



Jamaica AIDS Support For Life

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POLICY BRIEF

RIGHT TO LIFE, HEALTH AND WORK *Policy Responses on Respecting the Human Rights of Sex Workers in Jamaica*



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Statement of Issues



People of all gender identities and sexual orientations are involved in sex work in Jamaica and work in a wide array of settings such as clubs, brothels, private homes, hotels, outdoors, and in other spaces. Sex workers are also family members and community representatives; many are parents; many work in other forms of employment or study while also being involved in sex work.

Sex workers are among the key populations most vulnerable to HIV. Low socio-economic background, multiple sex partners, inconsistent condom use and increase exposure to violence as a result of the criminal nature of the act are all contributing factors to their vulnerability. The HIV prevalence rate among sex workers in Jamaica has moved from 4.9 per cent in 2008 to 4.2 per cent in 2011 to little under 2.8 per cent today (**Ministry of Health, 2016**). While the HIV prevalence rate has steadily decreased over the years for the sex work population, it is still very high compared to the prevalence rate among the general population and it is important that the policy and legislative framework of Jamaica are examined to ensure that they respect and protect the human and workers rights of sex workers.

Currently, sex work laws in Jamaica are based on an abolitionist approach where women involved in sex work are seen as being exploited under a patriarchal society of male domination. Sex work is not actually illegal, but there are various provisions in specific legislations which criminalize aspects of sex work. The following are noted below:

- **Town and Communities Act** – Section 3 which speaks to loitering and soliciting; Section 7 disturbing the peace and loitering; Section 9(b) indecent exposure, which basically allows police officers grounds to arrest a sex worker one way or the other even when they are not found soliciting.
- **The Offences Against the Person Act** - Section 68 which deals with Suppression of brothels allows for the issuing of a warrant to enter any premises that is suspected to be used for the purpose of “prostitution”, any time of day or night, by whatever force necessary and seize any items deemed to be used in the commission of the offence. The section also allows for an arrest of any person found therein who the officer reasonably believes is committing or has committed an offence.
- **Sexual Offences Act** – Section 23 (i) which speaks to living off the earnings of a prostitute; 23(ii) living with or habitually being in the company of a prostitute. This provision criminalizes the following:
 - Knowingly living off the earnings of “prostitution” wholly or in part.
 - Soliciting for immoral purposes in any place whether public or private
 - Using a house or part thereof for the purpose of “prostitution”.
 - Living with or being habitually in the company of a “prostitute”.
 - Exercising any form of control over a “prostitute” in such a way that shows you are aiding, abetting or compelling “prostitution”.

These legislations have significant negative impact on:

- the sex workers themselves who are frequently harassed by police officers in the name of loitering as per the Town and Communities Act;
- children and dependents of sex workers who are maintained by proceeds of their work, live with them or are habitually in their company as per the Sexual Offences Act; and
- act as barriers and limitations for persons who work with sex workers both at the governmental and non-governmental levels in the provision of various health, legal and social support services.

1 In its broadest sense, Section 23 (i) of the Sexual Offences Act has implications for not just direct health care from doctors and nurses but also for the procuring of medications from pharmacist. If such persons under the law can be imprisoned, this consequently diminishes the quality health care available to a vulnerable group such as sex workers. Site based interventions by both government and civil society will be compromised as they will be considered to be habitually in the company of sex workers. The Offences against the Persons Act section 68 also affects quality healthcare as anyone considered to be visiting a suspected brothel can be arrested; thus negatively impacting interventions by healthcare workers and other service providers. This is extremely important as due to high levels of stigma and discrimination many sex workers do not access services at public facilities; and if they do access public facilities, they do not identify as sex workers and therefore their vulnerabilities may not be adequately addressed.

2 Criminalization of sex work also makes it difficult to reach MSM sex workers and those who work via the internet or the telephone. The fact that same sex activities are criminalized and sex work is also criminalized is layered criminalization for this group and drives them even further underground. Proposals put forth by Voices for Equal Rights and Justice (VERJ) to the Joint Select Committee reviewing the SOA and related acts included the decriminalization of sex work, thus reducing any possibility of arrest for the SW and/or health care worker (HCW) and mitigating the negative health and human rights impact that can be created.

3 **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. Criminalizing consensual adult sexual activities has been recognized as violating the state's obligation to respect the right to sexual and reproductive health as it amounts to a legal barrier that impedes access to sexual and reproductive health services. 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.

The Jamaican government also have an immediate obligation to repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine an individual's or particular group's access to safe working conditions. Current laws regularly force sex workers to operate covertly and/or prohibit actions that sex workers take to manage their safety and, in doing so, violate sex workers' human rights, including their rights to security of person, work and health.



4 Criminalization of sex work also creates an environment where law enforcement officers and other officials can perpetrate violence, harassment and extortion against sex workers with impunity. The Jamaica Observer reported on March 2, 2015 that a night club was raided in Ulster Spring Trelawny and a 36 year old woman was arrested for being involved in prostitution. This raised many question as the club has always been operating in the eyes of the police, there were many women involved in sex work at the club and only one particular woman was arrested. Investigations by the Sex Work Association of Jamaica later found that the woman was approached by the police the night before demanding sex and she refused and hence the raid was organized the following night under the guise of a human trafficking raid.

Where sex workers face the threat of criminalization, penalization or loss of livelihood when or if they report crimes against themselves to police, their access to justice and equal protection under the law is significantly compromised. This, in turn, offers impunity to perpetrators of violence and abuse against sex workers. A case in point was a media report earlier this year when a policeman commented on national television that he did not know how to proceed with a case where a woman reported being raped because she was known to be a sex worker. These occurrences gives perpetrators motivation that they can get away with crimes committed against sex workers.

Without a change in law and policies, the social exclusion and poverty that results leaves sex workers vulnerable to exploitation, abuse and HIV infection; thereby resulting in a possible increase in new HIV infections among the population.

5 Many opponents to the decriminalization of sex work often confuse sex work with human trafficking. The Jamaica AIDS Support for Life believes that human trafficking is an abhorrent and egregious human rights violation involving the threat or use of force, abduction, deception, or other forms of coercion for the purpose of exploitation. The organization therefore argues that the law should fully prosecute any perpetrator of human trafficking under the existing Anti-trafficking Act of 2014 and any other international law available. Sex work on the other hand refers to the consensual trading relationship between adults. Fears over human trafficking and child abuse are not dismissed lightly. But laws against both already exist and should be strictly enforced.

This policy brief will therefore argue that the Jamaican government should implement positive state obligations through the following levels of interventions:

- Enforce and strengthen existing criminal laws to prevent forced labour, human trafficking, abuse and violence in the context of commercial sex and the involvement of children in commercial sex acts.
- Ensure that legal protections pertaining to health, employment and discrimination are accessible to sex workers and are effective in protecting them from all forms of abuse and exploitation.
- Develop and deliver comprehensive social interventions and programmes to effectively address the intersections that make sex workers vulnerable to harmful gender stereotypes and denial of economic, social and cultural rights that may lead to entry into sex work and prevent exit for those who wish to stop selling sex.

Criminalization of Sex Work enables human trafficking among women and girls.





Evidence of the Problem

According to the World Health Organization (WHO), sex workers are 10 times more likely to be infected by HIV than the general adult population (WHO 2014). This vulnerability and high risk to HIV are as a result of the social and legal factors in the Jamaican society. Sex workers are marginalized, stigmatized and criminalized. There is a severe limitation in policy and legislation as it relates to sex workers and their risk or violence especially sexual violence from state and non- state actors such as the police, clients, family members and intimate partners. This population has seen significant gains in the HIV prevalence rate due to those who insist on offering services to them at the risk of running afoul of the law. The failure of our policy makers and legislators to act, significantly increases the risk of eroding the gains made with this population.

In 2012, the CVC/COIN Vulnerabilised Groups Project published the results of a quantitative and qualitative study that included a survey of Jamaican sex workers. This survey interviewed 70 sex workers on the streets and in the clubs of Kingston. The findings included:

- The average age of the sex workers' were 21 years old;
- 78 percent were female and 22 percent were male;
- 97 percent were born in Jamaica;
- only 12 percent had enough years of schooling to give them good literacy and numeracy skills.
- They were, on average, 15 years old when they first had sex and 17 years old when they became sex workers;
- Thirty-five (35) percent said they had difficulty negotiating safe sex
- Twenty-five (25) percent had experienced sexual violence; of those, 38 percent had experienced it on the streets while 29 percent had experienced it from an intimate partner.

Social interventions for sex workers are limited as the present legislation criminalizes persons habitually being in the company of "prostitutes" and as such service providers are uncertain as to the outcome if they are caught providing services to sex workers. A 2001 Amnesty International report *JAMAICA: Killings and violence by Police: How many more victims?*, noted that on May 5, 2000, a nurse was detained while distributing condoms to sex workers in Jamaica, despite carrying identification authorizing him to carry out his work. He was held by police for nine hours, denied access to his family or to a lawyer, interrogated and verbally abused before being released without charge.

Amnesty International via its website also shares a testimonial of a sex worker recounting her experience with the police in Jamaica:

Last month I was arrested for the first time. It really was a horrific experience. I was picked up by the police along with 11 other females and we were just shoved into the back of a small truck. It was a really tight space and we were just crammed in there. When we arrived at the police station we were ridiculed and chastised. We were being looked down on as being trash and not being good persons. They used many negative words against us 'prostitute', 'old whore', 'nasty girl'.

No one explained what was happening. No one offered me a lawyer. I didn't even realize I was under arrest; nobody told me that."

If you refuse when he [the police officer] makes his advances, then he will return another night and then claim to be enforcing the law and arrest you. What he is actually doing is abusing the law."

I also think that one of the reasons he is doing this is because of how the law is set up in Jamaica. The fact that sex work is illegal, he is using that power over us.

(Taken from <https://www.amnesty.org/en/latest/news/2016/05/apple-sex-worker-testimony-jamaica/>)

Sub-populations of sex workers such as persons of trans experience and men who have sex with other men also face significant challenges. Dr. Carmen Logie's *Factors associated with sex work involvement among transgender women in Jamaica: a Cross-sectional Study*, showed that among 137 transgender women interviewed, 25.2% reported being HIV-positive and 51.82% reported any sex work involvement. Findings reveal sex work-involved participants experience social and structural drivers of HIV, including violence, stigma, and unemployment. Transgender women involved in transactional sex also experience high rates of incarceration, forced sex and homelessness in comparison with non-sex workers. Taken together, these findings suggest that social ecological factors elevate HIV exposure among sex work-involved transgender women in Jamaica.

Sex workers are at risk of a whole host of human rights abuses including:

- Rape
- Violence
- Trafficking
- Extortion
- Arbitrary arrest and detention
- Forced eviction from their homes
- Harassment
- Discrimination
- Exclusion from health services
- Forced HIV testing
- Lack of legal redress



Sex workers experience physical and sexual abuse at the hands of clients, partners and the police and are often reminded that they are engaging in an illegal activity and as such these acts of violence go unreported. (JASL, 2015)

According to Panos Caribbean's *Oral Testimonies of Jamaican Sex Workers*, stigma and discrimination experienced at health facilities deter sex workers from accessing health care services whether at preventative or treatment points and as such there is limited uptake of services that may prevent transmission or provide for early detection and treatment. The compiled testimonies also note that violence increases sex workers risk of contracting HIV and other STIs directly and indirectly. They are affected directly in that the trauma in the form of vaginal or anal tearing in forced or coercive sexual intercourse increases vulnerability. Additionally, there is fear of negotiating condom use in instances of actual or threatened violence.

Chocolate says many things happen in clubs which should be investigated by the police including minors working as dancers, the secret taping of these girls having sex and sale of these tapes by club bosses. She says however that the police never listen to dancers' complaints: "I think the police right now is a big part of the dancing organization! When you go to the police to report something as a dancer you are not recognized. Police, especially if they are men, they don't want to hear your side or they trying to get a business done (buy sex). That is the type of person them think you is. You never have a problem yet - to the police is just like rubbish. And I think people need to look at dancers as human beings and stop looking at them as a piece of cloth. We are human beings. We have responsibilities, we have children, we need our money to do things. That is why we are out there."



Policy Options

POLICY OPTION ONE – *DECRIMINALIZE SEX WORK*

Decriminalizing “prostitution” is a major step that can be taken to address most of the issues that cause sex workers to be at a higher risk of contracting HIV and other STIs, than the general population. Removing the criminal factor will remove the belief that individuals and groups can do whatever they like with sex workers because they are engaging in an illegal activity and as such acts of violence or abuse committed against them cannot be reported to the police. This will deter perpetrators from using violence against sex workers; and in instances where violence is still perpetrated; a system will be in place for sex workers to seek redress without fear of prosecution.

Decriminalization of sex work will also increase the uptake of preventative and treatment services as sex workers will not have to face resentment they get from health care workers at times simply because they are party to an illegal activity. This would be a positive step towards preventing a crisis as with more access to preventative services and commodities the possibility of contracting or transmitting an STI is reduced and the possibility of detecting and treating STIs is increased.

Sex workers children, their families, their circle of friends and even those who provide health care and other services to them can be free to associate with them without any concern about breaking the law. This will allow them to build wider and more lasting social networks to provide support for them, build their self esteem and help them to live more fruitful lives. It cannot be overstated that people, including family members and close friends stay away from sex workers out of fear of being accused of committing an offence. As such, amending the legislation that now exist is not about allowing sex workers to do as they please but instead is about protecting sex workers who have rights like any other citizen.

There is a considerable difference to “Decriminalization” and “Legalization” and it is NOT the model that JASL is proposing.

Decriminalization means removal of criminal and administrative penalties that apply to sex work, allowing it to be governed by labour law and protections similar to other jobs. In a fully decriminalized environment, a sex worker would be able to more easily access health care, housing, social services and defend themselves in child custody disputes. Full decriminalization also means that if sex workers are the victims of a crime such as rape, they could report these crimes directly to the police without fear of arrest.

Legalization means the *introduction* of laws and policies specific to sex work to regulate it. Legalization may include regulations that limit sex workers’ rights and protections, such as mandatory HIV testing. Legalization could also create mechanisms for abuse by authorities. For example, in the Netherlands where sex work is legalized, law enforcement has raided sex workers’ homes without a warrant and conducted mass arrests of sex workers veiled as anti-trafficking operations.

Legalization is therefore NOT a Policy Recommendation.

POLICY OPTION TWO – *REGULARIZE SEX WORK*

Decriminalization of sex work does not mean the total absence of any regulation of sex work. Rather it means that laws should be refocused away from catch-all offences that criminalize most or all aspects of sex work towards laws and policies that provide protection for sex workers from acts of exploitation and abuse. The regulationist approach has the advantage of regulating prostitution as a profession. In countries which subscribe to this approach, prostitutes are not criminalised and have labour rights (which means they can work more independently, and are less likely to be at the mercy of pimps or procurers), access to medical care, etc. This does not mean, however, that prostitution in regulationist countries is unproblematic.

Following the above mentioned point, commercial sex may also be regulated and licensed. Some schemes permit commercial sex in certain streets or brothels; others permit commercial sex that accords with prescribed standards, such as the licensing of managers and the registration of workers. In Germany, for example, sex workers have limited access to indoor premises, but in Berlin, they are allowed to work on streets if they pay tax by purchasing a ticket from a machine. In the Philippines, sex workers must produce a “health card” to avoid arrest. Some of these regulations have proven problematic and have led to instances of forced medical examinations and criminalization of HIV transmission. New Zealand’s model of decriminalization is arguably the most appropriate of models which can be examined for adoption based on Jamaica’s particular realities and context.

Afforded under the Prostitution Reform Act 2003, New Zealand currently recognises sex work as legitimate work, and there are laws surrounding occupational health and safety and public health, just as there are with other professions. Child prostitution, sex trafficking and rape are not sex work so remain illegal. The New Zealand model is supported by many international agencies such as Amnesty International, World Health Organisation, UNAIDS, and the UN Special Rapporteur on the Right to Health.

These organisations don’t necessarily support the selling of sex (nor do they necessarily condemn it) but they recognise that the human rights, health and safety of sex workers should be at the heart of policy. Opponents of decriminalisation argue it leads to an increase in the number of sex workers, but New Zealand has seen numbers remain consistent. Although there has been a decrease in violence, there are still risks but the improved relationships with the police mean that sex workers feel more able to report crimes.

In 2014, The Lancet published a study which estimated that decriminalisation and the promotion of safe working environments for sex workers could avert 33 - 46% of new HIV infections in sex workers and clients over a decade, through its iterative effects on violence, policing, safer work environment, and HIV transmission. Following this, the journal joined a growing number of international health and human rights organisations including UNAIDS, UNFPA and Amnesty International to call for the full decriminalisation of adult voluntary sex work in order to address the HIV epidemic more effectively.

This approach is in line with the International Labour Organisation’s Recommendation 200, which recognises sex work as informal labour and gives sex workers the same rights as other workers, including the right to safe working conditions that are conducive to HIV prevention efforts

POLICY OPTION THREE – TRAINING, SENSITIZING AND HOLDING KEY DUTY-BEARERS ACCOUNTABLE

It must be noted that amending the legislation will not automatically solve all the problems associated with sex work as this will have to be coupled with training, public education and enforcement. Firstly, there has to be training of health care workers to ensure they understand the importance of providing non-discriminatory stigma free service to the population so that they are not driven underground and refuse to come forward to access services. Secondly, the police have to be trained to ensure that the interaction between them and sex workers is violence free, preventative commodities found in the possession of sex workers are not seized and they are not arbitrarily deprived of their liberty. The police will also need training as it relates to enforcing legislation so that individuals who perpetrate violence against sex workers face the full blunt of the law and incidents reported by sex workers are taken seriously and treated with the same urgency as any other matter.

Additionally, sensitization regarding the differences between voluntary sex work and human trafficking is important. This will ensure that the arbitrary arrests are avoided; but importantly, that the laws are accurately employed.

POLICY OPTION FOUR – HOLISTIC APPROACH AND PUBLIC EDUCATION

There has to be public education around the legislation as some of the challenges sex workers face can be attributed to the general population. The public needs to be educated that sex workers are included in the rights and entitlements enjoyed by all other citizens and as such they should take no step to violate any of these rights. The public education will also have target getting people to understand the dangers of policy and legislation around sex work in their current state and how the proposed changes will be beneficial to sex workers, their families and friends and the general public. The moral argument must be juxtaposed against the public health argument so that people can understand that beyond morality, the state has a responsibility to protect every citizen of the country and more importantly to take whatever legal steps necessary to prevent any envisaged public health crisis. It must be emphasized that the good of the nation must take precedence over moral judgments.

While Jamaica AIDS Support for Life supports the rights of sex workers, the organization also holds the view that women tend to enter sex work because of their particular socio-economic vulnerabilities. Therefore, it also calls for the government to implement appropriate social interventions to prevent young girls and boys from entering sex work in the first place; as well as implementing mechanisms to provide an Exit Support Strategy for those who wish to leave sex work. Such a comprehensive intervention will include educational, economic support and life skills empowerment.

Recommendations

- Amend Sexual Offences Act to decriminalize soliciting, living off the earnings and living with or being habitually in the company of a “prostitute.
- Train health care workers and police officers about offering service to sex workers
- Launch public education campaign on the challenges of criminalization and how decriminalization will fix them.
- Implement regulations for enforcement of existing legislation that deal with use of violence against any person.
- Strengthen and enforce existing laws to address issues of human trafficking and forced sex.



Works Cited

Amnesty International

Jamaica AIDS Support for Life. *Submission to the Joint Select Committee*. Kingston. 2017

Logie CH et al. Journal of the International AIDS Society 2017, 20:21422 <http://www.jiasociety.org/index.php/jias/article/view/21422> | <http://dx.doi.org/10.7448/IAS.20.1.21422>

Myrie, Tenesha. *Collective Civil Society Submission to the Joint Select Committee*. Kingston : s.n., 2014

Pan American Health Organization. 2012. Violence Against Women in Latin America and the Caribbean. PAHO HQ Library (2012)

UN. 2010. Special Rapporteur on the Right to Health. Right to Health and Criminalization of Same-Sex Conduct and Sexual Orientation, Sex-Work & HIV Transmission (A/HRC/14/20), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

UNAIDS. 2012. Prevention and Treatment of HIV and other Sexually Transmitted Infections for Sex Workers in Low- and Middle-income Countries: Recommendations for a public health approach, http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf



Jamaica AIDS Support For Life

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CONTACT US:



HEAD OFFICE

3 Hendon Drive, Kingston 20

Tel: 969-6597 / 969-0282

Website: www.jasforlife.org

Email: infojasl2010@gmail.com

KINGSTON CHAPTER

3 Hendon Drive, Kingston 20

Tel: 925-0021

Cell: 551-1060 / 376-2083

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