforcement
- programmatic information (e.g. sensitisation programmes; interventions to improve outcomes of engagement for SWs, PWUD and LGBT people with law enforcement agencies around violence and human rights violations; challenges in implementing interventions aimed at improving relationships between police and the populations of focus)

Published and unpublished literature, policy documents, newspaper articles and service utilisation data were identified using online search engines (Medline, PubMed, Google Scholar, Web of Science and Google), a review of reference lists, and communication with stakeholders.

Relevant data sources were reviewed and information was extracted and inserted into a template. Data was analysed using directed content analysis[v] and triangulation[vi]. The initial literature review took place between August and December 2015. In November and December 2016 an additional review took place to identify new information for inclusion.

III. In-depth interviews and focus group discussions

IDIs and FGDs took place in September and October 2016. A total of five interviews, with six SAPS members, were conducted (one interview included two SAPS members). The interviewees included three women and three men, ranging in rank from Colonel to Lieutenant General across the three sites. Five FGDs took place, with between 4 and 12 participants per group. Three FGDs included 32 police, another comprised of a police service member and three members of the local community police forum, and the last FGD was made up of two PWUD and a representative from an organisation working with PWUD[vii]. Representatives from the SW and LGBT community were invited to the latter FGD, but were unable to attend. An overview of the participants is provided in Table 2.

The location of FGDs and interviews, and the selection of participants was informed by resources (limited budget for travel and number of IDIs and FGDs that could be completed), logistics (short time frame, limited availability of potential interviewees and FGD participants) and factors influencing police availability (several large protests took place during this time, including demonstrations at several university campuses).

Personal and demographic details were not collected, and IDIs and FGDs followed a semi-structured format (see APPENDIX 4: Interview and discussion tools).[viii]

[v] Directed content analysis involves the categorising of sections of data into pre-identified categories. Comparisons are then made within and between data sources. Data is analysed for manifest and latent meanings.
[vi] Triangulation involves the integration of data from a range of sources and the synthesis of this information to reach a better understanding of a issue of focus.
[vii] A representative from a Cape Town-based LGBT organisation was invited but was unable to attend. A representative from a Cape Town-based SW organisation confirmed participation but was sick on the day of the FGD. The literature around the experience of SWs and LGBT and police, and their experience of rights violations, was considered large enough to provide insights into their experiences that was used as part of the study.
[viii] Although the interview guide included broad questions about the LGBTI community, no specific questions focused around intersex people and none of the responses from study participants made reference to intersex people.

Written informed consent was obtained from all participants. Refreshments were provided and only participants from the PWUD community were reimbursed for their travel, as advised by SAPS.

Table 2 Interviewees and FGD participants.

	Durban	Pretoria	Cape Town
IDI	Visible policing commander	Employee health and wellness (senior manager)	Cluster commander
		Human resource development (trainer)	
		Colonels, visible policing (x2)	
FGDs	Representatives from public order policing unit (x10)	Representatives from visible policing, Pretoria Central Station (x10)	Representatives from visible policing, Central cluster (x12)
			Station commander, representatives from community police forum (CPF) (Central cluster)(x4)
			Representatives from PWUD and org. working with PWUD (x3)

IV. Validation of findings

Key findings from the IDIs and FGDs were presented at a manual development workshop held at the offices of SAPS Employee Health and Wellness in Cape Town on 8 November 2016. Recommendations to enhance the framing of the findings and to protect the identities of informants were provided and employed in the development of this report.

V. Report development

Findings from the desk review, IDIs and FGDs, and their limitations, are presented in the Findings section of the report. Recommendations were based on an analysis of information from the study findings and discussions with stakeholders. A draft report was circulated to stakeholders, SAPS, COC and Aids Fonds for review. Thereafter, comments were integrated and the report finalised.

4. FINDINGS: Literature review & consultations

A summary of findings from the literature and priority issues raised by key population organisations at the July 2016 workshop is provided below, including: an overview of the current legal context and policy environment; priority rights and health issues for key populations; links between public safety and public health, and an overview of South African law enforcement agencies. Thereafter, the report presents findings from the IDIs and FGDs around police knowledge, attitudes, practices around key populations and related issues in South Africa. Details of the literature review around the key populations, the law and law enforcement are provided in Appendices 1 – 3.

Sexual orientation, gender identity and LGBT people

Legal context, policy and LGBT rights

The Equality Clause of the South African Constitution 9(3) prohibits discrimination on the basis of gender and sexual orientation. Other important clauses include freedom from violence and the right to health.[7] MSM and transgender people are defined as key populations in the National Strategic Plan for HIV, STIs and TB (2012 – 2016), with recommendations for dedicated prevention interventions. However, limited specific mention was made of the need to address stigma, discrimination and violence in interactions with police.[1] LGBT people are likely to be defined as priority populations within the NSP (2017 – 2022), due to be released in early 2017.

The South African National AIDS Council (SANAC) has developed an 'LGBTI HIV Framework', which is due to be released soon. This outlines a strategic approach to LGBTI HIV and health concerns, and provides concrete implementation suggestions in order to decrease barriers to access to health and HIV services, and improve LGBTI health. While this framework focuses on health services, its strategic approach and areas for interventions are also relevant for work with law enforcement agencies.

LGBT people, police and HIV

Despite the strong constitutional and legal framework of protection, discrimination at the individual, societal and structural levels has an impact on the health and well-being of LGBT South Africans, especially in terms of their vulnerability to HIV and other STIs.[36–38] While there is a diversity of experiences of discrimination, access to health care, human rights and access to justice, some key themes have emerged from the literature. HIV prevalence is higher among MSM when compared to other populations. Risk factors include levels of intimate partner violence, inconsistent condom use, improper or infrequent use of condom-compatible lubricant during sex, high numbers of sexual partners, as well as heavy substance use among MSM, which increases the frequency of high-risk sexual practices.[37] Similar data is largely lacking among women who have sex with women (WSW), partially based on the assumption that WSW are not at high risk of contracting HIV. However, high rates of HIV have been reported in WSW, due in part to high levels of sexual violence, unsafe transactional sex and the aforementioned assumption that women are not at risk.[36,39]

From a health care standpoint, LGBT persons require access to sensitive and quality health care services, but their experiences of the health care system are shaped by societal stigma and discriminatory actions by health care workers. These experiences cause them to either deny and avoid discussing same-sex behaviour or to seek health care from LGBT organisations instead of the mainstream health system.[40–43]

LGBT persons are exposed to high levels of violence. Of particular concern, with regards to vulnerability to HIV, are the experiences of sexual violence, which is a high risk-factor, especially for lesbian, bisexual and other WSW – including the high prevalence of homophobic sexual assault, so-called 'corrective rape'. Despite this vulnerability to human rights abuses, law enforcement agencies have failed to provide affirming, sensitive and professional services to this key population.[36] Some of the barriers identified include societal stigma and discrimination, homophobia and transphobia on the part of SAPS personnel, experiences of violence from SAPS personnel themselves, mistrust of the criminal justice system and feelings that the police would not take complaints seriously. Additional barriers for transgender persons include the double stigmatisation experienced by transgender SWs and the need to provide a valid identity document in order to access the system. This deters LGBT persons from reporting violence to the police, and those who do, attest to having had a negative experience in doing so.

Seeking to address these barriers, the Department of Justice and Constitutional Development has developed a policy framework entitled, *The National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Sector 2014-2017,* which outlines strategies to implement effective measures to prevent violence and discrimination on the basis of sexual orientation and gender identity, and to improve access to the criminal justice and health care system for legal redress. Other reports offer recommendations for SAPS and other criminal justice and health care service providers to engage with LGBT organisations in order to provide better training and sensitisation of their employees.[44–46]

LGBT priority issues identified at Hands Off! partner meeting (July 2015)

Representatives from LGBT organisations identified the following priority areas that police training and related interventions should aim to address:

- ***Enhanced quality of services to LGBT people who access police services***
    - Secondary victimisation of LGBT people during encounters with the police should be avoided and interventions implemented to mitigate this from taking place.
    - Interventions should be put in place to enhance quality of service provided to LGBT people, and action taken against police who make degrading comments towards LGBT people.
    - People who accessed police services did not know their rights (access to post-exposure prophylaxis, victim-friendly room etc.). These rights should be covered in educational programmes for SAPS, and LEAs should be encouraged to offer them to LGBT people.

- SAPS need to record sexual orientation or gender identity of victims to guide investigations to be able to go to aggravation of sentence.
- Additional training will be needed when hate crime legislation comes into place.

Sex work and sex workers

Legal context, policy and SW rights

All forms of sex work, living off the proceeds of sex work, and purchasing sex is illegal in South Africa. The Sexual Offences Act 23 of 1957 outlines that it is a crime to have "unlawful carnal intercourse" or commit an act of "indecency" for reward. The Criminal Law (Sexual Offences and Related Matters) Amendment Act from 2007 furthermore stipulates that any person who engages in, or attempts to engage in, services of a sexual nature with another person for financial reward, has committed a crime. In addition, municipal councils have legislation (by-laws) to deal with a range of 'public nuisance' issues, including street trading, noise and loitering. These laws have been found to affect street-based SWs more than venue-based SWs.[47] The South African Law Reform commission notes that it is sex work itself that is illegal, rather than being a professional SW. SWs, as all South Africans, are entitled to the fundamental rights set out in the Bill of Rights of the 1996 Constitution, including rights to equality, dignity, freedom and security of the person, freedom of trade, occupation and profession, fair labour practices and fair trial rights. Any contravention of these rights by LEAs constitutes a human rights abuse.

SW-specific recommendations have been included in South Africa's current and previous National Strategic Plans on HIV, STIs and TB.[1,48] Since 2011, several other policies outlining the HIV response have been developed, including the South African Sex Work Sector Plan (2012), a National HIV Strategic Plan for HIV Prevention, Care and Treatment for Sex Workers (2013),[49] and most recently, the South African National Sex Worker HIV Plan (2016 – 2019), which was launched in 2016.[50] One of the objectives of The National Sex Worker HIV Plan includes the development and implementation of mechanisms to address rights violations affecting SWs, including those committed by police.[50] An initial draft of the National Strategic Plan on HIV, STIs and TB (2017 – 2022) included recommendations for ongoing HIV services, protection of rights and support for law reform.[51]

SWs, police and HIV

Numerous studies have found evidence of human rights abuses of SWs on the part of LEAs. Establishing evidence of the sale of sex is difficult, and often involves intrusive and violent policing. The most common forms of abuse were assault and harassment, arbitrary arrest, violations of procedures, inhumane conditions of detention, unlawful profiling, exploitation and bribery, and denial of access to justice. According to the Sex Workers Education and Advocacy Taskforce, due to the inherent difficulties of enforcing the Sexual Offences Act, police have also been found to use municipal by-laws to arrest or fine SWs rather than prosecuting them for their commercial sexual activity.[52]

Additionally, it is common practice for LEAs to cite condom possession as 'proof' that an individual is engaging in sex work, which disincentivises SWs to carry condoms. This increases HIV risk and runs contrary to health reports that emphasise condom use and a reduction of violence against SWs as crucial elements in reducing HIV acquisition and transmission.[53]

According to the Sex Workers Education and Advocacy Taskforce, SWs' only way of countering violence from LEAs is to avoid contact with them, as a result of which, SWs do not report offending officers or other experiences of violence. Even when SWs do report incidents, the police have often refused to take their statements. While most SWs are vulnerable to violence, harassment and abuse, certain groups are more vulnerable than others.[54,55] Transgender SWs and migrant sex workers face particular discrimination by police. In addition to problems of violence and harassment, current policing of sex work has been found to drain away scarce resources from more effective HIV prevention, treatment and care programmes.[56,57]

According to a report from UN Women and Open Society Initiative for Southern Africa, the criminalisation of sex work "consistently leads to discrimination" against SWs in health care settings across South Africa, despite a relatively progressive Constitution. Health care professionals' attitudes make it particularly difficult for SWs to access condoms, HIV screening, treatment for STIs as well as post-exposure prophylaxis.[58] In light of this, and specifically noting the link between criminalisation and limited retention on HIV treatment for SWs, SANAC highlights the need to "foster an enabling environment" in which all role players work to improve SWs' well-being. This includes moving towards legal reform and decreasing stigma and discrimination.[1]

Thus, de-stigmatisation through coordinated advocacy and education for health care workers, LEAs and the general public is essential. This should include training on current and planned legislation in partnership with relevant organisations.

SW priority issues identified at Hands Off! partner meeting (July 2015)

SWs identified the following priority areas that police training and related interventions should aim to address:

- ***Improved management of SWs while in police custody***
    - Appropriate health care services needed by SWs should be made available to them, including sexual and reproductive health services (antiretroviral therapy, post-exposure prophylaxis, and access to emergency contraception and termination of pregnancy services) and chronic medications (e.g. hypertension medication, diabetes medication).
    - Police should be made aware of the need for psychosocial services for SWs who are arrested who often experience multiple trauma (i.e. trauma leading up to being charged, and the process of being charged, arrested and detained).

- ***Enhanced quality of police services to SWs who access them***
    - Interventions should be undertaken to eliminate discrimination towards SWs who approach the police to access their services.
    - Interventions to remove barriers that SWs experience when reporting rights abuses and other crimes to police should be initiated.
    - A process to increase awareness of and access to specific, friendly services in areas with a large sex work industry is needed.
    - Access and referral networks for health and social services should be implemented.
- ***Advocacy from police and stakeholder to support SW empowerment***
    - This should include laws that protect SWs and their rights.
- ***Improve relationships between police and SWs in the community***
    - Educate LEAs around how to approach conflict.
    - Build awareness of how to engage with and manage issues specific to SW subgroups – specifically migrants, transgender and male SWs.
    - Raise awareness of the problems associated with profiling and the use of condoms as evidence.

Drug use and people who use drugs

Legal context, policy and PWUD rights

Illegal substances are defined in the Medicine and Related Substance Control Act 59 of 2002 and the Pharmacy Act 53 of 1974. Treatment efforts are outlined in the Prevention of and Treatment for Substance Abuse Act 70 of 2008, while the policing of the manufacture, distribution and use of illegal substances is covered by the Drugs and Drug Trafficking Act 140 of 1992. Under South African law, PWUD have the same constitutional rights as other people in South Africa, and three policies provide additional detail around health and rights for PWUD.

The South African National Drug Master Plan (2013 – 17) is the principal drug-related policy. It recommends the implementation of community-based treatment and harm-reduction[ix] programmes, especially for vulnerable people and children. The National Department of Health's Mini Drug Master Plan (2011/12 – 2013/14) describes evidence-based harm reduction interventions (in line with internationally recognised definitions) that should be implemented.[59] The South African National Strategic Plan for HIV, STIs and TB (2012 – 2016) includes PWUD as a key population in need of tailored HIV and TB prevention interventions and notes the HIV and related health risks and consequences of the criminalisation of drugs and associated stigma.[1] None of these policies currently provide recommendations around how to improve partnerships between the Departments of Health, Social Development and Police, and no harm-reduction policy or guidelines exist.

[ix] The NDMP definition of harm reduction does not align with the internationally accepted definition of harm reduction and related principles. It includes a localised version of harm reduction instead.

PWUD, police and HIV

As community-based epidemiological data on drug use in South Africa is very limited, it is difficult to quantify its scope.[33] However, PWUD from lower socio-economic circumstances are more likely than their wealthier counterparts to live or work on the street, to purchase or use drugs on the street, and to engage in theft. As a result, PWUD with fewer economic resources have more frequent encounters with police. They are also less likely to be able to afford bail and have few, if any, options for legal representation. Cumulatively, this contributes to a higher likelihood than better resourced individuals who use drugs of entry into the criminal justice system, which in itself is associated with a greater likelihood of further criminal activity and continued substance use. [60]

Almost half (45%) of police detainees sampled in a study in three metros, published in 2004, tested positive for drug use in a urine test.[61] These findings highlight the intersections between crime and drug use, but provide no insights into causality. They must thus be viewed in relation to the factors of disproportionate risks of engagement in crime and harmful substance use, as a result of underlying socio-economic factors.

The first initiative to actively collect data and monitor engagement between police and PWUD has been part of a harm-reduction demonstration project for PWID in Cape Town, Durban and Pretoria. Baseline information from these cities collected in 2015 noted daily engagement between PWID and the police at most locations in public spaces where PWID congregate.[62] This project has recorded over 500 rights violations affecting PWID in a six-month period. However, few of these episodes have been formally lodged[x] with the police or relevant oversight committees. Most violations included confiscation and also destruction of HIV-prevention commodities, including injecting equipment. Instances of detention without cause, harassment and bribery were also noted.[63–65]

PWUD priority issues identified at Hands Off! partner meeting (July 2015)

No PWUD were part of the Hands Off! programme partner meeting but representatives from an organisation providing health and rights services to PWUD in South Africa, the UNODC, and researchers experienced in working with PWUD participated. They identified the following priority areas that police training and related interventions should aim to address:

- **The training should deepen participants' understanding of substance use, from a factual basis**
    - Police, and all people in South Africa, should be provided with factual information around substance use, that is not influenced by moral viewpoints.
- **The perspectives of PWUD and the issues affecting them should be highlighted to foster empathy among police towards PWUD**
    - Training should convey PWUD perspectives, as these are frequently ignored, contributing to stigma, discrimination and social exclusion.
    - Training should be provided in a way that allows police to start to reflect, engage and develop approaches to manage substance use within their communities and families, or personally.

[x] Data on the number of rights violations formally reported is not available.

- **The police can learn from international examples of alternative approaches to policing drugs, which are improving public safety and public health outcomes**
    - The training should include some international examples of alternative policing of drug use – like law enforcement assisted diversion (LEAD) – that have shown positive policing and health outcomes.
    - Trainees should be exposed to global networks, like Law Enforcement and HIV Network, to allow interested police members to form links with other law enforcement agencies working around these issues for positive change.

Considerations for training police highlighted at Hands Off! partner meeting (July 2015)

Training should take contextual realities into account: The high workloads, stressful environments and political pressures that influence policing practice should be taken into account when developing and implementing training for police.

Buy-in and partnership from police is essential for change: Police participation and input at all stages of the project are important for success. Partnership with police will increase levels of support, and shape content and implementation to be appropriate for police practice. This will help create appropriate in-service and basic police training.

For institutional change to take place, training should occur across the various levels and organisational units and departments, and with other relevant stakeholders: Ideally, all employees should receive relevant training around diversity, and rights and issues affecting key populations, as they are important for policing. Training should span police members, from non-commissioned officers to senior management. Training should include elements focused within the police service (e.g. through employee health and wellness), as part of operations (e.g. for Social Crime Prevention, Victim Empowerment, Visible Policing etc.), as well as human resource development, research and performance management. As the police are only one important stakeholder in law enforcement, training should include metropolitan police departments, Correctional Services, the Department of Justice and Constitutional Development, the National Prosecuting Authority and police oversight mechanisms.

The current performance system (arrest quotas) contributes to practices: Several meeting participants highlighted that monitoring of policing effectiveness in South Africa relies largely on crime and arrest statistics. Arrest targets are developed around major and minor crimes, which police stations have to meet. Representatives from key populations participating in the meeting believed that these targets disproportionately affected key populations who lived, worked or were visible on the street.

There is an apparent conflict between police knowledge and practice: Meeting participants recognised police as important knowledge bearers who have a good understanding of crime and the contexts in which they work. A few participants who had done ethnographic research with police noted that in their experience there are police who arrest key populations in line with the law, but do not believe that this is the most effective use of police time or the most beneficial action for these people.

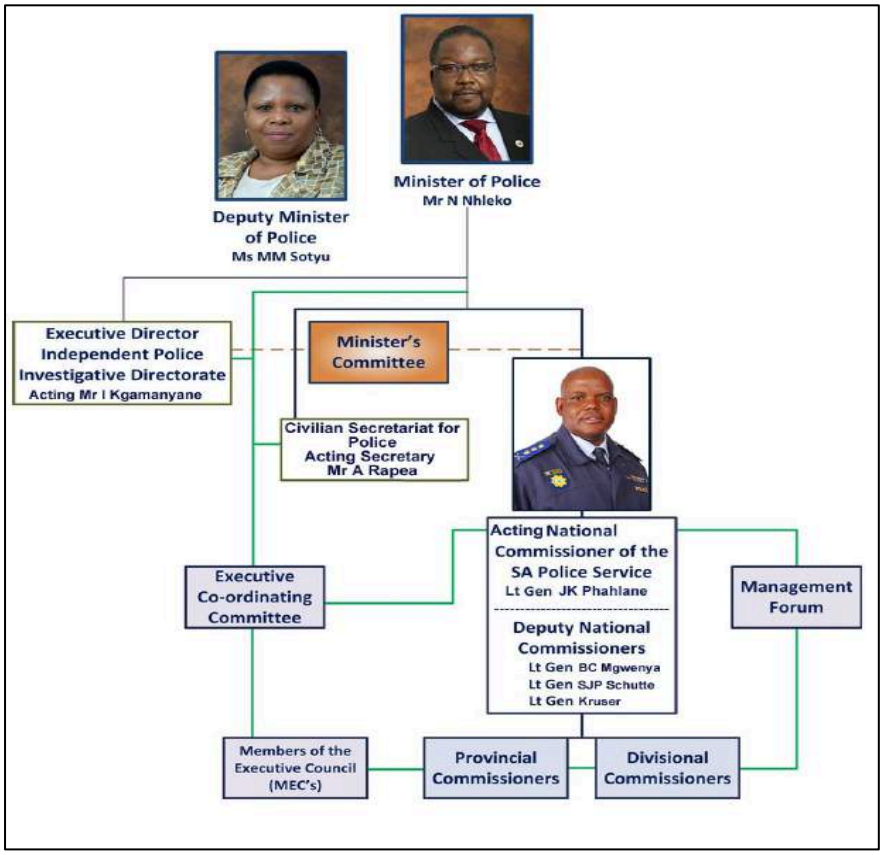
Training is an opportunity to inform police about ongoing debates around law reform and related policies, both locally and globally: Hate crime legislation is being developed and the South African Law Reform Commission has conducted a review around sex work, with debates around the decriminalisation of sex work being discussed as part of parliamentary working groups. Globally, the discourse around drug policy, its implementation and the potential health and rights consequences is ongoing and will influence South Africa. As a member of the African Union, South Africa has committed to upholding human rights of all people. The South African Central Drug Authority has also published a position statement confirming support for a harm-reduction approach and initiating discussions around drug policy reform.

Training alone is insufficient for significant change in policing practice: Training is a useful way to increase knowledge and can contribute to shifts in attitudes and build skills. However, buy-in from all levels is needed for training to be taken up, and relevant policing protocols and instructions that align with training are required to guide and support a change in practice.

South African Department of Police

The structure of the South African Department of Police is provided in Figure 2.
Legislatively, the South African Police Service Act 68 of 1995 outlines key elements of law enforcement, as well as the roles and responsibilities of SAPS, community police forums and metropolitan police services.

Figure 2 Structure of the South African National Department of Police



Source: www.saps.gov.za

SAPS is the most important law enforcement agency in the country. Municipal police services also exist, as well as other smaller agencies linked to the military and transport infrastructure.

South African Police Service[xi]

SAPS is one of the biggest civil service agencies in South Africa, employing approximately 200,000 people. SAPS is responsible for the execution of a range of legislation, covering issues affecting public safety and security, several of which are of specific relevance to key populations, including: criminal procedures, domestic violence, protection from harassment, sexual offences, immigration, drug use, manufacturing and trafficking of drugs, prevention of organised crime and human trafficking.

Vision: To create a safe and secure environment for all the people in South Africa

Mission:

- To prevent and combat anything that may threaten the safety and security of any community
- To investigate any crimes that threaten the safety and security of any community
- To ensure offenders are brought to justice
- To participate in efforts to address the causes of crime

Values:

- To protect everyone's rights and to be impartial, respectful, open and accountable to the community
- To use the powers given to us in a responsible way
- To provide a responsible, effective and high-quality service with honesty and integrity
- To evaluate our service continuously and make every effort to improve on it
- To ensure an effective, efficient and economic use of resources
- To develop the skills of all members through equal opportunity
- To cooperate with all communities, all spheres of government and other relevant role-players
- To fulfil in the vision and mission of the South African Police Service, all members are subjected to the South African Police Service's Code of Conduct

SAPS members are expected to conduct themselves in line with the Code of Conduct, which makes reference to the Constitution and the protection of rights (see Text box 1).

[xi] http://www.saps.gov.za/about/about.php

Text box 1 South African Police Code of Conduct

We, as Police Officials of SAPS commit ourselves to the creation of a safe and secure environment for all people in South Africa by –

- participating in endeavours to address the root causes of crime in the community;
- preventing action which may threaten the safety or security of any community; and
- investigating criminal conduct which has endangered the safety or security of the community and bringing the perpetrators thereof to justice.

In realization of the aforesaid commitment, we shall at all times –

- uphold the Constitution and the law;
- be guided by the needs of the community;
- give full recognition to the needs of the South African Police Service as my employer; and
- cooperate with the community, government at every level and all other related role-players.

In order to achieve a safe and secure environment for all the people of South Africa we undertake to –

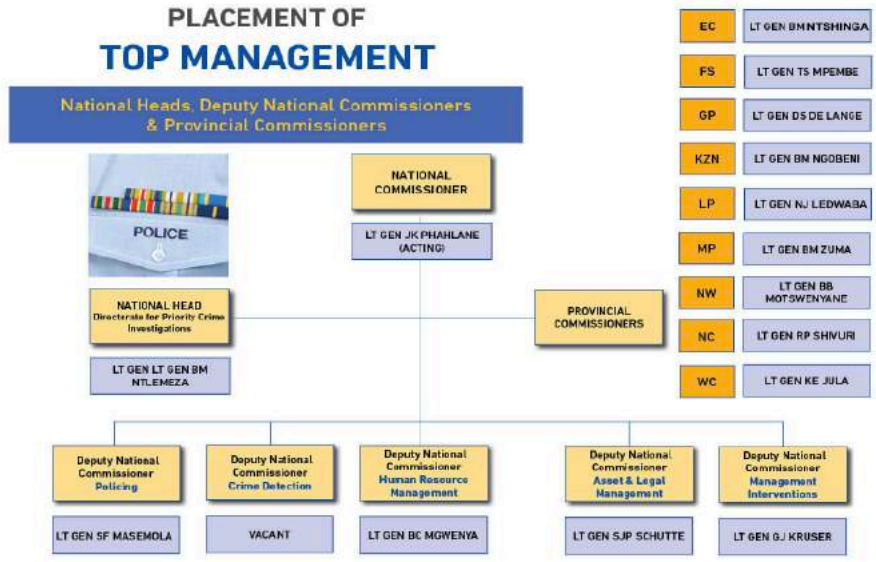
- with integrity, render a responsible and effective service of high quality which is accessible to every person and continuously strive towards improving this service;
- utilize all the available resources responsibly, efficiently and cost-effectively to maximize their use;
- develop our own skills and participate in the development of our fellow members to ensure equal opportunities for all;
- contribute to the reconstruction and development of, and reconciliation in our country;
- uphold and protect the fundamental rights of every person;
- act impartially, courteously, honestly, respectfully, transparently and in an accountable manner;
- exercise the powers conferred upon us in a responsible and controlled manner; and
- work actively towards preventing any form of corruption and to bring the perpetrators thereof to justice.

Source: www.saps.gov.za

The National Commissioner heads SAPS, supported by the National Head of the Directorate for Priority Crime Investigations, nine Provincial Commissioners, and five Deputy National Commissioners. The national structure is composed of a range of components and specialised units, which is also reflected on the provincial level (see Figure 3). At the local level, police stations are grouped in Clusters.

The operations of SAPS are aligned to their five-year strategic plan and annual performance plans, and annual reports reflecting performance and expenditure are developed. Pillars of the SAPS Strategic Plan (2014 – 2019) include: (i) Strengthening the Criminal Justice System; (ii) Professionalism of the Police Service; (iii) Demilitarisation of the Police Service, and (iv) Building Safety Using an Integrated Approach.

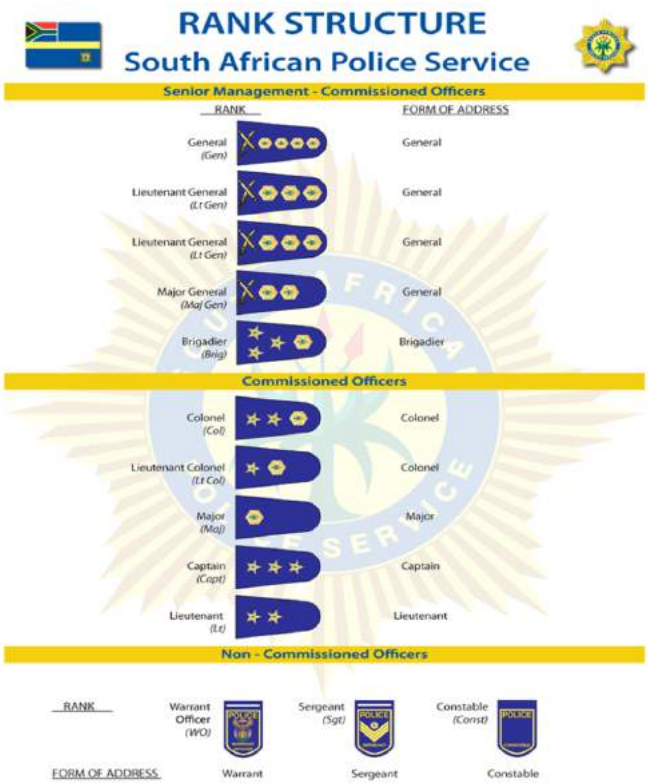
Figure 3 Overview of National Structure of the South African Police Service



Source: www.saps.gov.za

The SAPS is a hierarchical organisation that has transitioned from a militarised force to a professional service. There are three categories of rank: Senior Management – Commissioned Officers, Commissioned Officers and Non-Commissioned Officers (see Figure 4).

Figure 4 Rank structure of the South African Police Service



Source: www.saps.gov.za

Metropolitan police (law enforcement)

The six established metropolitan police services are mandated to work with local, provincial and national government departments and external agencies to uphold local by-laws. By-laws are passed by city councils. Several by-laws exist to uphold social order (graffiti, noise, loitering, public drinking etc.). Law enforcement officers have powers to confiscate items, issue warnings and fines, and arrest and shut down illegal operations that contravene by-laws. The divisions of the metropolitan police services differ by city, and a range of units exist. For example, Cape Town metropolitan police includes the Displaced People's Unit and the Rapid Response Unit, which patrols "Cape Town on a 24/7 basis to eliminate gangsterism, prostitution and other by-law infractions."[xii] The SAPS and Metropolitan police services often work together on joint operations, which are led by SAPS. Joint operations include roadblocks, festive season operations, policing of events and drug-related operations.

[xii] www.capetown.gov.za/Departments/Law Enforcement and Security Department

5. FINDINGS: Interviews & focus group discussions

This section includes key findings from the in-depth interviews (IDIs) and focus group discussions (FGDs). Findings are grouped by key population and around the themes of knowledge, attitudes and practices.

FGDs and IDIs were conducted with police in three cities, while one FGD consisted of two PWUD and a member of an organisation dealing with PWUD.

Sexual orientation, gender identity & LGBT people

Knowledge

Generally speaking, FGD participants had a narrow, binary understanding of gender. None of the police FGD participants in Pretoria or Durban recognised violence affecting LGBT people as part of gender-based violence, a current focus area of SAPS. Two participants in the Cape Town FGD with police recognised this link.

One non-commissioned officer who participated in the Cape Town FGD and several interviewees showed a more nuanced understanding of gender (and gender diversity) and how this was important for the work they did, particularly around gender-based violence. One interviewee stated that the police's current binary approach to gender limited their ability to appropriately respond to gender-based violence affecting the LGBT community. Training and understanding of gender-based violence was largely focused on violence inflicted by males on females.

> *"The first challenge is you need to change our definition of gender and carry it through all our regulatory frameworks, to re-classify it."*
>
> *Male commissioned officer, Cape Town IDI*

All participants had heard of the terms 'lesbian' and 'gay', and many of 'transgender'. Most participants reported having seen LGBT people, and that it was now more evident in their communities.

> *"These people have been exposed now, all along it was just a 'hide-and-seek', people were not actually out in the open. Only now that we can see and hear, 'cause it was something we could not talk about, to be honest."*
>
> *Male non-commissioned officer, Durban FGD*

> *"Gays and lesbians, they are there in the community."*
>
> *Male non-commissioned officer, Pretoria FGD*

Yet, only a few FGD participants said that they personally knew people identifying as LGBT. Across all three FGDs, participants showed interest in learning more about sexual orientation and gender identity. In Pretoria, one of the female participants related how she became more knowledgeable about gay and transgender people through conversations she had had with a male friend who was attracted to men.

Among the participants in the study, the commissioned officers appeared to have better knowledge around sexual orientation and gender identity compared to the lower-level FGD participants. FGD participants with higher levels of understanding linked this to personal or professional experiences, or engagement with LGBT people or organisations working with LGBT people. One of the female FGD participants in the Cape Town FGD with police openly identified as a lesbian woman. On the other hand, some FGD participants reported that they had never knowingly engaged with a LGBT person.

> *"I have seen one, but never interacted."*
>
> *Female non-commissioned officer, Pretoria FGD*

Participants were aware of the constitutional protection around sexual orientation and gender, and the National Protocol for the management of transgender people in detention. Despite acknowledging that LGBT people existed and displaying knowledge of the legal framework, a few FGD participants conflated gender identity and sexual orientation, as reflected in frequent misuse of terms, and the admission of the need to learn more about sexual orientation and gender identity.

> *"We were having some complaints, there were two guys that were loving each other. While when you see them they are two males, not something different from us [men in uniform]. So even today, I do not understand. Is the other one the wife, and the other the man? So how it comes like that?"*
>
> *Male non-commissioned officer, Pretoria FGD*

Several participants admitted their limited understanding around sexual orientation and gender identity. The terms 'lesbian', 'gay' and 'transgender' were frequently used interchangeably, with many participants describing gay males as transgender females.

> *"According to my view, that person looks like a lady, he did not introduce himself or herself as a male person. And it is a bit confusing."*
>
> *Female non-commissioned officer, Pretoria FGD*

Overall, responses from all participants confirmed support for opportunities to raise police members' understanding of sexual orientation, gender identity, LGBT people and the issues affecting them, relevant for police.

Attitudes

In most focus groups, participants spoke about an increasing visibility of LGBT people in community settings, and, to a lesser degree within the police. Among the FGDs, more frank, open discussions around LGBT issues took place. FGD participants in Cape Town were recruited from the central Cape Town area, which hosts a number of visible and clearly LGBT-identified events, such as pride marches and parties.

> *"Bearing in mind that it is a matter of young people. In the past, people weren't as open, now they are more free to speak about their sexual preferences and people are not that stigmatising now… [cont. overleaf]*

…Out there, now, when one says, 'I am gay' or 'I am bisexual,' people don't jump up and say, 'oh my word' – it is becoming, for me, becoming part of our community."

Male non-commissioned officer, Cape Town FGD

Members of a central Cape Town CPF that took part in a FGD in Cape Town confirmed police perception of a general community acceptance of LGBT people.

"*It is an open scene. There is no discrimination of gender. They are open about it, they walk hand in hand – it is very common. In general, it is normal."*

Male CPF member, Cape Town FGD

Apart from one IDI in Cape Town, hate crimes by community members towards LGBT people was not highlighted as a particular priority for police. Broader community views towards LGBT people from the other cities were not obtained.

However, some stigmatising attitudes were noted among police towards LGBT people.

"We try and teach our members that they [LGBT people] are human beings like we are, but then again there is that stigma. In isiZulu, they will talk about 'ustabane', in Afrikaans they will talk about a 'moffie'. Now we don't allow people to use this language at work, but you still hear it in between. So you then know there is this inborn hostility to someone that is LGBT. But I have never, since I have been here, I have not heard about a case that was made against a member, or a gay person provoked because of the stigma… I want to say, put a feather in my cap, a person like that will not be chased away."

Male commissioned officer, Durban IDI

Police participants in the Cape Town and Durban FGDs reported that sexual orientation and gender identity were not openly discussed within the police, and that LGBT people in uniform were not necessarily readily accepted. They related examples of prejudice within the police:

"I would say here in the police side, what police usually say is that is does not look like an appropriate police thing – being lesbian or gay, it looks like a 'soft' person. We may accept it, maybe, on our private days, but in uniform, I would say, as maybe police talk about it, it doesn't look like a police member."

Female non-commissioned officer, Durban FGD

On several occasions, police members voiced concerns that people might not be consistent in their gender identity, and were concerned that this would add a level of uncertainty for police:

"Those people can change their mind. You can detain that person and he says he is a gay, then not long from now, [he changes his statement]. If a person identifies as a lesbian or a gay then the person must be put in that cell as per protocol. After you detain that person, they say, 'I am the opposite.'"

Male non-commissioned officer, Pretoria FGD

Several other police FGD participants implied that many people who were detained by police were manipulative and looked for ways to abuse the policing system for their own devices. No FGD participants challenged statements by other participants about inconsistency of gender identity or sexual orientation. Nevertheless, two interviewees noted the need for sensitisation training in light of the prevalence of stigmatising attitudes towards LGBT people, without being prompted.

Positive police attitudes towards LGBT police members were also noted. For example, a commissioned officer from Cape Town stated that the station where he worked was a supportive environment and had some members who openly identified as LGBT, who he claimed were accepted among colleagues. This contrasted with the view of an interviewee from Employee Health and Wellness National Office who thought that police experienced challenges when disclosing their sexual orientation or gender identity.

Also in Cape Town, a FGD participant confidently listed a range of procedures in place to improve policing attitudes towards LGBT people.

> *"I think that it is something that is not a taboo anymore. We have working instructions that to speak to those – how to deal with LGBT community members in terms of arrest, in terms of custody management, as well as how we conduct ourselves with people from the community."*
>
> *Male non-commissioned officer, Cape Town FGD*

Practices

Several participants referred to the police Code of Conduct and the constitutional framework as the main guides for policing practice, including their engagement with LGBT people. However, on several occasions, discriminatory practices towards LGBT people were mentioned. A commissioned officer who took part in an interview in Durban noted that he had not received any formal complaints at his station about discriminatory practices towards LGBT people. Yet he said that if he did he would investigate them. He did, however, hint that discriminatory practices by police towards LGBT people, such as targeting or profiling of individuals, were possible.

> *"Now I am not talking about being rude, I am just talking about generally, if we did so have that a certain area in this precinct was only inhabited by gay males, the patrols that were happening in that area would not be the same as those happening in other areas."*
>
> *Male commissioned officer, Durban IDI*

Generally speaking, there was little evidence of active efforts to encourage practices that supported non-discrimination and affirmative treatment of LGBT people. However, a commissioned officer interviewed in Pretoria shared her awareness of an ongoing sensitisation training process with police being developed and piloted in Pretoria. Overall, interviewees and police FGD participants were supportive of training to build their knowledge around LGBT issues as a mechanism to enhance policing practices and engagement with LGBT people.

Sex work and sex workers

Knowledge

The level of knowledge of the current legal framework around sex work varied among the FGD participants. Almost all of the interviewees noted that the current legislation around sex work, and its implementation, was under review.

> *"We all know sex workers - it is a problem."*
>
> *Female non-commissioned officer, Pretoria FGD*

> *"Sometimes, others are using escorts, and others the street sex workers. Those [police] who are not sure which one is legal and which one is illegal."*
>
> *Male non-commissioned officer, Pretoria FGD*

Police were aware that the Sexual Offences Act criminalised SWs as well as clients. However, police acknowledged that the SWs were generally more affected by the current legislation than their clients, despite revisions to the law.

> *"[…] what we tend to do as police is we tend to focus on the prostitutes, but not the clients."*
>
> *Male non-commissioned officer, Cape Town FGD*

Few of the non-commissioned officers who took part in the FGDs were confident about the current legal status of sex work. Many were aware that it was a criminal offence, but several people referred to an instruction not to arrest SWs.

> *"That comes back to whether it is illegal or legal. A few years ago there was a memorandum that you can't just arrest them [SWs]."*
>
> *Male non-commissioned officer, Pretoria FGD*

Most participants acknowledged that sex work was done for financial reasons, and many noted that a range of other socio-economic circumstances further influenced it.

> *"For others, they will tell you they are suffering, they are from poor families, they ended there [in a brothel]. 'Cause they are looking after them. With others they just do it for fun."*
>
> *Male non-commissioned officer, Pretoria FGD*

Police showed a fairly good yet somewhat stereotypical understanding of sex work. This included knowledge of the various types of sex work, and that it took place in a variety of settings (e.g. on the street, escort agencies, massage parlours and other indoor venues). Although factors contributing to sex work and the range of sex work venues were fairly well known, not all police were aware of the existence of male SWs.

Some police, particularly those who had engaged with SW organisations, were empathetic and their responses to questions around sex work revealed deep understandings of the reasons for and challenges of sex work.

"I work with them. If you listen to those people and you know why they do it, then you get a whole different understanding. Compared to when you see the person on the road - a person that is not good for society - but if you really work with the person and find out why the person is on the street selling their bodies, the outlook on how you look at it [changes]. Sex work in general is males and females. Different ages, also, LGBTI community that also are involved in sex work, they put themselves out there, some of them are abused by syndicates, and drug habits, some of them are diagnosed [with HIV], some work to keep their children in school; not because they want to, but because that is what is available, the only commodity that they have is their bodies to sell."

Male non-commissioned officer, Cape Town FGD

None of the non-commissioned officers in FGDs reported personal knowledge of human rights violations committed by police members towards SWs. However, reports of these allegations were acknowledged by several commissioned officers interviewed.

In most focus groups and several interviews, sex work and trafficking were conflated and believed to be the same. Only one interviewee distinguished the difference between sex work, trafficking and exploitation.

FGD participants had varied knowledge of police using sex worker services themselves. Some reported hearing about these allegations, and encouraged SAPS to investigate these further. Others claimed that SWs made such allegations to insult police.

On several occasions, commissioned and non-commissioned police members noted that the Sexual Offences Act was not equally applied. During two interviews and two FGDs with police, officers stated that SWs working on the street were more likely to be charged and/or arrest by police than SWs working in venues. On two occasions, police noted that clients were almost never charged or arrested. Some reasons cited for this were community complaints about SWs, the higher levels of power of many clients, and clients' greater access to legal recourse compared to SWs.

A CPF representative who took part in a FGD in Cape Town acknowledged limited knowledge around sex work among CPF members, and attributed this to the limited interaction, advocacy and engagement between SW organisations, the CPF and the general community.

Attitudes

Despite their awareness that criminal law and municipal by-laws related to or were used in relation to SWs, police appeared to be ambivalent towards SWs.

"[I would arrest them] If they commit crime or if they steal from their customers."

Female non-commissioned officer, Pretoria FGD

Police generally associated sex work with crimes other than 'prostitution', mostly related to theft. Most police pointed out that SWs did not necessarily commit these crimes, but were often linked to the perpetrators. Responses from several non-commissioned officers inferred that street-based SWs were more likely to be involved in crime.

> *"Some on the streets, they commit crime. They ask for R50 and then they end up stealing stuff. But those ones are professionals, the ones that …. You won't hear things like stealing of thing or money. On the street they commit most of the crime."*
>
> *Male non-commissioned officer, Pretoria FGD*

However, one commissioned officer believed that organised crime was a deep-rooted issue in the sex industry. He believed that many SWs working on the streets and in venues were victims of organised crime, and that decriminalisation of sex work would undercut the organised crime element related to the industry. Several FGD participants thought that SWs who used drugs were more likely to be involved in crime.

Some commissioned officers viewed SWs as criminals chiefly because of their definition as such under existing legislation (the Sexual Offences Act), whatever these officers' personal opinions on the matter may be. They elaborated that by this standard, the same definition of criminality would apply to any person, even police, whose actions were against the law.

One interviewee believed the criminalisation of sex work contributed to organised crime and potential exploitation, and differentiated between decriminalisation and legalisation. The participant also acknowledged power differentials between SWs and clients in relation to engagement with police, particularly in the current legal framework that increases SWs' vulnerability to rights violations.

Stereotypes of SWs being female, substance users, linked to crime syndicates and working on the street were commonly alluded to during interviews and discussions with police. A female police member thought that community stigma towards SWs did exist, and that they were partially viewed as vectors of disease.

> *"What they are doing [sex work], it is not regarded as a job. 'Cause they are regarded as people who are infecting people with HIV. All of that stuff."*
>
> *Female non-commissioned officer, Durban FGD*

> *"Prostitution comes with things, with drug use and alcohol, which is not safe. When they are drunk or high on drugs they can not assure their safety while doing the act."*
>
> *Male non-commissioned officer, Durban FGD*

On several occasions, SWs were mentioned as good informants, and partners to reduce crime. One commissioned officer believed that former SWs were potentially good informants. This person also held the rigid view that any person who was engaged in, or who had committed a crime, was by definition a criminal.

Again, this highlighted conflicting attitudes among police officers in that SWs were important partners with police while also susceptible to arrest by police.

None of the FGD participants expressed their attitudes around current legislation and the decriminalisation debate, and no specific questions aimed to elicit these responses. However, one commissioned officer interviewed (who also highlighted the need for structural reform around the binary definition of gender), expressed his support for the decriminalisation of sex work from a policing perspective without being prompted.

> *"I believe in the decriminalisation of sex work. The sex trade has become run by organised criminals. If you have got 1 to 5 women on the street, you are the syndicate leader. Crime is not the fault of sex workers, but the prevalence of robberies is [due to] the pimp who calls his friends to target the clients of the sex workers. If you decriminalise [sex work], people have access to public health care and they have the protection of labour and legal people. You undermine these people who try to make profit, because it is illegal, because it is illicit. That is the syndicate around that … The point is, all the money and crime would not have been there if that thing was decriminalised."*
>
> *Male commissioned officer, Cape Town FGD*

Among those who participated in this study there was general recognition and consensus that the confiscation of condoms for evidence of sex work was unacceptable, largely due to the increased sexual health risks for SWs and their clients.

Not until probed did CPF members recognise SWs (and also PWUD) as part of the community. After pointing this out, the CPF members that participated in the group acknowledged this, and highlighted some of the actions they had taken to address issues affecting marginalised people living on the street in their community. The CPF were openly supportive of the actions taken by police around sex work and drug use. The CPF members did not elaborate on the actions that had been taken, however, they felt that most police action in these areas was as a consequence of pressure, complaints and/or expectations of the communities, which had representation on the CPF, or were empowered to make such requests from the police.

Practices

Some participants reported that they made specific efforts to arrest SWs. However, some of the reasons stated for arresting SWs did not appear to be valid causes for arrest.

> *"Sex workers contribute to high crime levels. That is the reason for police to arrest them and lock them up. Police officials have a job to do, we must do something about it. There is a perception outside that we are hunting SWs to lock them up. I am not gonna sit in a van 24/7 looking for SWs. But if they are there and they cause problems - sometimes they cause congestion in traffic - I will. That is the broader mind of the police officials dealing with this."*
>
> *Male non-commissioned officer, Cape Town FGD*

A police member in Cape Town noted that law enforcement agencies use municipal by-laws to charge SWs, often in response to public complaints. However, the member noted that the Metropolitan Police services were largely responsible for implementing these by-laws, not SAPS.

A police officer aware of the debate around decriminalisation related examples of sex work being linked to other crimes.

> *"Sex work is criminalised. It is illegal. There has been a fight to decriminalise it. That is where people confuse the action of the police and where it comes from. Because, if for instance, a certain area is experiencing a lot of crime relating to sex work that is happening there, for example, if these parties make an agreement about payment and there is a contestation, one of the parties changes their mind after the act, does not want to pay anymore, it translates to rape. Once you change your mind, then the victim is going to come up and lay a charge. Now you get a hotspot of rape cases that come out, and robberies. Some sex workers also get their money linked to drug activities."*
>
> *Commissioned Officer, FGD CPF and Police FGD, Cape Town*

The examples reflect policing experience and practice, but do not quantify the proportion of SWs linked to other crimes. Statements also highlight the unintended consequences of the current legislation: without access to recourse for SWs for breach of contract for sexual transactions, it falls to the police to deal with the repercussions.

Many police participants reported having to endure verbal abuse from community members, including SWs. On different occasions, two male police members reported witnessing indecent exposure of SWs, which they found offensive but did not act upon. Almost all police reported that they were trained to manage these types of incidents and that they did not react inappropriately in these situations. Participants in Durban and Pretoria acknowledged widespread capacity of community members to film police actions, and the potential consequences thereof.

Some police officers reported that policing practices differed depending on the type or location of sex work, with street-based SWs being more heavily focused on by police, often due to community pressure.

> *"I think there is a lot of discrimination when it comes to sex workers, especially with police. There is a lady that is standing on the street and police will treat her badly, but the same police will go to her house or, you know, something where there is a massage parlour or something and they know that there are sex workers there. They would not discriminate so much about those people."*
>
> *Male non-commissioned officer, Durban FGD*

Several non-commissioned police officers noted that their uncertainty around laws relating to sex work meant that they did not take any specific action to enforce elements of the Sexual Offences Act relating to sex work, unless ordered to do so by a commanding officer.

Various conflicts in knowledge, attitudes and practices as they relate to SWs were revealed. For example, one of the commissioned officers interviewed recognised sex work as an economic option for many people who had few other options, but viewed arresting SWs (particularly street-based SWs) as an effective method to reduce their number in the area where the interviewee worked. Although this response did not show a commitment that this approach offered a solution to addressing sex work, it was seen as enabling arrests that would contribute to meeting arrest quotas set for the station.

> *"They would not arrest these people [sex workers] if it was not for my insistence. Because to them, they do not want to understand like I understand why we arrest them. It is not to charge them in terms of the by-laws but to try and keep the numbers down to a minimum… if there is more of them [sex workers and clients] there is more crime. It's a kind of a circle. If we stop arresting for those petty offences, if we stop arresting people for having a gram of dagga it will get worse and worse and worse. The more dagga that is sold, the more people who come into the area and the more people get raped, mugged or the like. Sometimes I have to be a bit forceful, I have to say, 'tonight I want you to arrest 20 ladies of the night'. Not all cities have by-laws that contain legislation that bars people from loitering for the purpose of prostitution. To charge in terms of the Sexual Offences Act requires [proof of] prostitution, and one has to entrap, one has to use a civilian, as an informant, and you have to get [to] the stage when they are just about doing the deed before one can make the arrest for doing prostitution. And that we don't do."*
>
> *Male commissioned officer, Durban IDI*

None of the police who participated supported the confiscation of condoms from SWs, and none reported having done so.

One non-commissioned officer who worked in Social Crime Prevention in Pretoria reported providing a known sex work manager with condoms, motivated by her obligation to partake in HIV prevention:

> *"There is a lady we know who is a sex worker, and she has a group. We cannot arrest her or anything as a sex worker, so as Social Crime [Prevention], we provide her with condoms. I don't know if by giving condoms I am committing a crime or if we are saving lives. As Social Crime [Prevention], we think that we are reducing the risk of HIV and AIDS by giving her condoms. We know her by name."*
>
> *Female non-commissioned officer, Pretoria FGD*

Across the FGDs, participants viewed sex work as a minor offence, and often felt that their policing effort would be better spend on more serious crimes. FGD participants across all cities acknowledged the influence that arrest quotas had on their work, as these were often used to measure policing effectiveness.

> *"The quota system – we are governed by that. Whether or not they will admit it or not. We are severely under pressure to perform."*
>
> *Female non-commissioned officer, Cape Town FGD*

The potential negative consequences of the quota system were acknowledged by several commissioned officers. A station commander of visible policing explained:

> *"I do not feel very good because I am not managing anymore. When I got to the police station 5 years ago it was 8%, and now there is more pressure on people like me, so in 6 years I had to make, say, 100 arrests a month, and now with all of this interest on these yearly taskings, this year it is 13% – now I must make 200 arrests. Where street robberies in 2010 were 100 then I had to reduce that from 6% to 4%, now I get penalised if I am having, say, 40 robberies a month. I am not so happy with this because it can lead to malicious arrest, it can lead to people planting, it can lead to people exaggerating."*
>
> *Male commissioned officer, Durban IDI*

A police cluster commander provided his perspective around the use of arrest quotas to monitor policing effectiveness:

> *"It is a perverse incentive. That kind of thing creates [the opportunity for] people to say, 'we arrested 10 last week, this week we need to do 20, somehow for the month we did 100 –hold, hold, hold - we are sufficiently 12 % over for the difference, let's go do something else.' No, if you are applying that then you are not applying all of this moral nonsense. Now it is not about the normative framework – this is performance management expediency, and that is seriously problematic".*
>
> *Male commissioned officer, Cape Town IDI*

This cluster commander showed a more nuanced understanding of the disproportionate impact that arrests have on SWs, and noted how, in his position, he was able to push for arrests for crimes committed against SWs, or arrests that would have an influence on organised crime:

> *"The whole notion of targets causes problems. I don't place a premium on those things, however, I do place a premium if these sex workers are being beaten up or are victims of domestic violence, or beaten up every time. I want the sex worker prioritised by [over] the pimp or the clients. I want it prioritised. I also have a problem with the arrest of a sex worker in the absence of the client. 'Why are you not arresting the client?' The only reason you are not arresting the client is because of who the client is. You know, you will face a hell of a lot more difficulty [when it] comes to advocates and lawyers for the clients compared to the easy targets which are the sex workers. For me, that is important."*
>
> *Male commissioned officer, Cape Town IDI*

Other police members in Cape Town agreed that police members' engagement with SWs, key populations and other people was influenced by their personal beliefs and morals, as evidenced by the approach taken by the cluster commander above. Some FGD participants acknowledged that limited training and discussion around issues affecting key populations has meant that few police have had the possibility to reflect on the nature of their engagement with key populations.

"The problem is, some go on the sex workers and the 'low status' person. You are bringing your personal beliefs, and this is how you are going to treat this person now…. it comes down to your personal views, in terms of the prejudices you have against them and that is how you will interact with them."

Male non-commissioned officer, Cape Town FGD

Police in all three cities reported that arrests of SWs were often linked to other crimes, particularly robberies. While a commissioned officer reported that he instructed police to arrest SWs, he also acknowledged that police members under his command would generally not arrest SWs if it were not for his insistence.

No police who participated in FGDs reported witnessing or participating in incidences of SW rights violations by police, however, commissioned officers noted media and other reports of such police practices. Both of the PWUD that took part in a FGD in Cape Town reported witnessing the excessive use of force by police when engaging with SWs working on the city's streets.

One of the commissioned officers who was interviewed mentioned that he had heard of some police members that paid SWs for sex, and the need for additional training around HIV for police members.

Drug use and people who use drugs

Knowledge

Many participants reported knowledge of common drugs, and some knew of the consequences of harmful and chronic drug use. Police in all cities knew that the drug market and the types of substances available were vast and dynamic, and recognised that their knowledge was often outdated or limited.

"And there are new drugs being introduced into the market – it is difficult to catch up with the effects of such drugs and who knew what they put in whoonga [heroin-cannabis combination that is smoked]? People did not know about whoonga."

Male non-commissioned officer, Durban FGD

"Overall, the police, including myself, lack understanding [around drugs]."

Male non-commissioned officer, Durban FGD

Few participants reported having an in-depth understanding of the multifactorial nature of drug use and consequences thereof.

"Drugs, they is against the law, it affects your health, and the community." (all FGD participants agree).

Male non-commissioned officer, Cape Town FGD

None of the study participants reported differences in how the nature of drug use (i.e. dosage, frequency etc.) were important considerations for the potential consequences of use. Little mention was made of the potential risk of police being exposed to HIV or viral hepatitis through a needle stick injury when searching a person who may have a concealed needle.

Police who participated in FGDs[xiii] reported learning about legislation around drugs as part of basic training, and had received ad hoc information sessions during police service – as part of station-based training, from colleagues and from the media.

> *"There are several members that have gone on courses – some small courses – the identification of drugs. For the youngsters, that is the most important one. Training also cover the symptoms [of use], how to be able to detect if a person is on meth, the physical condition of the person, what are the long-term implication. What we are lacking is how to do real follow up and do real investigation of trafficking."*
>
> *Male commissioned officer, Durban IDI*

Several FGD participants in Pretoria and Cape Town from Visible Policing, and some of the commissioned officers from Operations, were aware of changes in drug-use patterns, with increased use among youth and increased prevalence of injecting.

Participants knew that drug use was common, and something that was a priority concern in the broader community.

> *"You find in household that has a drug user, that it affects the whole family… the drug users have become so young - the learners in the primary school, they are using dagga [cannabis], and mandrax [methcathinone]."*
>
> *Male non-commissioned member, Cape Town FGD*

Several police and one of the CPF members from Cape Town reported experiences of harmful drug use within their families. The degree to which participants knew of drug use among SAPS members varied. One FGD participant from Cape Town knew of a colleague with a harmful pattern of drug use, who no longer works for the police.

> *"A colleague, he was a good cop. He would not go home until he had done the arrest – a big robbery, drugs, the crimes related, he would always be there. We suspected that he was using drugs. Instead of helping him and sending him to rehab or something like that, he was fired."*
>
> *Female non-commissioned member, Cape Town FGD*

One of the commissioned officers from Pretoria reported no knowledge of any police using drugs, while another reported that there were no mechanisms to track drug use among members. One commissioned officer knew of police members with drug-use problems that had been referred to private substance-use treatment facilities.

[xiii] No study participants were from any specialist drug unit

This person noted the ethical and legal dilemma faced by police in the context of having to manage the health and well-being of police members who use drugs, and the problem of this approach being different from how the service was implementing the law in the broader community. This same person knew how access to substance-use treatment differed according to socio-economic status.

Few police interviewed had a good understanding of evidence-based treatment for substance use. Participants in almost all interviews and FGDs made reference to the need for interventions to address harmful substance use, however, almost none of them were aware of what 'rehab' entailed.

> *"A rehab centre. You go there, some are without any medication, there's some that give you that part of the drug [substitution therapy], and then you go through so you don't get any more help."*
>
> *Female non-commissioned member, Cape Town FGD*

> *These other people, they went to rehab, when they came back they are coming back to the streets again. Are they are getting more drugs [while in treatment centres] or what? According to my understanding, once you go out, you get everything out from your blood. Now you will come this week, staying one week at home, the next week comes to town with his friend [and uses drugs again]."*
>
> *Male non-commissioned member, Pretoria FGD*

Little mention was made of harm reduction as an approach or of opioid substitution therapy for people with opioid-use disorders. Some FGD participants in Pretoria were aware of an operational needle and syringe programme in the city.

There was generally an acknowledgement of an unmet need for treatment for people who engaged in harmful drug use, particularly those from poorer backgrounds, contributing to an ongoing cycle of drug use.

> *"And we do not have the right facilities for people who are less fortunate, because everything is monitored. Those people, who, the only way you can help is if you get caught, and the magistrate actually sentences you or sends you to a rehab or whatever. Then the other people, who on the other side, who are asking for help cannot get help, because certain place where they treat these people or where they administer the drugs cannot afford, therefore these people are back on the streets."*
>
> *Male non-commissioned officer, Durban FGD*

A commissioned police officer further elaborated on the actions community members took to try and obtain substance-use treatment, including the use of the criminal justice system (and the potential for diversion for first time offenders), and the potential lifelong consequences of a criminal record, due to limited options in under-resourced environments. This pattern reflected inequitable access to treatment, and inequitable likelihood of entry into the criminal justice system, which was economically – and due to South Africa's history of racial segregation and differential access to resources – racially aligned.

"I started picking up a strange trend. Mothers called up to arrest their kids. Especially with first time use… I spoke to mothers. They told me, 'look, we are from [a low-middle income, largely coloured community], we can't afford to send our sons to [a private substance use treatment facility]. The only way they [their children] get treatment is through you [the police]. They go to court the first time and then there the magistrate and the mothers appeals, noting that they are a first-time offender, and then they get sent for treatment.' Then I looked at this thing and realised that we need to look at this thing differently. The rich people in [a wealthy, predominantly white suburb] or wherever, without ever reporting it, get their kids cured, get access to addiction treatment through the amount they have. The people that don't have money see that the only option is through criminalising their children. Getting a record for the same problem. This is fundamentally wrong to me. That is what I learnt. Even if they should rehabilitate through this mechanism they are sitting with a record for life. Although court diversion may not reflect on the criminal record, the point is, if someone does a probe into this, then at some point they will come up with this encounter with drugs."

Male commissioned officer, Cape Town IDI

Community-driven responses in the face of limited access to substance-use treatment included initiation of home-based treatment facilities:

"Some mothers stood together and started running their own rehabs, and the frightening things that happened there. Well, they were not trained."

Male commissioned officer, Cape Town IDI

Attitudes

Several FGD participants in all three cities felt that drug use, particularly among the youth, was an increasing problem. The views towards drugs were very reductionist, and related to the classification of substances in line with current scheduling. A representative from a civil society organisation providing HIV-related services to PWUD felt that police had little nuanced understanding around drug use or the harms of drug use, nor of the inconsistencies or conflicts in implementation of legislation that was not linked to apparent harm.

Police attitudes towards PWUD varied. Disapproval of the personal hygiene and other behaviours of PWUD living on the street were spoken about in the FGD in Pretoria.

"We can see from the street. Those that are using nyaope [low grade heroin in combination with cannabis], they don't want to bath… they are eating too much sugar."

Female non-commissioned officer, Cape Town FGD

"I do have a family member. Who does use drugs now. The person doesn't want to bath, stays away from home. He goes away and comes back when he wants."

Female non-commissioned officer, Cape Town FGD

Police in FGDs did not explicitly mention attitudes towards PWUD who were not visible or living on the street. A male commissioned officer viewed PWUD simply as criminals, as he would anyone who committed any form of crime:

> *"That one is the same. There are some criminals who use drugs in order to commit crime. Those who use drugs, just for fun, but in the end, they need to be arrested, because they are contrary to the law. All of them are criminals because to be in possession of a drug is a criminal offence."*
>
> *Male commissioned officer, Pretoria IDI*

One female police member highlighted negative community attitudes towards PWUD, which did not seem to improve after being imprisoned, or having been admitted to a drug treatment centre:

> *"The communities are very judgemental towards people who use drugs. That also pushes them away. Same when they come out of prison, they do not get integrated into society, you come back from drug rehab, they don't get a welcome back in, they [family members] still think that you are using drugs and that you steal, and your mom and dad still accuse you of stealing things from the house to sell for your fix. People are quite judgemental towards these people."*
>
> *Female non-commissioned officer, Cape Town FGD*

Some participants from the PWUD FGDs felt that the police viewed PWUD in a negative light, which was influenced by beliefs that harmful drug use was a choice. A few PWUD participants emphasised that such negative attitudes were influenced by class:

> *"They [police] basically view addicts as bad people. But the guy who snorts coke in a boardroom on a porcelain glass is not going to get the same treatment as the guy who snorts on the street corner. The guy on the street corner is the one who is more likely to go through the whole system and get traumatised."*
>
> *Male PWUD, Cape Town FGD*

The two PWUD who participated in the FGD corroborated this argument by explaining how PWUD who lived on the street were subjected to a higher degree of scrutiny around their substance use compared to wealthier, employed people who did not live or spend a long time on the street.

> *"They come from and the live within the community that are affected by drugs, yet they have an extremely hostile look towards people who use drugs."*
>
> *Male PWUD, Cape Town FGD*

A male PWUD who participated in a FGD felt that most of the laws around drug use and their implementation were based on religious morals. He felt that this was problematic due to the range of morals that exists within and across communities. This person felt that the decriminalisation of drug use was an important approach, from a policing perspective, to address organised crime.

Community pressure for police to act in response to people on the street, some of whom may be engaged in sex work or may use drugs, was linked to wealthier members' moral concerns around these practices. Another respondent from the same FGD felt that this attitude was due to a preference for avoiding being exposed to the social realities of people from lower socio-economic status living or spending time in wealthier neighbourhoods:

> "*They just want them [people living/working/using drugs on the street] gone from their experience. I think that the quality of their [people from higher socio-economic circumstances] daily experience is more important than what happens to a person on the street… You can't harbour bullying someone out of there [public spaces], people exist on their own, and they [people from higher socio-economic circumstances] are punishing people for existing in public spaces while being dirty."*
>
> *CSO representative working with PWUD, Cape Town FGD*

Few police FGD participants spoke of PWUD with empathy. Examples where empathetic responses were provided largely related to instances where police had encountered people from the middle or upper class, or those with higher perceived levels of (potential) status.

> *Participant: "Because, for example, you find a child, or a teenager, or a student who is doing, maybe whatever, doing their last year and you find that person with drugs, and in their last year, and he tells you that story and you believe that person. You know if you take that person and arrest him his career is ruined, so you have to use your discretion."*
>
> *(one person agrees).*
>
> *Participant: "What do I do in this situation? Do I build the society or just take this person and put him in jail?"*
>
> *(People agree)*
>
> *Male non-commissioned officer, Durban FGD*

No instances of such considerations where reported when it came to people who were living on the street or perceived to have few future opportunities.

Several non-commissioned officers felt that arresting PWUD was an ineffective method to manage the current levels of drug use and related harms. Participants of a FGD in Durban noted that, although more PWUD were being arrested, the effectiveness of this approach was not clear, and that alternative approaches may offer better uses of police resources and were likely to be more effective.

Facilitator: "Have you seen the positive result of arresting people who use drugs?"

Several participants: "No."

Facilitator: "How does that feel as a police person?"

Participant #1: "You feel like your work is in vain. I do know that if you do arrest a minor for dagga [cannabis], the courts send them to [a local civil society organisation] and they have to undergo counselling and stuff like that – treatment sessions. That is like a part of their sentence, and maybe it is of assistance."

Participant #2: "I personally feel that it is useless to arrest addicts rather than a drug dealer. When you [do], you do not stop the problem, you have left the problem, it is going to carry on and on and on and affect more people. You just arrested a user, but the person behind that is the dealer who benefits from selling the drug. So if you take someone who is using, you have not stopped the crime. I know that the crime stats show that you start using before you commit the crime. I get more satisfaction taking the drug dealer than the user."

Participant #3: "Also the drug dealers they are behind the scenes, it is just the runners and the pushers that are in front. And they take the blunt, so those guys pay the price, if they are charged or fined, whatever, they are behind the scenes."

Participant #1: "I have to agree, when you do arrest a dealer, you do get more satisfaction that you took someone out of the community who is like a disease. But at the same time, if someone is using, if you take away one dealer they will just go and find another dealer – it does not eliminate the problem altogether."

A representative of the CPF reported that action by the police, with support from the CPF, had been effective to move drug use problems out of their community – police had "cleaned" their area – and drug use had moved to another area. A civil society participant who works with PWUD recognised the pressures that police faced to curb drug use, and that the motivation of operations to arrest PWUD on the street varied:

> *"I think they know that people are not going to be changed if they are arrested – they will be back on the streets after a few days. Other stakeholders in the community complain to police, but they do not seem to be looking at this in a way of, in the most effective way to go about this. Obviously that makes the police frustrated and they get a lot of flack from the community as well. The police officers are on Facebook groups and members of the public will post things about PWUD and the police are under pressure from the community. To give the impression of doing something. And then they do something. There are a lot of them that would like to keep doing that because of the sense of power that comes from their actions, but I think a lot of them realise that they are not making any difference on crime."*
>
> *Male CSO representative working with PWUD, Cape Town FGD*

Practices

Police reported to frequently engaging with PWUD. Street-level drug users were generally thought to be identifiable and easy targets for arrest.

> *"It is our daily bread."*
>
> *Female non-commissioned officer, Pretoria FGD*

In most circumstances police reported charging and arresting more PWUD than people involved at higher levels of the drug market value chain (runners, dealers and syndicate leaders). These practices were confirmed by the experience of PWUD from Cape Town:

> "*Ironically, we laugh at this. They will do all of this focusing on the users, they will catch you with a R20 pack of tik [methamphetamine], but the dealer that is standing over there, that has been dealing tik for so many years on the same corner gets left alone."*
>
> *Male PWUD, Cape Town FGD*

Police related that it takes significant amounts of police time to charge and process an arrest related to drug use, and that the consequences of arrests are influenced by criminal justice proceedings.

> *"Besides the arrest, that paper work for one arrest takes at least an hour. It is the exhibit, weighing, the packaging, the statement of the person doing the arrest, the statement of the person witnessing the arrest, the paper work to transfer the person from here to [a different police station], from [that police station] to the community court here at the bottom. It is logistics, it is paper work transported back to [a correctional facility] if the person is convicted and sentenced for a week or two."*
>
> *Male commissioned officer, Durban IDI*

As with the arrest of SWs, the arrest of PWUD was often linked to arrest quotas.

> *"Our National Head Office says crimes that are dependent on police action, like drug possession, need to increase every year by 13%."*
>
> *Male commissioned officer, IDI Durban*

The PWUD FGD participants felt that arrest of PWUD for possession of drug paraphernalia (like needles and syringes, or a pipe) were linked to pressure to arrest PWUD in line with arrest targets. Additionally, community pressure to address visible drug use or visible PWUD were frequently noted as contributing to police action.

One police officer who participated in a FGD in Durban reported that she used violence to manage PWUD as they "did not listen to what police instructed them to do," but she wanted to obtain training around more effective ways to 'manage' people who use drugs.

"[More training is needed around] dealing with addicted people. Because most of the time they just get a hiding, because of the way they act. Sometimes you just use your own discretion and you give them a hiding as they do not listen. So more training on how to handle them. It is something that we lack training on."

Female non-commissioned officer, Durban FGD

Other police who participated in FGDs also reported poor treatment of PWUD by police. In addition, the PWUD who participated in a FGD shared their experiences of coming into contact with the police:

"You don't answer them unless you answer them in the way that they want you to, otherwise you get pommelled. There is no sensitisation involved when it comes to the police. If they have a feeling that you may be a drug user, or if they have marked [you], and you are walking in the main road, they will literally pull up and give you a pat down in front of everybody – in front of normal everyday people and families walking around. One day I was walking with my mom [when police stopped me], and she wanted to know what I did with the police and why they stopped me and patted me down. Police need to be sensitised and also must understand that they are the police, they should enforce the law, not break the law. Nine out of ten times they are breaking the law. Even in doing their work they think they have a search warrant, most times they break in without a search warrant… They slap you around, throw you on the ground, and then they ask you what are you doing here."

Male PWUD, Cape Town FGD

"They [the police] are forceful and they can be very demeaning, and I think that like you [another PWUD participant] said, the way they do their searches is very invasive and violating."

Male PWUD, Cape Town FGD

6. DISCUSSION

This sections highlights and discusses some of the key findings from the IDIs and FGDs, and relevant literature.

Knowledge, attitudes and practices of police around key populations

Higher levels of knowledge were generally found among commissioned officers who took part in the study, compared to non-commissioned officers. Knowledge around key populations and the issues affecting them was better among non-commissioned officers who had personal experience of working or engaging with key populations, compared to those who did not. In other regions (including Kenya, Ghana, the Netherlands, Canada and Mexico), engagement and training with police around drug use, sex work and LGBT issues has proved effective in raising levels of police knowledge around these issues.[66–69] Similarly, in South Africa, training around LGBT issues targeting health workers has been shown to increase their knowledge around key issues.[70]

Other reasons contributing to the varied knowledge among police participants included personal interest, training and exposure to media. Some police participants had already undergone training, while other interventions are currently being implemented to improve police knowledge around gender diversity and sexual orientation, sex work and drug use.[29,71] However, police training interventions need to be scaled up and integrated into basic training to have a sustainable impact on knowledge among police.

Examples of stigma by police and the broader community towards LGBT people, SWs and PWUD were revealed during the IDIs and FGDs with police. Police participants gave examples of stigmatising attitudes by police towards LGBT people in the community, and also LGBT police members. This finding reflects the literature, which notes that despite constitutional protection, stigma towards LGBT people in South Africa is common. Stigma occurs within families,[36,72,73] in community settings[74] and in health care facilities.[43,75] The acknowledgement of negative views held by police towards SWs and, in particular, PWUD, and their association with other forms of crime, is also a reflection of community perceptions, and is a contributor to these key populations' exclusion and marginalisation.[22,56,76,77] Further, family and community exclusion of key populations increases the likelihood of living, working, socialising and having to complete daily activities on the street, increasing the likelihood of police engagement.[78,79]

Unsurprisingly, a range of practices reported by police towards key populations were identified. Some of these were congruent with the earlier identified police knowledge and attitudes, but some were conflicting. Police practices that further contributed to the vulnerability of key populations (e.g. use of excessive force) or human rights violations (e.g. assaulting PWUD) were identified in IDIs and FDGs with police, and confirmed both by PWUD who took part in a focus group, and SWs and LGBT people who participated in the Hands Off! programme partner meetings. Documentation of police practices that have negative health consequences for key populations and that violate their rights are increasingly being published in South Africa.[9,65,80]

Significantly, though, examples of police action that enhanced the safety and health of key populations were identified in this study and related activities. These included police support for referral to health and social services (e.g. access to substance-use disorder treatment services and skills-building opportunities), distribution of condoms to SWs by police, and engagement with organisations working with key populations around community issues.

Several of the police who participated in IDIs and FGDs were responsible for engaging with key population organisations and initiating these health and safety initiatives. The positive role that police can take in fostering environments for effective HIV responses and in improving police effectiveness are increasingly being described, and are critical to ending the AIDS epidemic.[81]

Conflicts between the knowledge police had, the attitudes they reflected and their practice in the field were most prominent in relation to police actions in response to broader community pressure to "clean" areas of individuals living on the street, or to make arrests to meet performance targets. Challenges with the use of quantitative methods that focus on arrests or reported crime is ongoing. Some of the criticisms of this approach include the potential for perverse incentives, the limitation of using output measures (i.e. arrest and crime statistics) to evaluate outcomes (i.e. effectiveness of policing), and the need to take into account the multiple actors working to address socio-economic factors contributing to crime reduction (e.g. work by the Department of Social Development and the Department of Labour).[82,83]

The importance of engagement

This study and the activities that supported it highlighted the positive outcomes that can emerge from engagement and discussion around the intersections between key populations and police around public health and safety. Engagement was more positive when the benefits of participation for police were highlighted. Police members who reported engagement with organisations working with key populations were generally more empathetic and appeared to have a more nuanced understanding of the diversity of key populations and the range of factors affecting them, as well as the potential (positive or negative) role that interactions which police can have on them. Police are under significant pressure to perform, and have systems in place to engage with the communities they serve. However, few of these community police fora represent or include marginalised people (e.g. people who live on the street), or people who engage in illegal behaviours (like sex workers or PWUD).[84]

An opportunity for intervention

Police who were interviewed and who participated in FGDs showed interest in the topics and were open to sharing knowledge around these issues. They suggested practical ways to build on this knowledge, including the option to include modules into basic and in-service training programmes.

Some commissioned and non-commissioned officers noted the need for operating procedures, instructions and policy to support the training, and for endeavours to align the policing environment with the principles of the Constitution and policy imperatives of the White Paper on Safety and Security.[2,85]

At this juncture, there appears to be a window of opportunity to develop and implement training around key populations. Pending hate crime legislation, debate around decriminalisation of sex work, and a review of national policies around drug use are all current policy concerns. Training police around these issues will provide a good foundation for further efforts, and reduce risks of civil litigation cases against the police for rights violations, which have started to occur.

7. LIMITATIONS

The study had several limitations, including the limited number of participants and the restriction of activities to three major metropolitan areas. Inclusion of a wider range of participants in IDIs and FGDs would have likely increased the range of perspectives and insights around the interface between key populations and police in South Africa. Increased financing for the study, and a longer time frame could have enabled a larger sample size. Police perspectives are likely to differ in more rural areas, due to the current focus of advocacy and programming for key populations within metropolitan areas, although this is changing.

Another limitation, especially for the findings on sex work, is that metro police were not included in the sample. Given that SWs are often arrested and policed through city by-laws, which are enforced by metro police, metro police perspectives would have contributed additional nuance to the findings.

Participation in the study was voluntary, however, some degree of selection bias is likely. Police members who opted to participate may have been more interested in the issues that were discussed, compared to those who opted not to participate. Police with discomfort about or negative attitudes towards the topics of discussion may have been less likely to volunteer to participate. There may also have been differences in the knowledge, attitudes and practices between participating police and police who were unavailable for the study proceedings due to ongoing unrest in several cities at the time of the study.

Only two PWUD were involved in a FGD. Participation of more key population representatives would have increased the range of views expressed. Representatives of SWs, LGBT people and organisations working with these groups did highlight their concerns and recommendations during the preceding consultation workshops. The literature around the interaction between SWs and LGBT people with police, and their experience of rights violations, was considered large enough to provide valuable insights.

Information bias may have influenced the findings from the IDIs and the FGDs. Participants, who were in police uniform and taking part in a study on police premises in the presence of other police members may have been guarded in their responses. However, open, frank, and potentially controversial views were frequently discussed. FGD participants who were introverted or uncomfortable with the topics of discussion may not have contributed to the discussions, and their views may have differed from participants who participated more actively.

The lead consultant is a white, male, South African medical doctor who has been working with key populations for ten years, and more recently with police. He facilitated all of the interviews and focus group discussions. His support for rights-based public health approaches may have influenced the nature of the discussions and the subsequent analysis. The study findings and recommendations were reviewed by other members of the study team and discussed to provide alternative views and understanding of the findings and to enhance recommendations.

8. CONCLUSIONS AND RECOMMENDATIONS

This section reflects integration and interpretation of findings from the literature review, Hands Off! programme partner workshops and consultations, as well as the interviews and focus group discussions conducted as part of the study.

Police are not a homogeneous group and their knowledge, attitudes and practices around key populations vary significantly. Participants openly shared their views about key populations and were interested to hear the views of others. This suggests an environment that has the potential for knowledge sharing and subsequent shifts in attitudes and practices. Potential advocates to lead change from within SAPS include commissioned officers who support progressive policing approaches and recognise the value of human rights-based approaches for enhancing the effectiveness of law enforcement, as well as others who acknowledge discriminatory actions by some police towards key populations.

***Recommendations**:*

- *Create opportunities for and participation in focused dialogue sessions, workshops and other knowledge-sharing fora where supportive police members and content experts can share evidence and experience around the effectiveness of rights-based policing to stimulate debate and internal change.*
- *SAPS should consider engaging with other stakeholders and academics to review how policing practice, and the external pressures from the community, are informed by moral views towards key populations. Efforts to understand how police practice inequitably affects people from lower socio-economic circumstances should be used as motivation for change.*

The study identified the need to increase police members' understanding of key populations, particularly around LGBT, SW and PWUD issues that impact on policing. This could enable attitudinal shifts towards an acceptance of key populations and the embracing of a human rights approach. Where police engagement with LGBT, SW and PWUD organisations was found, it was associated with deeper understanding of issues affecting key populations and empathetic attitudes towards their health and rights.

Police acknowledge differing levels of acceptance of gender diversity within the organisation, and the range of challenges they are facing in light of their current, binary approach to gender.

Recommendations around gender diversity and sexual orientation:

- *The Department of Justice and Constitutional Development's planned LGBT training programme should be fully supported and implemented. This training should be coordinated with other justice sector training plans, and include representatives of key population organisations. It should include sensitisation to non-judgmental service provision, rights related to sexual orientation and gender identity, as well as knowledge needed for the investigation of bias-motivated crimes related to sexual orientation and gender identity.*
- *Training around gender diversity and sexual orientation should be implemented by a skilled facilitator in a safe and affirming space, follow a rights-based approach, and should allow police to talk about issues around sex and sexuality (including taboo topics).*
- *Training around sexual orientation and gender identity should highlight the proposed hate crime legislation, as well as existing relevant legislation such as the Constitution, the Sexual Offences Amendment Act 5 of 2015, the Prevention of Harassment Act 17 of 2011, the Domestic Violence Act 116 of 1998, as well as relevant case law regarding sexual and gender minority rights.*
- *Representatives from community police forums should be included in training on sexual orientation and gender identity.*
- *After training, police should strengthen support for existing Provincial Task Teams (PTT) that focus on hate crime. SAPS should identify a liaising officer for each province who will act as contact point for the PTT. Links between investigating officers and LGBT community members and/or organisations will improve the effectiveness of investigations and resolution of hate crimes.*

Recommendations around sex work:

- *Training for police should clarify the legal status of sex work and the obligations of police under the 2007 Sexual Offences Act, as well as relevant city by-laws. Training should also include a discussion on the rights of SWs, sex work decriminalisation, and other essential topics that affect policing of this key population, including:*
    - *differences between sex work, exploitation and trafficking*
    - *legislation and case law pertaining to SWs' rights*
    - *experiences of SWs with the police, including case studies and input from SWs*
    - *links between the criminalisation of sex work and organised crime*
    - *risks of civil litigation by SWs against the police as a result of rights violations*
- *Training for police should highlight the potential benefit improved relationships between police and SWs could have on addressing other crimes.*
- *Training should give insights into the reasons for entering the sex industry, challenges with transitioning out of the industry, and experiences of negative and positive police encounters. This could foster personal shifts towards more empathetic approaches to SWs.*
- *Representatives from community police forums should be included in these training sessions.*

Recommendations around drug use:

- *Training for police should allow the sharing of knowledge and information on the following:*
    - *The manufacturing, properties, affects and methods of use of substances.*
    - *The scale of the drug-use problem, including increasing trends in drug use despite increasing arrest rates.*
    - *Understanding PWUD as a total population, including the reality that police deal with the minority of PWUD – those who are more visible and therefore vulnerable to consequences of engagement with the police and entry into the criminal justice system.*
    - *The rights of PWUD.*
    - *Consequences of current approaches: laboratory testing backlogs, court roll backlogs, challenges in justice system processing, inefficient of use of police time, low conviction rates, and the circumstances of people awaiting trial when unable to afford bail.*
    - *Dispelling myths around PWUD (e.g. all PWUD commit other forms of crime), and around drugs themselves (e.g. all drugs are equally dangerous and more dangerous than legally used substances like alcohol and tobacco).*
    - *Understanding of the natural history of substance use practices (including resolution without treatment), evidence-based treatment options, enhanced options for diversion, use of discretion when engaging with PWUD, and dealing with conflicting policing and public health policy.*
- *Representatives from community police forums should be included in these training sessions.*

The study identified a need for additional training around HIV and blood-borne infections among police members.

Recommendation:

- *Training should include information around HIV and other sexually transmitted infections, as well as viral hepatitis (transmission routes, prevention, treatment etc.).*

Study participants were supportive of training around key populations and policing. To be effective, participants suggested that training should be implemented across SAPS (and other relevant agencies), across all ranks, and should be integrated into basic training.

Recommendations:

- *Ensure training is operational and include SAPS participation in the writing of the manual to ensure language is understandable and appropriate.*
- *Endeavour to use existing SAPS training mechanisms, including train-the-trainer processes, to maximise coverage of in-service police members, either as a separate course, or as a module that could be inserted into existing training courses.*
- *Training around this content should be included as part of Basic Training.*

- *Emphasis needs to be placed on supporting the development of competent master trainers and other trainers. Partnerships with other government departments (namely Health, Social Development and the National Prosecuting Authority) and civil society organisations experienced in training police around human rights and working with key populations should be explored. This would prevent unintended negative consequences of training implemented by under-capacitated trainers or trainers without experience of engaging with key populations.*
- *The training should use realistic scenarios and case studies that build on police's knowledge, skills and abilities.*
- *Examples of other countries' alternative policing strategies and approaches to drug policy, experiences working with SWs and managing gender diversity and sexual orientation, and the effectiveness thereof, should be included.*

Police operating procedures around managing encounters with key populations and marginalised groups of people would assist police to translate knowledge into practice.

Recommendation:

- *SAPS should explore and take up opportunities to engage with stakeholders experienced around health, rights and key populations to foster understanding and establish partnerships.*
- *Policing protocols should be developed to set out procedures for managing marginalised people, including key populations.*
- *Ideally, a National Instruction around key populations, dignity and policing should be developed.*
- *Interventions should be considered to support the use of police discretion that aligns with rights-based policing until relevant operating procedures are in place.*

Some important structural changes that are required for long-term impact are beyond this project, but should be highlighted.

Recommendations:

- *SAPS and other government departments should consider changing the classification of gender from a binary category to one that includes a spectrum of identities.*
- *SAPS should review the use of arrest statistics as a measure of policing effectiveness, and increases in arrests as a measure of improved safety, in light of the potential negative consequences for PWUD and SWs. This would also enable a focus on addressing crimes that have the greatest impact on the safety and well-being of all people.*

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APPENDIX 1: Literature review around LGBT, HIV and Law Enforcement

Gender diversity and sexual orientation, the law and related policy

Prior to the establishment of democracy in 1994, homosexuality was illegal in South Africa. In Apartheid South Africa, common law and national legislation (namely the Sexual Offences Act, No. 23 of 1957; the Criminal Procedure Act, No. 51 of 1977; and the Security Officers Act, No. 92 of 1987) explicitly banned homosexuality.[1] Apartheid South Africa's draconian laws governing sexuality historically impacted the relationship between LGBT[xiv] people and law enforcement agencies as police engaged in surveillance of suspected gay persons in addition to raiding bars and gatherings where suspected gay persons met (p.20).[2] Due to the criminality of homosexuality and the hostile relationship with police officers, LGBT South Africans who experienced crimes were often unable to report to the police or access legal recourse (p.20).[2]

The transition to democracy in South Africa brought about constitutional protection for marginalized populations – including LGBT persons – who had been previously victimised by the State (p.20).[1] The Constitution of the Republic of South Africa introduced protections for LGBT persons. In particular, the Equality Clause of the Constitution, Section 9(3), prohibits discrimination on the basis of gender and sexual orientation.[xv] In addition to its anti-discrimination measures, the Constitution includes measures that are particularly important for LGBT people, who regularly face targeted violence and discrimination based on their sexual orientation and gender identity.

The most relevant sections of the Constitution include:
Freedom from Violence

- Within the Constitution's Freedom and Security Clause, Sections 12(1) and 12(2) respectively guarantee that all persons should be "free from all forms of violence from either public or private sources" and shall "not be treated or punished in a cruel, inhumane or degrading way".[3]

The Right to Health:

- Section 27(1) of the Constitution guarantees that *everyone* has the right to "have access to health care services, including reproductive health care".[3]
- Section 27 (2) establishes that within its resources, the state should take "reasonable legislative and other measures… to achieve the progressive realisation of these rights".[3]

[xiv] Note that while the acronym commonly used in the South African context is LGBTI, a choice has been made in this document to use LGBT due to the lack of intersex related content.

[xv] Though gender identity and the rights of transgender people are not explicitly mentioned in the Constitution, there is strong case law protecting and upholding the rights of transgender peoples. In a Constitutional Court Ruling (CCT 11/98), Judge Ackermann argued that non-discrimination and equal rights in regards to 'sexual orientation' ought to be broadly interpreted to include 'transsexual.' Therefore, transgender (transsexual) peoples in South Africa are entitled to equal protection and non-discrimination under the law

Though South Africa has been a democracy for more than 20 years, it remains in a state of transition, resulting in high levels of contradictions (p.52).[4] Despite the aforementioned strong Constitutional protection against discrimination and violence and the positive rights to health, LGBT people frequently experience serious rights violations (p.52).[4] Persons with non-conforming gender identities and sexual orientations are still socially highly stigmatised and sometimes viewed as 'un-African'.[4,5] Recent research conducted by The Other Foundation found that a 2:1 ratio of people surveyed support keeping the current Constitutional protections for LGBT persons, but 72% of respondents reported considering same-sex sexual activity to be wrong or disgusting.[6]

LGBT, Health, HIV and the law

Though there are no restrictive or discriminatory laws governing sexual orientation or gender identity in South Africa, discrimination at individual, societal and structural level significantly impacts on LGBT people's health and well-being, especially their vulnerability for HIV.

In any discussion on the human rights and wellbeing of LGBT people, it is important to recognise the heterogeneity of this group. In fact, the experiences between and amongst lesbian, gay, bisexual and transgender persons differ dramatically with respect to their experience of human rights violations and ability to access the health and criminal justice system. Intersecting factors such as race, class, non-conforming appearance, ability and geographical location amongst LGBT people can be protective factors, or add further vulnerability to discrimination and violence. Notwithstanding these caveats, there are some key themes that can be identified in regards to the human rights violations experienced by LGBT people, their impact on health, vulnerability to HIV, and LGBT people's reasons for engagement with law enforcement agencies.

HIV and LGBT people

In South Africa, HIV prevalence is disproportionately higher among men who have sex with men (MSM) when compared to other populations (p.2).[7] Representative surveys found that HIV prevalence among MSM is between 1.89 and 4.65 times higher than men of similar ages who do not have sex with men (p.14).[7] These higher rates can in part be attributed to behavioural risk factors as well as high rates of sexual violence.[7] In a study examining intimate partner violence (IPV) and sexual risk-taking among 521 South African MSM, Stephenson et al.[5] report that 4.51% of those surveyed reported experiencing sexual IPV (p.346). There is a strong association between IPV and unprotected anal sex, which increases the likelihood of contracting HIV and STIs (p.346).[5] Additional behavioural risk factors increase the likelihood of contracting HIV and other STIS. These risk factors include inconsistent condom use, improper or infrequent use of condom compatible lubricant during sex, high numbers of sexual partners, as well as substance use among MSM in the context of sexual encounters which increases the frequency of high-risk sexual practices.[7]

While research related to HIV identifies MSM as a high-risk population in South Africa, research is largely lacking regarding HIV prevalence among lesbians and women who have sex with women (WSW) (p. S44).[8]

Therefore, the prevalence of HIV among WSW in South Africa is largely understudied and unknown. A recent study asserted that self-reported HIV prevalence among WSW was as high as 9.6%.[9] The assumption that WSW are not at a high-risk for contracting HIV stems from the perception that WSW only engage in sexual acts with other women (p.S35).[8] According to Matebeni et al., "This assumption overlooks a person's sexual history and the reality that sexual identity is not indicative of nor does it directly translate to sexual behavior" (p.S35).[8] In fact, many WSW engage in high-risk sexual activities and behaviours that place them at risk of contracting HIV (p.758).[10] The high rates of HIV among lesbian and bisexual women can be partly attributed to high levels of sexual violence[11] as well as unsafe transactional sex (p.S35)[8] and the belief that WSW are not at risk of contracting HIV or other STIs (p.1).[12]

Given their increased risk of contracting HIV and high levels of violence committed against them, LGBT persons need access to sensitive and quality health care services. Participants of Matebeni et al.'s[8] study identified that health care workers were 'supportive' in their care relating to HIV; however, for the most part, this care and sensitivity did not encompass issues relating to sexual history and orientation (p.S42). LGBT persons' experiences of healthcare are often shaped by societal stigma against sexual and gender minorities as well as personalised discriminatory treatment of LGBT persons by health care workers.[8] Moreover, to avoid harassment, many LGBT persons will deny or avoid discussing their same sex behaviour with healthcare workers .[8, 13] In order to seek more affirming, sensitive and quality care, many LGBT persons pursue health care from supportive LGBT organizations. Most participants in Matebeni et al.'s[8] study sought "information, care and support" from gay and lesbian organisations because they felt they could openly discuss their sexual histories and identities –in contrast to general medical settings where they felt they could not disclose their sexual orientation due to stigma and prejudice (p.S42).

Experiences of human rights violations

Like other South Africans, LGBT persons are exposed to high levels of general and gender-based violence (p.36).[14] However, in addition to this violence, LGBT people are also vulnerable to specific forms of violence due to their non-conforming sexual orientation and/ or gender identity (p.36).[14] In particular, 'visible outness', integration in LGBT communities, and challenging patriarchal norms and roles are linked to greater likelihood of being victimised by homophobic/hate violence (p.26).[15] LGBT persons most commonly experience verbal abuse, which can be a precursor for other forms of violence.[13,15,16] As a result, LGBT persons often live in fear of violence: in a study of 958 LGBT persons in the Western Cape, 59% of participants feared physical abuse, 55% feared verbal abuse and hate speech and 33% feared domestic violence (p.80).[17] Figures cited in the preliminary findings of the 'Progressive Prudes' study conducted by The Other Foundation show that 450,000 South Africans have physically harmed 'women who behave like men', 250,000 have physically harmed 'men who behave like women', and 3 million say they might commit violence against gender non-conforming people in the future.[6]

Of particular concern with regards to vulnerability to HIV are experiences of sexual violence, which is a high risk factor especially for lesbian, bisexual, and other women who have sex with women. A cross sectional survey of 591 lesbian and bisexual women in South Africa and three other Southern African countries, identified that nearly one-third of participants had been forced to have sex during some point of their lives (p.6).[11] Lesbian and bisexual women reported that they were forced to have sex by both men and women; 14.8% of participants reported that they have been forced to have sex with men only; 6.6% reported that they have been forced to have sex with women only and 9.6% of participants reported that they have been forced to have sex with both men and women (p.5).[11] In addition to assessing the prevalence of forced sex among participants, the study also identified the differential mental health impact of forced sex by the gender of the perpetrator. Participants who experienced forced sex by men were more likely to report drug problems, mental distress and lower sense of belonging. Forced sex by women was associated with drinking problems and mental distress. Having experienced forced sex by both men and women was associated with lower sense of belonging to the LGBT community, drug use problems and mental distress (p.1).[11] The impact that forced sex had on HIV prevalence among the participants was shown by the high self-reported HIV prevalence of 9.6% in the sample.

Sexual violence committed against lesbian women and transgender men has often taken the form of 'corrective rape,' (p.3)[16] which is a form of sexual violence that punishes women and transgender men for their gender identity or sexual orientation and seeks to conform lesbians, bisexuals and transgender men to heteronormative and patriarchal norms.[16,18] Human Rights Watch reports that lack of access to secure housing and transport increases vulnerability to 'corrective rape'(p.2).[16]

Violence and other crimes committed specifically against LGBT people due to their sexual orientation, gender identity and/ or gender expression may be viewed as hate crimes: criminal acts that constitute an "offence that is motivated in part or whole by bias or hate".[14] However, the South African Constitution, and specifically The Bill of Rights, does not recognise hate crimes as separate offenses at the time of writing (p.13), however hate crimes legislation is being developed.[4] Because of this, the South African Police Service (SAPS) does not disaggregate records for hate crimes (p.23),[16] and thus data regarding the number of LGBT persons who have experienced crimes perpetrated against them precisely due to their sexual orientation and/ or gender identity is largely unknown.[16,19]

Reporting crimes and engagement with police

Due to the reality that LGBT persons are particularly vulnerable to human rights abuses, it is the responsibility of law enforcement agencies to provide professional and sensitive care to LGBT persons. Given that the primary entry point to the criminal justice system is reporting a crime with SAPS personnel,[20] it is critical that LGBT people receive the best possible service in order to facilitate their journey through the criminal justice system. However, as will be discussed, law enforcement agencies have largely failed to provide affirming, sensitive and professional services to this key population.

Barriers that prevent LGBT people from receiving quality, professional and sensitive services from SAPS are both related to general societal stigma and discrimination, as well as lack of professionalism, and existing homophobia, transphobia and patriarchal attitudes of SAPS personnel.

Whilst the nature of engagement between LGBT persons and South African law enforcement agencies remains understudied, limited evidence suggests that South African law enforcement has failed in their duties to protect this key population. In fact, it has been reported that in many instances, SAPS personnel have actively violated the human rights of LGBT persons. Anecdotal evidence suggests that SAPS officers lack awareness of the specific needs of LGBT persons as well as the willingness to explicitly protect this vulnerable population.

It is reported that LGBT people mistrust SAPS.[4] This mistrust is based both within the general inefficiencies within the SAPS that affects all South Africans, as well as embedded in patriarchal, homophobic and transphobic culture of SAPS. As a result, fear of discrimination and stigma oftentimes deters LGBT persons from reporting to the police after experiencing a crime.[15] According to a 2016 survey of LGBT persons in South Africa designed in part to determine the prevalence of discrimination and the experiences of such persons when using services such as the police and the justice system, while 44% of respondents reported having experienced discrimination in their everyday lives over the past two years and 41% reported knowing of someone who had been murdered due to their sexual orientation, very few of those incidents were reported to police. Reasons given for this reluctance included feeling like the police would not take them seriously, would not pursue the complaint, were homophobic or were themselves the abuser. Over half of the respondents who did report crimes to the police reported negative experiences in doing so.[13] Instead, especially after experiencing hate crimes, LGBT persons are likely to use alternative forms of support and services from LGBT-friendly organisations. Stephens et al.[4] report that, largely, LGBT people seek alternative sources of support for hate crimes rather than choosing to inform the police (p.46). Given that LGBT persons may be aware of supportive networks and may receive more sensitive care in these settings, this report recommends that SAPS should proactively work to engage LGBT organisations in providing better training and sensitisation of their employees.

On the occasions when LGBT persons do report to the police, reporting is often delayed and LGBT persons frequently experience secondary trauma at the hands of SAPS.[15,16] It has been alleged in various reports that insensitivity in regards to sexual orientation, gender identity and gender expression is embedded in the institutional culture of SAPS.[16,21] Through in-depth research with 121 self-identified lesbian and bisexual women and transgender men living in townships across South Africa, Nath and Mthathi[16] found that of the participants that reported crimes to the police, most had experienced verbal abuse and demeaning treatment by SAPS officials (p.47). Participants in the study had been blamed for their own rapes and their sexual orientation/gender identity/gender expression, and were ridiculed and mocked by police members.[16]

The secondary trauma experienced by LGBT persons was oftentimes coupled with "police inefficiency, corruption, inaction and occasionally even complicity with perpetrators" which contributed to lesbian and bisexual women's and transgender men's general lack of trust in SAPS (p.46).[16] The report pointed out that when SAPS members (who are officially representatives of the State) engaged in this type of discriminatory and harmful treatment, they were actively committing human rights abuses by violating LGBT persons' rights to non-discrimination.

In an effort to address some of the barriers identified in this paragraph, the recent *National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Sector 2014-2017* by the Department of Justice and Constitutional Development outlines strategies to implement effective measures to prevent violence and discrimination on the basis of sexual orientation and gender identity, and to improve access to the criminal justice and health care system for legal redress.[22]

Due to social exclusion, many transgender people engage in sex work in order to gain an income that allows them to survive.[23] The South African National AIDS Council[24] estimates that transgender sex workers constitute around 4% of sex workers (5000-7000 persons) in South Africa. South Africa currently follows the model of total criminalisation or prohibition of sex work. The *Sexual Offences Act*[25] criminalises the selling of sex, and refers to sex workers specifically as 'women'. The *Sexual Offences Amendment Act*[26] employs gender-neutral language, and also criminalises the procurement of sex work. The *Criminal Procedure Act*[27] also contains provisions that are peripherally relevant to sex work, and municipal by-laws play a role in the legal control of sex work. These by-laws may take the form of general and 'sex work-specific' provisions[xvi]. Transgender persons often face particularly acute forms of discrimination and violence from SAPS. As previously discussed, the criminalisation of sex work in South Africa contributes to a double stigmatisation for transgender sex workers. While most sex workers are vulnerable to violence, harassment and abuse, transgender sex workers face acute discrimination by police due to high levels of transphobia (p.50).[28]

A valid identity document (ID) is required to access public services, including health services and the criminal justice system in South Africa.[29] This document has a picture of the document holder, and the seventh digit in an ID number indicates gender: generally 0 to 4 indicates female, and 5 to 9 indicates male. The encoding of gender in ID numbers presents tremendous problems for transgender, gender non-conforming and intersexed people in their day-to-day lives, as it forces them to reveal their non-conforming gender identity when the ID document reflects a gender identity at odds with the person's gender expression. This means that transgender people who do not hold an ID document that reflects their gender identity and expression can often not access the services listed above.[30]

[xvi] For example regulation 5 of the Western Cape By-Laws PN 710 of 24 November 1950 provides that 'no person shall . . . cause an obstruction or a nuisance to pedestrian or vehicular traffic on a street, by loitering or congregating in or upon such street or sitting or lying down on any stoep adjoining such street . . .' and under the title 'nuisances', regulation 41 provides that no person shall . . .(h) in or near a street loiter or solicit or importune any other person for the purpose of prostitution, immorality or mendicancy; . .'

Altering the gender marker on an ID document holds significant challenges for transgender people,[30] and ID documents thus pose an additional crucial barrier for transgender people in accessing law enforcement agencies and the criminal justice system.

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APPENDIX 2: Literature review around Sex Work(ers), HIV and Law Enforcement

Sex work, the law and related policy

The Sexual Offences Act[1]criminalises the activities of sex workers (SWs), prohibiting "*unlawful carnal intercourse*" and "*act[s] of indecency*" for reward, as well as brothel keeping, procurement, facilitating sex work, soliciting, indecent exposure and public indecency.[2,3]

The Criminal Law (Sexual Offences and Related Matters) Amendment Act[4] (the "Amendment Act") furthermore stipulates that any person who engages in, or attempts to engage in, services of a sexual nature with another person for financial reward, has committed a crime.[4]

While the Sexual Offences Act does not define '*carnal intercourse',* Milton and Cowling[5] explain that it was generally understood as penetration of the female vagina by a male penis only (p.47). This did not exempt anal intercourse for payment from the remit of offences within the Sexual Offences Act, as it was included in the interpretation of an '*indecent act'*. However, in 1999 the Constitutional Court recognised the right of gay men to consensual anal sex[6] and declared the common law offence of sodomy unconstitutional and invalid. Thus '*carnal intercourse'* can now be understood as including anal intercourse as well as vaginal.[7] Furthermore, the term 'any person' is broad enough to include transactional sex between individuals who are in a relationship.[7] The phrase is also gender neutral. It can therefore be applied to male and female SWs engaged in hetero or homosexual acts for reward.[7]

The South African Law Reform Commission (SALRC) notes that while the "*core function*" of sex work is illegal, being a professional SW is not:

> "Section 20(1)(Aa) … does not penalize 'being' a [sex worker]. A person cannot therefore be arrested for being known to the police as a [sex worker] – 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 specified time with a specified person)."[71]

The rights of sex workers

SWs, as all South Africans, are entitled to the fundamental rights set out in the Bill of Rights of the South African Constitution. These include, but are not limited to the rights to equality (Section 9), dignity (Section 10), freedom and security of their person (Section 12), freedom of trade, occupation and profession as well as fair labour practices (Sections 22 and 23) and fair trial rights (Section 35).[8]

The *Equality* Clause specifically states that everyone is equal before the law and has the right to equal protection of the law and prohibits unfair discrimination from both public and private sources.

Additionally, the right to freedom and security of the person includes the rights:

i. not to be deprived of freedom arbitrarily or without just cause;
ii. not to be detained without trial;
iii. to be free from all forms of violence from either public or private sources;
iv. not to be tortured in any way; and
v. not to be treated or punished in a cruel, inhuman or degrading way.

SWs are also protected by section 35 of the Constitution, which secures *the rights of arrested, detained and accused persons*. These include the rights:

i. not to be compelled to make any confession or admission that could be used in evidence against that person;
ii. to be brought to court as soon as possible and before 48 hours after arrest;
iii. to be informed of the reason for detention or arrest;
iv. to be released from detention if the interests of justice permit; and
v. to conditions of detention that are consistent with human dignity.[3]

Thus, failures to inform a SW of the reason for their arrest, detaining a SW for longer than legally necessary, abusing SWs while in detention, failing to charge or bring SWs to court post arrest all constitute human rights abuses and are in breach of the Constitution.

The Constitution further provides all South Africans with the right to choose their trade, occupation and profession as well as to fair labour practices.

Due to the criminalisation of sex work in South Africa, employment and service provision contracts are largely concluded informally and SWs have difficulty accessing the protections afforded by the Constitution and/or labour relations legislation. This results in increased vulnerability to exploitation and abuse by employers and/or clients as SWs have little course for redress.

Notwithstanding this, in the case of *Kylie v Commission for Conciliation Mediation and Arbitration and Others* (CA10/08) [2010] ZALAC 8, the Labour Appeal Court emphasised that Section 23 of the Constitution states that *everyone has the right to fair labour practices*, not only those doing legal work. The Court also held that the protections guaranteed by labour law were intended to achieve social justice, fairness and respect for all, including SWs. The Court was therefore entitled to order employers to pay compensation to SWs who were unfairly dismissed.

Unlike cases involving legal employment, the Court held it could not order employers to re-employ SWs, even where they had been unfairly dismissed, as this would amount to encouraging illegal activity. The relationship between SWs and labour law is evidently a difficult one, wherein SWs are entitled to protections that cannot legally be enforced due to the criminalisation of their work.

Any contravention of these rights by law enforcement agencies ("LEAs") constitutes a human rights abuse and violation of fundamental rights and freedoms.

Sex workers and law enforcement

Establishing evidence of the sale of sex is a difficult task for LEAs, which often involves intrusive and violent policing.[9] The findings set out below indicate frequent and serious violations of the rights of sex workers. In 2009, the Women's Legal Centre (WLC) and the Sex Workers Education and Advocacy Taskforce (SWEAT) formed a partnership to monitor human rights abuses against SWs. They interviewed 309 sex workers in Cape Town, Johannesburg and Limpopo. The results indicate that LEAs commonly violate South African law in their interaction with SWs, including the Constitution, the Criminal Procedure Act 51 of 1977 and various police Standing Orders, which stipulate the minimum requirements for police investigations, arrests and detentions.[10] 70% of SWs interviewed had experienced at least one type of human rights abuse at the hands of the police.[10] The most common forms of abuse were assault and harassment, arbitrary arrest, violations of procedures, inhumane conditions of detention, unlawful profiling, exploitation and bribery, and denial of access to justice.[10,11]

Furthermore, roughly 50% of SWs who had been arrested and 40% of SWs who had been fined reported that the police failed to follow the required formal procedure, such as informing a person that they are under arrest, informing them of the reasons for their arrest, and informing them of and providing them with a Notice of Rights.[10] Some SWs reported having experienced verbal or physical assault when they asked arresting police officers for the reasons for their detention.[10,11] Despite the abusive behaviour of LEAs, these aggressive policing tactics rarely resulted in SWs being formally charged or prosecuted.[9] In a study conducted by the Sexual Health and Rights Project and Law and Health Initiative of the Open Society Public Health Program (SHARP and LAHI), only 21 out of 138 arrested sex workers appeared in court.[12]

In response to the frequent arrest of SWs without consequent charges or prosecution, litigation against LEAs was brought by SWEAT in the Western Cape High Court. The resultant judgment in *The Sex Worker Education and Advocacy Taskforce v Minister of Safety and Security and Others (3378/07) [2009] ZAWCHC 64*, made an Order that interdicted and restrained LEAs from "arresting sex workers in terms of section 40 of the Criminal Procedure Act No. 51 of 1977, for a purpose other than to bring the arrestees before a court of law, there to face due prosecution", as well prohibiting LEAs from "arresting sex workers while knowing with a high degree of probability that no prosecution will follow such arrest."[13] Despite the judgment having ruled in favour of protecting SWs against harassment and human rights abuse at the hands of LEAs, LEAs continue to arrest SWs without charge or prosecution on a regular basis.[14]

Following arrest, SWs' rights are commonly violated in detention. The WLC reports that nearly half of the participants who had been arrested were held beyond the 48-hour maximum arrest period.[10] In Hillbrow, Johannesburg, as in Cape Town, SWs spoke of the common practice of police deliberately arresting SWs on Fridays so that they could detain them throughout the weekend, and release them on the Monday that followed.[15] Scorgie et al.[16] state that some SWs reported being detained for up to six months. Roughly 70% of SWs in the SWEAT/WLC study reported being denied food or water in detention and nearly half asserted that they were held in dirty, ill-functioning cells.[10]

The SWEAT and WLC study found that almost one in six of the SWs they interviewed had been sexually or physically assaulted by police. Many reported being assaulted at the police station, some in full view of other police officers.[10] The most common forms of abuse from LEAs were in the form of harassment and verbal assault, but physical and sexual assault levels were also high. Gould and Fick found that at the moment of arrest or receiving a fine from a police officer, 14% of the SWs they surveyed complained of physical assault, while 18% complained of verbal assault and 2% complained of sexual assault.[10] Nearly half (47%) reported being threatened with violence by police.[10]

Use of by-laws to target sex workers

According to SWEAT, due to the inherent difficulties of enforcing the Sexual Offences Act, police have also been found to use municipal by-laws to arrest or fine SWs rather than prosecuting them for their commercial sexual activity.[17] The use of by-laws would most often affect SWs who are street-based.[18] Common by-laws employed for this purpose include those that criminalise drunken behaviour, loitering, soliciting for the purpose of sex work, making a fire, disturbing the peace and littering.[3,12,19-21]

The WLC reports that police rarely carry out the legal protocol for arresting an individual under a by-law.[10,11] The protocol requires an individual to be given written notice to stop the offending activity before they are fined or given a date to appear in court. Furthermore, arrest is only permissible as a last resort if necessary to secure a person's attendance in court. In most cases a summons would be sufficient. The experiences of SWs as set out above indicate the failure of LEAs to follow this protocol.

Sex workers, condoms and LEAs

It is common, general practice for LEAs to profile perceived SWs based on their appearance or past involvement in sex work.[10,22] They often use this reasoning to search a suspect's possessions. If condoms are found, LEAs cite condom possession as 'proof' that an individual is engaging in sex work.[22] LEAs frequently confiscate and destroy such condoms.[22] This is incongruous with the government's distribution of free public sector condoms. The Open Society Foundation, among others, reports that in many instances, police have used condom possession as a ploy for extortion.[22,23] As a result, many SWs are afraid to carry condoms with them for fear of arrest.[9]

The health implications of the above are a concern for SWs, clients and, by extension, the South African population at large. The nature of their work requires SWs to engage in penetrative sex with multiple partners over extended periods of time, placing them at high risk of HIV and other STIs without the regular use of condoms.[22,24] In low to middle income countries like South Africa, female SWs are 13 times more likely to be infected with HIV than other women of reproductive age.[25] According to health reports, "[e]liminating law enforcement practices that inhibit condom use … and protecting sex workers from violence are critical for the prevention of HIV/STI acquisition and transmission."[23] A similar point is raised by South African National AIDS Council (SANAC) in their South African National Sex Worker HIV Plan 2016-2019[26] which emphasises the need to provide greater access to commodities such as condoms and lubricants as a key part of their interventions, though they note that access to the populations in question is difficult for them due to the criminalisation of sex work.

Reporting human rights violations and/or crime to LEAs

It is common practice for police officers to carry out arrests while not wearing identity tags, making it impossible for SWs to report police officers for abusive or illicit activity. More than 85% of arrested SWs involved in the SWEAT and WLC study reported such an incident.[10] SHARP and LAHI's study found that 59.5% of the SWs investigated corroborated this finding.[12] The lack of identification denies SWs their right to justice following assault, unjust detention and/or other police exploitation.[10] In order to mitigate this, SHARP recommend that police identification should not be removable.[10]

SWEAT reports that in their experience, SWs can only combat violence from LEAs by avoiding contact with them, as a result of which SWs do not report offending officers.[17] Even when SWs do report incidents involving LEAs, the police have often refused to take their statements.[27] The criminality of sex work and the abuses perpetrated by LEAs have resulted in SWs viewing the police as a "source of danger and potential violence" rather than a symbol of safety and protection.[17]

A fact sheet on Sex Work and Policing released in 2015 by the ASIKIJI Coalition for the Decriminalisation of Sex Work[28] picks up these issues, highlighting the fact that SWs are over-policed and under-protected, noting in particular the weak policing of crimes against SWs who are less likely to report crimes out of avoidance of the police due to fear of being arrested or facing stigma and discrimination – including the belief that it is impossible to rape a SW or that they deserve abuse due to their position. The fact sheet also discusses incidences of violence and abuse on the part of the police, including harassment, robbery, assault, rape, illegal assault, being forced to give bribes and the use of unnecessary force, which are also not reported due to fear of arrest.

Gould and Fick's study revealed that just over one third of street based SWs reported rape by a client, but half of these didn't believe the police would help them.[12] In Cape Town, 37% of street-based and 20% of brothel-based SWs reported suffering frequent violence that they felt they could not report to the police.'[3] The stigma surrounding sex work leads some police officers to believe that 'sex workers cannot be raped'.[9] As a result, SWs have experienced serious secondary trauma in the aftermath of sexual violence due to the humiliation they have felt when reporting incidents to the police.[27] Scorgie et al.[15] report "a deep reluctance" among SWs "to be public about their experiences and to claim their rights" (p.50).

LEA corruption, including bribes and demands of sex from SWs, has also been reported.[7,11] Gould and Fick[27] found that 28% of SWs they interviewed had been asked for sexual acts by policemen in exchange for release from custody. In an analysis of roughly 50 statements given to SWEAT by sex workers, one third of female SWs disclosed that they had been coerced to have sex with police officers or knew of other SWs who had been. It is reported that police threaten arrest or offer conditional release from jail in order to force SWs to have sex with them or otherwise perform acts of a sexual nature.[11,22]

While most SWs are vulnerable to violence, harassment and abuse, certain groups are more vulnerable than others. Transgender SWs face particular discrimination by police due to high levels of homophobia and transphobia.[17]

Gang rape by police was commonly experienced by male SWs.[15] According to one study, male SWs face a double-stigma and increased discrimination due to their perceived sexual orientation coupled with their profession.[29] Cross-border migrants are also a minority group often targeted.[16]

LEAs have been known to defend claims levelled against them by SWs by alleging that such claims are motivated by an intention to prevent the police from doing their work. They emphasise a failure of SWs to support their claims with medical evidence. However, a confluence of factors contribute to the alleged lack of supportive evidence, including the nature and location of the alleged abusive acts, the lack of witnesses, and the criminalisation of sex work and concomitant discrimination against SWs by many healthcare and other professionals.[7]

Discrimination, Violence and Poor Service Delivery as a Result of Criminalisation

The illegal status of sex work creates conditions in which exploitation and abuse can thrive. SWs are murdered at much higher rates than the rest of the population due to their marginalisation and consequent increased vulnerability[3], murders which often remain unresolved. The link between violence, social stigma and discrimination results in disempowerment and sends a message to SWs that their lives do not matter.[3,9] Furthermore, as law enforcement tightens, organisations who provide services to SWs find it harder to reach those in need.[30]

According to a United Nations Women and Open Society Initiative for Southern Africa report,[31] the criminalisation of sex work "consistently leads to discrimination" against SWs in healthcare settings across South Africa, despite a relatively progressive Constitution.

Healthcare professionals' attitudes make it particularly difficult for SWs to access condoms, HIV screening, treatment for STIs[24] as well as post-exposure prophylaxis.[32] Even when they attend health care centres after experiencing physical and sexual violence, SWs report that they are routinely denied necessary medical care. Discrimination from doctors and nurses often results in the withholding of care, treatment and support.[29] A study on utilisation of health services among female SWs found that while the participants did access available health care services, their uptake of anti-retroviral therapy was low, noting the need to ensure non-stigmatising clinical environments and to provide nuanced interventions in order to account for differences in structural/work environments.[33] In light of this, and specifically noting the link between criminalisation and limited retention on HIV treatment for sex workers, the South African National AIDS Council[26] highlights the need to "foster an enabling environment" in which all role players work to improve SWs' well-being, which includes moving towards legal reform and decreasing stigma and discrimination (p.9).

Although the criminalisation of sex work is often defended as a method of increasing the protection of women, it has in fact decreased the safety of female SWs. Criminalisation leads to fewer available clients and therefore longer working hours. Street-based SWs are often forced to move from urban areas to more remote and dangerous areas where, though arrest is less likely, the risk of violence increases.[7]

Lack of social support leads to increased risk of contracting HIV.[34] In addition, though brothels allow negotiation of payment through management, paying SWs an hourly rate, there is little control given to workers over clients and types of services - which may increase the occurrence of violent incidents.[23] SWs are forced to charge low prices and may be more willing to submit to unprotected sex or take clients they do not trust as safe. Furthermore, as Fick[30] reports, "[t]here is a corresponding increase in dangerous clients who are potentially violent and who are not concerned about being arrested."(p.3)

Decriminalisation of sex work would allow for the protection of SWs in line with all other labourers in South Africa.[7] This would include increased employment rights and occupational health and safety legislation, while lone SWs could be seen as independent contractors.[34] In addition, SWs could take part in trade unions, hold legitimate professional contracts, and receive unemployment benefits if they choose to leave the industry.[12,21,34] Decriminalisation has also been demonstrated as a method of significantly reducing HIV infection rates,[35] modelled to reduce new infections by 33-46% over the next 10 years.[36]

Conclusion

The government has committed to reconsidering the laws relating to adult sex work since 2000, yet no reform processes have been finalised. Though an Issue Paper was released in 2002, the subsequent Discussion Paper only followed in 2009. This was to contain recommendations based on the research carried out for the 2002 paper, yet none were made. It was stated that too much time had lapsed since 2002 for the research to remain valid. In September 2015, the Minister of Justice and Correctional Services stated that a report regarding Project 107 relating to adult prostitution, which was initiated by the South African Law Reform Commission in 2000, will be released for public comment before the end of the year. At the time of writing, this report has not been released.

The South African Law Reform Commission suggests:

> "A national strategy to deal with [sex work] is crucial regardless of which model is chosen by the legislature. The aim of such a strategy should be, inter alia, to:
> • implement the legislation or policy
> • offer viable alternatives to [sex work]
> • assist an individual exit from [sex work] should he or she choose to do so
> • support re-skilling, health and education initiatives
> • promote economic independence
> • promote sexual health and safer sexual practices
> • provide for a review system and body to evaluate the effectiveness of the legislation and make recommendations for improvement.'[7]

De-stigmatisation through coordinated advocacy and education for health care workers, LEAs and the general public is essential.[15] This should include training on current and planned legislation.[37]

Current policing of sex work has been found to drain away scarce resources from more effective HIV prevention, treatment and care programmes. According to Technikon South Africa's Institute for Human Rights and Criminal Studies:

- *"At a minimum, it costs the police close to R14 million a year to prosecute sex workers;*
- *Police action against sex workers is inconsistent;*
- *Most cases against sex workers are dropped after coming to court, wasting valuable court time."* (p.22)[12]

Due to the inefficacy of the current legal framework to protect SWs against abuse from LEAs, collective action may be the most effective way to restrain the police. South Africa's National Strategic Plan 2007-2011 recommends the implementation of sex work specific programmes (instead of criminalisation)[38] and the creation of a "multilevel, collaborative response from government, community and international partners using multiple prevention strategies and fostering sustainability".(p.4)[39]

Overall, the criminalisation of sex work in South Africa has not eliminated sex work or reduced the number of clients and workers engaging with the industry.[17] Instead, the existing national and municipal laws make SWs vulnerable to violence and exploitation at the hands of police, clients and the community at large.[17] The criminality of sex work is also used to excuse all abusive treatment against SWs, perpetuating a widespread belief among the general public that such treatment is acceptable. Moreover, criminalisation poses barriers to SWs' access to vital health[17] and other services. Arresting SWs as an attempt to abolish sex work is counterproductive. When released, SWs often have to work harder to make up for the time they spent in jail.[20]

'*The focus should be on respecting, protecting and fulfilling human rights of the most vulnerable people, who are marginalized by social institutions and subject to frequent human rights abuses. Sex workers are entitled to the human rights guaranteed to all South Africans by the Constitution. In addition, female sex workers should be afforded those particular human rights that are extended to women under international treaties and agreements.*'[3]

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APPENDIX 3: Literature review around People Who Use Drugs, HIV and Law Enforcement

Drug use, the law and related policy

In South Africa illegal substances are addressed by three Acts. Substances are hierarchically scheduled in the Medicine and Related Substance Control Act 59 of 2002[1] with further definitions provided in the Pharmacy Act of 1974.[2] The Prevention of and Treatment for Substance Abuse Act 70 of 2008 outlines the prevention and treatment efforts that should be made by government and civil society organisations.[3] The Drugs and Drugs Trafficking Act 140 of 1992 outlines the policing of the production, distribution and use of illegal substances. The criminal justice system, largely through a policing approach, is responsible for the implementation of the Drugs and Drug Trafficking act.[4]

The South African National Drug Master Plan 2013-17 (NDMP) is the country's main drug-related policy. The NDMP outlines three approaches to address and manage drug use, namely: supply reduction, demand reduction and "a localised version of harm reduction". Broadly, the NDMP includes recommendations for community-based programmes of treatment and 'harm reduction', especially as this pertains to vulnerable people and children. The NDMP does not explicitly support the implementation of the package of HIV prevention, treatment and care services for people who inject drugs (PWID) as recommended by the World Health Organizatoin.[5] It does note links between drug use and HIV, and highlights the need for further research in this area.[6] The next NDMP is under development.

The National Department of Health (NDoH) is mandated to regulate precursor chemicals and medicines with the potential for addiction. It also manages drug-related medical emergencies, complications and detoxification related to drug use. The NDoH Mini Drug Master Plan (2011/12 - 2013/14) describes harm reduction interventions to be implemented in the short, medium and long-term. [7] This plan is also being revised.

The South African National Strategic Plan for HIV, STIs and TB (2012 – 2016)(NSP) defines people who use drugs (PWUD) as a key population in need of tailored HIV and TB prevention interventions. The NSP notes the legal and stigma issues that affect PWUD, and how these increase their vulnerability to HIV and TB. [8] There is currently no South African National Policy or Guideline around harm reduction.

The rights of people who use drugs

PWUD are entitled to the fundamental rights set out in the Bill of Rights of the South African Constitution.[9] These include, but are not limited to the rights to equality, dignity, freedom and security of their person and fair trial rights. The *equality* clause specifically states that everyone is equal before the law and has the right to equal protection of the law and prohibits unfair discrimination from both public and private sources.

Additionally, *the right to freedom and security of the person* includes the right:

vi. not to be deprived of freedom arbitrarily or without just cause;
vii. not to be detained without trial;
viii. to be free from all forms of violence from either public or private sources;
ix. not to be tortured in any way; and
x. not to be treated or punished in a cruel, inhuman or degrading way.

PWUD are also protected by section 35 of the Constitution, which secures *the rights of arrested, detained and accused persons*. These include the right:

vi. not to be compelled to make any confession or admission that could be used in evidence against that person;
vii. to be brought to court as soon as possible and before 48 hours after arrest;
viii. to be informed of the reason for detention or arrest;
ix. to be released from detention if the interests of justice permit; and
x. to conditions of detention that are consistent with human dignity.

Thus, failures to inform PWUD of the reason for their arrest, detaining PWUD for longer than legally necessary, abusing PWUD while in detention, failing to charge or bring PWUD to court post arrest all constitute human rights abuses and are in breach of the Constitution.

Neither the NDMP nor the NDoH Mini Drug Master Plan highlight the importance of protecting the rights of PWUD. However, in 2016, The South African Deputy Minister of Social Development, on behalf of the African Union, highlighted member states' commitment to adhering to international principles of human rights and the rule of law when engaging with PWID in the Common African Position submitted as part of the preparations for the United Nations General Assembly Special Session on the World Drug Problem held in April 2016.[10]

PWUD and law enforcement

PWUD frequently engage with law enforcement and are at risk of entry into the criminal justice system. The criminalisation of drug use and limited access to resources and limited alternatives contribute to acquisition crime and contribute to this risk.[11,12]

Furthermore, PWUD from lower socio-economic circumstances, particularly those who live, use, purchase drugs or earn a living on the street, are more likely than PWUD who are employed, or PWUD with access to financial resources, to come into contact with police in their daily activities.[12] Furthermore, social profiling and limited access to safe spaces to use drugs increases the likelihood of encounters between police and PWUD.[13,14] Data around engagement between PWUD and law enforcement in South Africa is limited. A draft report from a 2015 formative assessment preceding a three-city harm reduction programme for PWID identified engagement with law enforcement as being the primary reason for movement of PWID who congregated in public spaces. In almost all of the locations identified in the cities where PWID congregate, police visited these locations at least daily, and treatment of PWID by police was perceived as unfair or abusive in two of these cities.[15]

In addition to the elevated risk of arrest, PWUD from poorer circumstances are likely to spend more time in detention while awaiting trial (due to challenges in paying for bail), and at an increased risk of imprisonment (due to limited options for legal representation) compared to their wealthier counterparts.[12]
Although PWUD in South Africa have equal rights, there is often a limited understanding of these rights.[16]

The police are responsible for the enforcement of the Drugs and Drug Trafficking Act. Over the last decade the police have been placing increasing emphasis on measuring their effectiveness through the use of arrest and crime statistics.[17,18]

The South African Police Strategic Plan (2014 – 2019) outlines targets for drug-related arrests for this period. This is part of 'Strategic Objective: To discourage all crimes by providing a proactive and responsive policing service that will reduce the levels of priority crimes', which Visible Policing is responsible to implement. The sub-objective is to increase the reporting of unlawful possession of and dealing in drugs by at least 13% from a 2013/14 baseline of 260 732 reported cases. This course of action is suggested to contribute towards feelings of safety in communities.[19]

From a policing perspective, the number of police arrests related to drug use has increased significantly over the last two decades. In 2005, 94 792 drug-related crimes where reported, and this increased to 266 902 in 2015 (a 2.8 fold increase). The majority of these arrests were related to drug possession.[20] Despite the dramatic increase in reported drug-relate crime, the street price of illegal drugs during this period has decreased when adjusted for inflation.[21]

This apparent increase in reported drug-related crimes and decrease in drug price is something that some police in South Africa are aware of. An ethnographic study of policing practices focused on street level drug use in Durban noted that many police members feel that arresting PWUD is not an effective strategy to reduce drug use, or the consequences thereof, and is not the most efficient use of police time.[22]

Although little published data exists on drug use prevalence in the broader community, one review estimates that one in seven South Africa's will develop a substance use disorder in their lifetime.[23] The high levels of drug use, and high risk of people living on the street who engage with police, and the intersections between drug use and acquisition crime has been confirmed among police detainees. A South African three-city study of police detainees published in 2004 identified that almost half (45%) of detainees tested positive for an illegal substance (mainly cannabis and methaqualone). Detainees who tested positive for drugs were most likely to have been arrested previously.[24] No conclusions can be made about causality and some drugs (like cannabis) test positive several days after they have been consumed.

The entry of PWUD into correctional facilities increases their likelihood of becoming further involved in crime and of developing a criminal identity. PWUD in prison also have an increased likelihood of exposure to TB.

PWUD in prison who inject drugs are likely to use contaminated injecting equipment where sterile needles and syringes are not provided by the criminal justice system.[12,25]

The intersections and consequences of PWUD's engagement with police and entry into the criminal justice system do not end there. The stigma and discrimination, and legal ramifications of a criminal record, limit employment options among people who have been sentenced on a drug-use related crime. These consequences further exclude individuals and reduce their social capital, increasing the likelihood of ongoing substance use and engagement in crime.[14] In correctional services, limited access to HIV prevention and evidence-based drug dependency treatment options increase risky practices and the consequences of drug use. Unsurprisingly, entry and later release from detention settings is associated with high rates of relapse among PWUD who cease using substances while in prison.[12] PWUD area also at significantly elevated risk of drug overdose after release.[26]

Data on the prevalence of drug use among police in South Africa is limited. However, drug use among police, law enforcement officers and military personnel has been well described in other countries. Substance use among police has been suggested to be higher than among the general population due to higher levels of exposure to trauma associated with policing, as well as the individual, social and structural factors that contribute to substance use among people in the general community. [27–29]

Reporting human rights violations and/or crime to LEAs

The excessive use of force by the SAPS when engaging with civilians has been described[30], and interventions are underway to enhance rights-based policing in South Africa. In the last five years the Marikana[xvii] and Khayelitsha Commissions[xviii] where established in response to national concerns around policing practices. The Marikana Commissioned was established in response to the killing of 34 mine workers by police in Marikana (North West Province, South Africa) to quell labour related unrest.[31] The Khayelitsha Commission was established to address reports of police corruption and ineffectiveness in Khayelistha (Western Cape Province, South Africa).

Data describing the nature of engagement between PWUD and police in South Africa is limited. Since 2014, a multi-city harm reduction programme has been collecting and monitoring human rights violations experienced and reported to project implementers. A review of reported rights violations in the fourth quarter of 2015, included 232 human rights abuses across the three cities (116 in Pretoria, 108 in Cape Town and 22 in Durban). These violations included: the confiscation of sterile injecting equipment (144); being arresting without cause or without being processed (20), and physical assault (28). The recorded violations were concentrated in geographical areas where there had been significant political and public opposition to the project and the distribution and collection of sterile injecting equipment. The number of used needles returned decreased by a third in the month following increases in police activity focusing on PWID.[32]

[xvii] http://www.marikanacomm.org.za

[xviii] http://www.khayelitshacommission.org.za

Data from quarter two of 2016 showed similar figures – with 257 rights violations reported across the cities comprising of: 190 instances of the confiscation or breaking of medical supplies; 34 assaults; two cases of being detained without cause, and two cases of extortion. Over two-thirds (68%) of violations were committed by, or in the presence of SAPS members.[33]

Very little information exists around the experience of PWID that report crimes at police stations or who request police services. Some negative experiences were documented as part of the PWID consultation that the United Nations Office on Drugs and Crime hosted in Cape Town in 2014.[34]

Conclusion

PWUD and police have frequently encounters. Encounters are due to a combination of factors, including the criminalisation of drug use, the relative visibility of PWUD from lower socio-economic circumstances and arrest targets for drug-related crimes. PWUD are a prioritised population from an HIV and TB point of view, and national drug and related policy is under review.

Despite their prioritisation from a public health perspective, data on the nature of encounters between police and PWUD (although limited to PWID) indicate frequent rights violations, many of which include the confiscation and breakage of HIV prevention materials, particularly needles. These police actions increase the HIV risk for police through needle stick injuries and PWID through reduced access to sterile injecting equipment.

As such there is a conflict between the implementation of public safety and public health policy that needs to addressed to maximise the health and safety outcomes of all people in South Africa. The World Health Organisation recommends the decriminalisation of drug use, and movements towards this should be advocated for public safety and public health reasons.

As police members and law enforcement officers live and work in contexts of high crime rates, significant socio-economic disparities and prevalent substance use, the potential for harmful substance use is likely. Drug use among police needs to be better understood and evidence-based interventions put in place to reduce the harm caused to individuals, their families and the community at large.

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APPENDIX 4: Interview and discussion tools

In-depth Interview Guide

Interviewer name: Date:
Location: Time:
Interview ID: Recording number:

After signing the informed consent form confirm with the participant that you may begin the recording. Affirm the participant that there are no right or wrong answers and explain that you are interested in the situation and their experiences.

I. Demographics/ background

First, I would like to ask you a few questions about yourself.

1. **How long have you been working in law enforcement?**
2. **What different divisions or areas have you worked in?**

II. Training

Thank you for giving me those details. Now I want to ask you some questions about police training.

1. **Can you tell me about training police members receive around sex work?**

   Prompts:
   - When does it happen?
   - What is included in the training?
   - Does this training include insights into the profession (reasons, risks, benefits etc.)
   - Which specific areas may more training be needed?

2. **Can you tell me about training police members receive around drug use?**

   Prompts:
   - When does it happen?
   - What is included in the training?
   - Does this training include insights into the profession (reasons, risks, benefits etc.)
   - Which specific areas may more training be needed?

3. **Can you tell me about training police members receive around gender and sexuality?**

   Prompts:
   - When does it happen?
   - What is included in the training?
   - Does this training include insights into the lived experiences of lesbian, gay and bisexual people?

- Does this training include insights into transgender people?
- Which specific areas may more training be needed?

4. **Can you tell me about training police members receive around human rights?**

   Prompts:
   - When does it happen?
   - What is included in the training?
   - Which specific areas may more training be needed?

5. **Can you tell me about training police members receive around managing challenging situations with citizens, particularly women?**

   Prompts:
   - What kinds of situations are covered?
   - What is included in the training?
   - Which specific areas may more training be needed?

III. Work experience

Remember, you do not need to answer any question that makes you uncomfortable and also know that all identifying information will be removed from this interview. I would now like to ask you a bit about your work experience.

1. **What has been your experience in working with the enforcement of laws around sex work?**

   Prompts:
   - Tell me about your experiences of enforcing laws around sex work
   - How consequences do you think current approaches have on sex workers?
   - What could improve your experience and that of sex workers?

2. **What has been your experience in working with the enforcement of laws around drug use?**

   Prompts:
   - How were these laws implemented?
   - What effects do you think approaches to drug use to date have had?
   - What do you know about harm reduction?
   - What are your thoughts towards needle and syringe programmes?
   - What could improve your experience and that of people who use drugs?

3. **What has helped you to understand about the challenges that sex workers, people who use drugs and LGBTI people in South Africa experience?**

Prompts:
- People living on the streets?
- Sex workers?

- People who use drugs?
- LGBTI people?
- What could improve your experience and that of marginalised groups of people?

IV. Performance assessment

I would now like to ask you a bit about your thoughts on current performance evaluation within the police service.

1. **Tell me about the arrest quota system?**

   Prompts:
   - How do these influence law enforcement practice?
   - How do these practices influence serious crime?
   - How does this system affect sex workers?
   - How does this system affect people who use drugs?
   - How could this system be changed/ improved?

V. Legal reform

Laws are often changing. I would now like to ask you a bit about your knowledge of some laws that are under review

1. **What do you know about efforts to change laws around sex work?**
2. **What do you know about the proposed Hate Crime legislation?**
3. **How could police be better informed around laws?**

VI. Strategies to protect human rights and improve safety for all

1. **What could be done to assist law enforcement agents to improve their work with sex workers?**
2. **What could be done to assist law enforcement agents to improve their work with people who use drugs?**
3. **What could be done to assist law enforcement agents to improve their management of challenging situations?**

VII. Closing Questions

Is there anything else you would like to tell me about law enforcement and mechanisms to implement laws?

This information is important and the more we understand the situation the better our report and recommendations will be: do you know anyone else who might be willing to talk to me about these issues? How can I contact them?

Once again, thank you very much for taking the time to talk to me.

[stop recording]

Focus Group Discussion Guide

Facilitator name: Date:
Location: Time:
Focus group number: Recording number:

After signing the informed consent form confirm with the participants that you may begin the recording. Affirm the participants that there are no right or wrong answers and explain that you are interested in the situation and their experiences.

I. Knowledge

1. **What do you think police members know and understand about sex work?**

   Prompts:
   - Reasons, risks, benefits etc.
   - What knowledge gaps do you think there are around sex work?

2. **What do you think police members know and understand about drug use?**

   Prompts:
   - Drug use, dependence and addiction
   - Influencing factors, risks, benefits etc.
   - What knowledge gaps do you think there are around drug use?

3. **What do you think police members know and understand about gender and sexuality?**

   Prompts:
   - Diversity
   - Gender non-conformity
   - Anal taboo
   - What knowledge gaps do you think there are around gender and sexuality?

4. **What would be the best ways to share new knowledge or address misconceptions with police members around these issues?**

II. Attitudes

1. **How would you describe police members' attitudes towards sex workers?**

2. **How would you describe police members' attitudes towards people who use drugs?**

3. **How would you describe police members' attitudes towards lesbian, gay, bisexual, transgender and intersex people?**

4. **What would be the best ways to shift police officer attitudes towards sex workers, people who use drugs and/ or lesbian gay bisexual transgender and intersex people?**

III. Practices

Now I would like to ask you a few questions about experiences of police and sex workers, people who use drugs and lesbian, gay, bisexual, transgender and intersex people

1. **What are things like on the street between police and sex workers in this city?**

   Prompts:
   - Tell me about your experiences of law enforcement and sex workers
   - What consequences do you think the current situation and approaches have on sex workers?

2. **What are things like on the street between police and people who use drugs in this city?**

   Prompts:
   - Tell me about your experiences of law enforcement and people who use drugs
   - What consequences do you think the current situation and approaches have on people who use drugs?

3. **What are things like on the street between police and lesbian, gay, bisexual, transgender and intersex people in this city?**

   Prompts:
   - Tell me about your experiences of law enforcement and lesbian, gay, bisexual, transgender and intersex people
   - What consequences do you think the current situation and approaches have on lesbian, gay, bisexual, transgender and intersex people?

4. **What are things like at police stations for marginalised groups?**

   Prompts:
   - For sex workers
   - For people who use drugs
   - For LGBTI people
   - What is done well?
   - What could be improved?

5. **Can you tell me about the way police members manage challenging situations with citizens, for example when people swear at them, particularly women?**

   Prompts:
   - What kinds of situations are managed well?
   - What kinds of situations could be managed better?

6. **What would be the best ways to change police practices and behaviours towards sex workers, people who use drugs and/ or lesbian gay bisexual transgender and intersex people?**

   Prompts:
   - To promote safety
   - To prevent human rights violations
   - To provide friendly, supportive environments and remove barriers to reporting crime/ accessing security services
   - Other

7. **What could sex worker, people who use drugs and/ or lesbian gay bisexual transgender and intersex people do to assist law enforcement officers to improve safety and security for all?**

   Prompts:
   - Knowledge
   - Attitudes
   - Behaviour
   - Other

IV. Closing Questions

Is there anything else you would like to tell me about how to improve the relationship between law enforcement and key populations to improve the health and rights of all?

Once again, thank you very much for taking the time to talk to me.

[stop recording]


Aids
Fonds


hands
OFF!
Stop violence against sex workers