



Caribbean
Vulnerable
Communities
Coalition



POSITION PAPER on DECRIMINALIZING SEX WORK

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In October 2014 a coalition of Civil Society Organizations, including the CVC and JASL, took the opportunity of the Joint Select Committee's review of the Sexual Offences Act (2009) and related acts to submit a series of recommendations that would "strengthen [Jamaica's] legislative framework, which governs the substantive and procedural laws on sexual offences in an effort to equally protect all persons within the jurisdiction" who are made victims of sexual violence (2). This Position Paper seeks to support and extend the arguments made regarding Recommendation #14 which calls for the "decriminalization of activities surrounding 'prostitution' so as to better protect the safety, health, and security rights of persons who engage in Sex Work." This Paper will highlight the ways in which the current laws which effectively criminalize 'prostitution,' contribute to the dual epidemics of gender-based violence/violence against women (GBV/VAW) and HIV/AIDS, particularly as they affect all females and transgender persons who are Sex Workers.

Links of GBV, HIV and Sex Work

As research and initiatives from various international organizations: such as the World Health Organization; UNAIDS; Pan American Health Organization; the Center for Disease Control; Global Fund to fight AIDS; Tuberculosis and Malaria and others; have shown there is a documented and linked relationship between rates of/exposure to gender-based violence and higher prevalence rates of contracting HIV, which disproportionately affects all women and transgender persons. There are both direct and indirect causal relationships between GBV and HIV. Direct transmission of HIV can occur through sexual violence, in which forced or coercive sexual intercourse heightens the biological risk factors for transmission, in accordance with degrees of trauma, vaginal tearing, and abrasions.



Indirect transmission can occur through inability to negotiate condom use, because of threatened or actual violence and through other factors such as partnering with thrill-seeking/adventuresome, older men and through sexual risk taking that is sometimes a response to early sexual debut and forced sexual initiation.¹ Sex Workers in particular are vulnerable to these various forms of violence which has instilled in them a reasonable fear of violence as a result of the social stigmatization of Sex Work and the criminalization of Sex Work by the state. These factors which both limits social and legal responses to violence against Sex Workers, leaves them vulnerable to violent attacks from both state personnel, such as the police, and civilians including partners, family members, and clients.

Through funding from UN Trust Fund to End Violence against Women, in 2015, Jamaica AIDS Support for Life conducted Focus Group Discussions, dialogues and, Legal Literacy and Advocacy Workshop with more than 1,000 Sex Workers across Jamaica who confirmed these risk factors do contribute to Sex Workers' vulnerabilities to becoming infected with STIs including HIV.

In Jamaica, Sex Workers have experienced one of the most dramatic reductions in HIV rates nationally, from 12% in 1990 to 4% in 2011 to 2.9% in 2014. However, they are still disproportionately vulnerable to contracting HIV as compared with the national rate of 1.8% (2014). While these numbers have decreased without the decriminalization of Sex Work, in order to achieve the elimination of HIV, for which 0% rate is the only standard, the legal context that supports and shrouds the acceptable social meting out/administering of violence against Sex Workers needs to be addressed precisely because elevated violence is key in rendering Sex Workers particularly/more highly vulnerable (2x more than the general population) to contracting HIV. Furthermore, as the Sex Workers Association of Jamaica (SWAJ) notes in their recent report Best Practices for Working with Sex Workers "violence is still a more practical worry [for many Sex Workers] than HIV, which can often seem like an abstract risk." As the report indicates, according to PANCAP/CVC-COIN studies conducted in 2011, 38% of Sex Workers have been victims of violence on the street where they work, 25% in the sex club where they work, and 29% at the hands of their intimate partners.



Effects of Criminalisation of Activities Surrounding Sex Work



The criminalization of activities surrounding Sex Work, as prescribed/described by the laws in Jamaica, while it might be intended to protect Sex Workers, produces legal circumstances that effectively work as a “de facto criminalization of prostitution in Jamaica.”² The law, as it stands, produces a negative social environment and legitimate reasons that supports and provides reasons for unscrupulous persons to execute acts of violence against Sex workers and also allows little recourse for them (Sex Workers). Sex Workers state that they feel like less than human because of the treatment meted out to them generally. In light of how the law and religion negatively influences public opinions and reactions to Sex Workers, they feel that that they need to prioritise mitigating violence that they experience above maintaining focus on strategies to protect themselves from HIV and other STIs.

In reality, because HIV and VAW are interconnected, the state should follow civil society in promoting simultaneous or dual strategies that ensure the safety and, health and well being of women and transgender persons who are involved in, or choose, Sex Work as a profession.

The criminalization of activities surrounding Sex Work directly and indirectly increases Sex Workers vulnerability to contracting HIV in several ways; indirectly because of the way in which it promotes violence against Sex Workers and, directly because it doesn't offer a response to threats of violence and actual violence that Sex Workers experience.

1 When Sex Work is criminalized, rather than regulated and standardized, Sex Workers are less able to negotiate the terms of their work and therefore more likely to be prevented from practicing safe sex. Often they are controlled by what the World Health Organisation (WHO) refers to as a series of "gatekeepers," (which includes owners of sex encounter and entertainment establishments, managers, clients, intimate partners, and local power brokers) who become the ones empowered to negotiate and dictate the amount charged or earned for work done; which clients are engaged; and whether or not the Sex Worker can insist on employing safer sex which would include the use of condoms and lubricants. In these cases, Sex Workers have little or no authority to refuse clients that they find to be questionable or suspicious as it relates to their level of sexual riskiness, or to advocate for the use of condoms. Criminalization of Sex Work and not having authority in decision-making processes, including condom and lubricant usage, are two factors identified by Sex Workers who experience GBV, as vulnerabilities for contraction of HIV.

2 The illicit nature of Sex Work when criminalized means that Sex Workers have to clandestinely work, quickly move, and be more concerned with being caught and charged under the law, most times, at the expense of paying less attention to negotiating safe sex with their clients.

3 Stigmatization of Sex Workers and fear of incarceration deters the reporting of abuses, seeking counseling, getting assistance, getting tested for STIs, and accessing medical treatment, whether in regards to HIV contraction, or for violence they experience as Sex Workers. Obstructions to freely accessing these types of resources heightens the likelihood of not knowing their HIV status, contracting HIV or other STIs, not being treated for illnesses or injuries sustained and prevents them accessing social and legal information and assistance

that should help protect them from the kinds of violence to which they are vulnerable.

4

As the Coalition for Civil Society Organizations submission to the Joint Select Committee noted, whatever good was intended for the creation of these laws, the negative results caused from imposing them far outweigh any good it has done for Sex Workers across Jamaica.” Criminalizing Sex Work does not eliminate selling sex, it merely “heightens” the risks encountered by Sex Workers.





In summary:

- 1** The Legislation around Criminalizing Sex Work will neither eliminate nor curtail the clandestine activities associate with Sex Work but will only serves as fuel for more risk-taking and will continue to create the environment for encouraging violence.
- 2** As the Coalition's document notes the broad prohibition of sex solicitation also inherently prohibits, communication between Sex Worker/ Client negotiation and agreement around safer sex practices.
- 3** Violence and lack of control over one's life means that Sex Workers may give lower priority to their health needs and behavior change, over more immediate concerns for safety and survival. [many feel that consideration about their health and well being is a lesser priority than considerations about ensuring basic safety and survival while on the job]
- 4** Outlawing brothels prevents Sex Workers from working in environments in which they are able to better put measures in place to protect their physical and sexual health. Many Sex Workers feel that working inside an enclosed site provides some amount of added security. Sex workers in these clubs however do complain that all club owners do not ensure complete safety and protection of the girls working there. Decriminalizing Sex Work, it is hoped, would force some club owners to put more effort in providing greater security for their employees.

A photograph of a woman with long dark hair, wearing a black top and shorts, walking away from the camera on a city street at night. She is carrying a black bag. The street is illuminated by streetlights, and there are other people and a motorcycle visible in the background.

CONCLUDING POSITIONS

Sex Workers therefore have agreed on and have decided to take the following positions. They agree that these actions must be implemented in order to decrease Sex Workers vulnerabilities to violence and, contracting STIs including HIV:

- ⦿ Decriminalise Sex Work to reduce the current violation of human rights, brutality and unfair treatment meted out by police, healthcare workers, clients, family and others, as well as end unlawful detentions, and eliminate/decrease fear of detentions and, other criminal penalties;
- ⦿ Decriminalise Sex Work to facilitate: reporting violations experienced, timely response to reported violations; enabling access to counseling, legal and social assistance, accessing HIV testing, and accessing routine healthcare including testing for STIs including HIV;
- ⦿ Have designated areas for Sex Work with enforceable laws that protect Sex Workers and attract penalties befitting the gravity of the crime committed, as stipulated by the laws of Jamaica. Penalties for police brutality and exploitation of Sex Workers by clients and club owners, must be included among violations;



- ① Decriminalize Sex Work and establish ongoing national educational programmes to empower Sex workers to know their rights and the channels available (which are the same for all citizens) for reporting abuses and crimes against them and how to get redress for violations. This training and empowerment will increase the reporting of rights violation and other types of violence, and reduce the overall impact of violence among women and girls;
- ① Review and simplify the “The Montego Bay Declaration” developed in Montego Bay August 30, 2013 by The Caribbean Sex Worker Coalition (CSWC) (to which Sex Work Association of Jamaica is a signatory) and advocate for implementation of the recommendations of the Declaration to be adopted in Jamaica.

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