

TOWARDS THE DECRIMINALIZATION OF SEX WORK

A Public Health Perspective

POSITION PAPER



Jamaica **AIDS** Support For Life

Love. Action. Support.



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Executive Summary

As is common in most of the English Speaking Caribbean, aspects of sex work are criminalized in Jamaica. This criminalization pushes those involved in the industry underground and deters them from accessing comprehensive sexual and reproductive health services. The sex work population by World Health Organization standards is one of the populations most vulnerable to HIV and other sexual transmitted infections (STIs). As such, preventative and treatment services must be readily available to them. This population has experienced one of the most dramatic reductions in HIV prevalence rate in Jamaica moving from 12% in 1990 to 2.8% today. While this is a noteworthy decrease, it is still significantly high compared to the prevalence rate of 1.6% among the general population (**Ministry of Health, 2016**). The Jamaica AIDS Support for Life (JASL) contends that the trajectory of this decrease is threatened due to the current laws that exist which force sex workers in circumstances that promote the spread of HIV and other STIs.

The public health concern is further complicated when one looks at the high incidents of violence among sex workers. A study conducted by PANCAP/CVC-COIN in 2011 among 70 sex workers found that 25% of club based sex workers experienced violence, 38% on the street and 29% at the hands of their intimate partner. Most of the street based sex workers reported that they were terrorized by the police who demanded free sexual favours, money and verbally abused them. The Constitution of Jamaica guarantees all Jamaicans certain protections that the state has a responsibility to ensure. These protections include the right to dignity, bodily integrity and freedom from violence. The violation of these rights is a reality for sex workers in Jamaica every day and we believe the legislation that criminalizes aspects of sex work helps to facilitate these constitutional breaches.

This paper recommends decriminalization of sex work and calls on policy-makers to put in place a regulatory regime so that persons who engage in sex work comply with general laws dealing with labour, occupational health and safety, and human rights. In countries such as New Zealand and Australia, decriminalization has resulted in higher rates of condom use, which reduces HIV risk. Decriminalization has also allowed sex workers to report and for police to address illegal acts such as sexual assault as they occur.

Legislative Context

Jamaica's current laws around sex work take an Abolitionist approach where key activities around sex work are criminalized but not sex work itself. To understand the positions being put forth by Jamaica AIDS Support for Life, it is important that one understands the two distinct terms that are frequently blurred in the debate around different models of sex work legislation: Legalization versus Decriminalization. *"Legalization would mean the regulation of prostitution with laws regarding where, when, and how prostitution could take place. Decriminalization eliminates all laws and prohibits the state and law-enforcement officials from intervening in any prostitution-related activities or transactions, unless other laws apply"* (Hughes, et al, 2004). **Jamaica's AIDS Support for Life's position call for the decriminalization of sex work, not legalization.**

The major pieces of legislation in Jamaica that deal with sex work are:

- 1.The Sexual Offences Act**
- 2.The Offences Against the Person Act, and**
- 3.The Town and Communities Act.**

The Sexual Offences Act S.23 (1) says that every person who knowingly lives entirely or partially off the earnings of prostitution or solicits in any place whether public or private for immoral purposes commits an offence and if found guilty can be fined up to J\$500,000 or a maximum of three years imprisonment if convicted in the lower court; or to a fine or term of up to 10 years in prison if convicted in the higher court. Section 23 (3) outlines that it is an offence to live with or be habitually found in the company of a prostitute. These sections of the Sexual Offences Act basically condemns the sex worker to a prison sentence; criminalizes the partners of sex workers, the children of sex workers, the family and friends of sex workers and by extension those who provide health care services to sex workers.





Due to economic and social vulnerabilities, especially among women and girls, data suggests that most persons who engage in sex work are from low socio-economic backgrounds. The fine of \$500,000 is therefore problematic as it is almost certain that a sex worker who is fined this amount will most likely be serving the time because of an inability to pay. Consequently, the sex worker is then thrown in prison and continues to engage in sex work in a restricted environment where access to preventative commodities is even more limited and the health risk increases.

How the law affects dependents of sex workers and healthcare provision?

The law as it stands also alienates sex workers from their children, elderly parents and other loved ones as they may be found to live with or be habitually in the company of a prostitute and face prosecution. There elderly parents and children of sex workers who are maintained from proceeds of their work are currently criminals as per S. 23 (1) of the act and are at risk of facing criminal sanctions. This totally destroys their support systems and makes sex workers and their dependents more vulnerable. Children end up engaging in sexual activity at an early age and the health risk continue to multiply.

Sex workers not only face discrimination in the wider society but also when accessing healthcare from providers who frown upon their activities and may refuse to provide care as they can be found to be aiding and abetting prostitution. Other health care workers who assist them do so at the mercy of the law and as such access to health care services for them is limited. Where healthcare is available, uptake is extremely low out of fear of stigma and discrimination and ultimately sex workers' health risk are increased.

The law forces sex workers underground and increases public health risks

The Offences Against the Person Act (OAPA) Section 68 (1) says: "If it is made to appear to a Justice by information on Search oath that there is reason to suspect that any premises or part warrants thereof is used as a brothel or for the purposes of habitual prostitution, the Justice may issue a warrant authorizing any

constable to enter and search the premises, at any time of the day or night and with such assistance and by such force as may be necessary, and to seize any article found therein which there is reasonable ground for believing will afford evidence as to the commission of any offence of an obscene or immoral nature and to arrest any person found therein who there is reasonable cause to suspect is committing, or has committed, any offence against this act”.

The abovementioned section of the OAPA gives the police wide powers to invade privacy of persons and cease items that may be used as a part of safer sex such as condoms. Prohibiting sex workers from working in indoor locations like brothels affects their ability to care for their sexual health. Working indoors provide sex workers with a safer environment and more time to negotiate safer sex given that regulated brothels can establish and enforce procedural mechanisms around condom use and safer sex practices. The brothel setting also allows for more time to screen the clients for sores or other indications of STIs. However, these laws which outlaw the keeping of brothels means that there are no safe space for sex work to take place and this increases vulnerability to abuse, exploitation and violence. Sex workers in brothels with firm policies relating to condom use are in a better position to turn away clients who refuse to use condoms because they have the support of the institution and others working within it **Gray 2014**).

Understanding how the law leads to police abuse and arbitrary arrests

The Town and Communities Act Section 3 (r) says: *Every person who shall loiter in any public place and solicit any person for the purpose of prostitution, shall be guilty of an offence and shall be liable to a penalty not exceeding one thousand dollars.* The act also makes loitering in and of itself an offence. Additionally, this piece of legislation limits both social and legal responses to violence against sex workers, leaves them vulnerable to attacks from state personnel, such as the police and civilians including partners, family members and clients. Reported incidents have found that many sex workers face violence at the hands of police officers due to this section of the act. They are often arbitrarily arrested and charged for loitering without an opportunity to account for their being at a particular place at a particular time. The law defines loitering as being found in a public place between the hours of 9 p.m. and 6 a.m. without being able to give an account of one's self.

Police officers often arrest sex workers by accusing them of loitering and demand sexual favours in order to avoid prosecution. Sex workers in most cases go along with this request as they see it as a more viable option than prosecution; and in instances of this nature, their ability to negotiate condom use or dictate the terms of the encounter is compromised. Both parties are now at risk of passing on whatever they have to the other and then whomever they come in sexual contact with thereafter is a serious risk of contacting an STI.



JASL's Positions

The Jamaica AIDS Support for Life rejects the Nordic Model approach to sex work which decriminalizes the sex worker and criminalizes the client. Pioneered in Sweden, this model fails to take into consideration that there are the socioeconomic factors that drive women into sex work. The model also presents the case as though these women are forced into sex work by the buyer and does not consider those who off their own volition chose to engage in sex work. This model does not provide an enabling environment for those who wish to engage in sex work in safe sanitary conditions and have excess to the same social safety net as everyone else.

DECRIMINALIZE sex work to ensure that the constitutional rights that are guaranteed to all citizens are not violated when it comes to sex workers. Every Jamaican is guaranteed the right to life, liberty and security of the person and the right not to be deprived thereof except in the execution of the sentence of a court in respect of a criminal offence of which the person is convicted. When sex workers are harassed by the police, arrested without just cause, laughed at when they try to report breaches committed against them, these rights are being blatantly violated. Decriminalization will ensure that sex workers are not directly harassed simply because they are known to be such and they are not deprived of their liberty without just cause. Decriminalization will ensure that their right to dignity, equal and fair treatment and overall respect is upheld.

DECRIMINALIZE sex work so that all Jamaicans have an equal opportunity to exercise their right to work. It is important here to address the issue of Human Trafficking/Trafficking in persons which is sometimes confused with sex work. Trafficking in Persons is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving

or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (**Article 3 paragraph (a) UN Protocol to Prevent Suppress and Punish Trafficking in Person**). The Jamaica AIDS Support for Life in no way supports human trafficking and it must be clearly understood that when we speak of sex workers we speak of a group of adults who of their own free will choose to engage in sex work as their choice of work. “Sex work is fundamentally a labour issue, so this right is especially important. Sex work is a form of service work that should enjoy the same protections that any other type of service work entails. By signing the international treaty dealing with economic, social and cultural rights, the Jamaican government guarantees that it would take steps to ensure that all Jamaicans, including sex workers, have the right to choose their own employment”. (**Gray 2014**)

● **DECRIMINALIZE** sex work to ensure improved access to sexual and reproductive health services for sex workers. Sex workers are one of the key populations at risk of HIV infection; and as such, it is important that they have access to proper health care so they can be properly screened and treated for HIV or any other STI. Sex workers at times do not access health care services because of the stigma and discrimination associated with sex work. Service providers, in some instances, assume the posture that suggests sex workers accept whatever services provided, if any, because they are participating in an illegal activity.

● **DECRIMINALIZE** sex work so that incidences of violence against sex workers can be reduced; and where these incidents do happen, the possibility of them being reported and investigated increased. Sex workers often experience violence from varying levels. This violence is fuelled by the presence of laws that criminalize sex work. The violence they experience is mostly sexual, physical and verbal. The risk of violence is also increased because sex workers are displaced. Out of fear of prosecution, the sex workers are forced to conduct their activities in dark and isolated areas which significantly increase their vulnerability to violence. In addition, the incidents predominantly go unreported as perpetrators often remind sex workers of the fact that they are engaging in an illegal activity and may face prosecution if they report cases of violence.

● **DECRIMINALIZE** sex work so that sex workers can spend adequate time to properly screening their clients. Due to the rush to escape the police sex workers are not able to properly screen their clients for any signs of STIs or to ensure that condoms are properly put on and this increases their risk. They are also forced to go to unknown places with clients where they feel further away from the police and this leads to some of them being seriously violated or even murdered.

SEX WORKERS' RIGHTS ARE HUMAN RIGHTS

To deny sex workers their rights is to challenge their humanity.



SEX WORKERS' RIGHTS ARE HUMAN RIGHTS

The fear of arrest prevents sex workers from reporting rape and other violent crimes against them.



SEX WORKERS' RIGHTS ARE HUMAN RIGHTS

When sex work is decriminalized, sex workers are more empowered to insist on condom use by clients.



Concluding Positions

Despite the conclusive body of evidence that criminalization of sex work does more harm than good, it remains on the books and many religious and women's groups are against the proposition to decriminalize. It is the responsibility of government however to ensure that any law that exposes the very people they are sworn to protect to more harm than good should be removed. The health of the nation is more important than judgment by the moral compass of some.

In decriminalizing sex work, the government should use existing criminal laws to target violence and abuse in the sex work industry. There are many laws that prohibit sexual assault, bodily assault, robbery, domestic violence and many other forms of abuse that can be more rigidly enforced alongside decriminalization in order to protect sex workers. For too long perpetrators have rarely been charged, much less convicted when these crimes are committed against sex workers. We however should not continue to criminalize sex work as it is counterproductive to enforcing these laws. The criminal law should be used to target harms against sex workers rather than criminalizing their work. Many sex workers had no alternative and had to choose to do sex work to survive. Criminalization does not provide an alternative and as such sex work will continue to happen underground and the risk associated with it will only increase.

RECOMMENDATIONS

The imposition of certain regulations is normally associated with legalization but we believe that the industry can be given some guidelines alongside decriminalization. We recommend the following decriminalization and the following guidelines:

- Restrict areas in each parish where sex work can take place.
- Restrict the activity to persons age 18 and over.
- Allow for immunity from prosecution for those who provide preventative, treatment and care services and commodities to sex workers.
- Set up user friendly cites for sex workers to access sexual and reproductive health services.
- Increase criminal sanctions for pimps.
- Step up enforcement of criminal laws on those who perpetrate violence against and abuse of sex workers.



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