

Joint stakeholder report by:

Zambia Sex Workers Alliance

Zambia Sex Workers Alliance is a community-led organisation that seeks to promote and improve health outcomes and livelihoods of sex workers, lesbians, gay and gender diverse people in Zambia.

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African Sex Workers Alliance

The African Sex Workers Alliance (ASWA) is the Pan African alliance of sex worker-led organisations formed in 2009 with membership from 35 countries. The organisation's mission is to amplify the voices of sex workers as well as advocate for the health and human rights of the diverse community of sex workers working and living in Africa.

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Sexual Rights Initiative

The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and Southern Africa that work together to advance human rights related to sexuality at the United Nations.

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Key Words

Sex work, violence, illegal detentions, stigma, poverty and laws, right to health, HIV

Executive Summary

1. Current discourse about the nature of sex work in Zambia and the experiences of sex workers is narrow. Discussions on laws criminalising sex work are often informed by arguments on morality. Morality is a complex and subjective issue, heavily informed by patriarchal, religious norms and standards - criminal laws must comply with international human rights standards.
2. Sex workers are exposed to repressive policing practices, and on average are at increased risk of infection with HIV and STIs compared to those in the general population. In the context of any criminalisation, repressive policing of sex workers, their clients, and/or sex work venues disrupts sex workers' work environments, support networks, safety and risk reduction strategies, as well as access to health services and justice. Policing within criminalisation and regulation frameworks exacerbates existing marginalisation of sex workers. In order to improve sex workers' relationships with police, their access to justice, and their negotiating power with clients, sex work must be fully decriminalised.
3. The lives of sex workers remain poorly understood, especially in terms of the economic and social opportunities available to women, and the health and psychological consequences of the impact of criminalisation, stigma and discrimination of sex work.
4. Criminalisation contributes to an environment in which violence against sex workers is tolerated. Lack of protection of street sex workers and those working in isolated places is generally the result of anti-prostitution laws and policing policies. The criminalisation of sex work also means that sex workers operate in unhealthy and unregulated conditions.

Introduction

5. In Zambia, sex work mainly takes place on the street or indoors in brothels, bars and nightclubs or along the main trucking corridors. 87 percent of sex workers in Lusaka have experienced police harassment and intimidation. The most recent data on sex work shows an HIV prevalence of 48.8 percent among female sex workers in Zambia. However, these infection rates can be lowered among sex workers when physical or sexual violence is reduced.
6. An estimated thirteen percent (13%) of men have paid for sexual intercourse. Female sex workers (FSW) in Zambia generally operate without intermediaries and negotiate directly with potential clients. Experiences of violence and threats are common among sex workers.
7. Sex workers experience discrimination, stigma and violence in all spheres of their daily lives. Often the perpetrators of physical and sexual violence against sex workers are clients and police officials; a situation facilitated and exacerbated by the climate of criminalisation that surrounds sex work.
8. Acts of violence and discrimination deny sex workers their fundamental rights and freedoms – including their right to equality, protection from cruel, inhumane and degrading treatment, and to be free from arbitrary arrest and detention. Unfortunately, as a marginalised population group, sex workers often experience discrimination, exploitation, and degradation on account of their precarious economic situation, as well as stigma associated with sex work. Legally referred to as "prostitutes", the lives of sex workers remain poorly understood, especially in terms of the economic and social opportunities

available.

Legal and policy context

9. The legal framework in Zambia with regards to sex work can be described as one of partial criminalisation. Partial criminalisation refers to a situation where only the activities related to sex work are criminalised, and not the actual act of selling or buying sex. Selling or buying sex is not illegal in Zambia.
10. According to Zambian law, the procurement of sex workers for a brothel¹, detention in a brothel², living on the earnings of sex work³, soliciting clients, brothel-keeping⁴, production or exhibition of obscene matters⁵, and indecent behaviour are illegal activities. These provisions are meant apply to people who live in an exploitative manner off the earnings of a sex worker, for their own gain, or who are involved in trafficking, in tandem with section 143 of the Zambia Penal Code. It does not appear to be the intention of legislators to criminalise the sex worker herself, or to prevent her from using her earnings, but the contrary view is widely held. Sex workers therefore remain a target of police enforcement, abuse, harassment and extortion – even though the substantive offences related to sex work are aimed at those who exploit sex workers.
11. The above provisions and charges that are directly linked to sex work are seldom enforced – because they require police officials to investigate and provide evidence of the commission of such offences. Evidence to prove the commission of these offences is usually difficult to obtain, and requires police resources to enforce the provisions. Further, the offences each have several elements that should be proven before a conviction can occur. Instead, police authorities often unlawfully use vagrancy provisions in the Penal Code to arrest and detain sex workers.
12. Police arbitrarily engage the vagrancy and nuisance provisions in the Zambian Penal Code to arbitrarily arrest, detain, and extort sex workers. These offences are poorly constructed, over-broad and are subjectively applied by police officials, leaving sex workers vulnerable to the whims and power dynamics of the police. The subjective application of these offences by police officials creates a culture of impunity– in which both the clients and police officials feel emboldened to abuse sex workers, as they have limited recourse to justice. UNAIDS has also noted that the application of vagrancy laws “give police wide latitude to arrest and detain sex workers. Even if they do not generally result in long periods of detention, they contribute to an atmosphere of fear and marginalisation”⁶.
13. Sex workers who have been arrested in the past say they were often not clear about which offence they have been arrested under when they are detained. They mostly reported having been charged with being “idle and disorderly”⁷ or “loitering”⁸. In addition, some reported being charged with “common nuisance”, “soliciting”, “touting” or with being a “rogue and vagabond”. Sex workers are also charged

¹ See section 140 of the Zambia Penal Code

² See section 144 of the Zambia Penal Code

³ See sections 146(1)(a) and 147(1) of the Zambia Penal Code,

⁴ See Section 149 of the Zambia Penal Code

⁵ See section 177 of the Zambia Penal Code

⁶ [Annex to the UNAIDS Guidance note on HIV and Sex Work, April 2012, p4, available at \[http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDSGuidance-note-HIV-sex-work_en.pdf\]\(http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDSGuidance-note-HIV-sex-work_en.pdf\) \(accessed 16 July 2016\). This position was endorsed by the Global Commission on HIV and the Law in July 2012. Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health*, UNDP, July 2012, p36-7, avai](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDSGuidance-note-HIV-sex-work_en.pdf)

⁷ See section 181(a) of the Zambia Penal Code

⁸ A common law charge but also operates in tandem with section 181(d) of the Zambia Penal Code

under Chapter XV of the Penal Code, which lists “offences against morality”.

14. Although there are no legal provisions that specifically protect the rights of sex workers, the Zambian Constitution protects the fundamental rights and freedoms of all persons. Zambia observes the principle of constitutional supremacy, which means that the Constitution is the supreme law of the nation, and all other written or customary law is subject to its provisions. The rights contained in the Bill of Rights in the Constitution are universal rights, and apply to all persons equally.
15. For instance, Article 8 (d) of the Constitution (Amendment) Act of 2016 provides that the national values and principles are: human dignity, equity, social justice, equality and non-discrimination. Additionally, the duty of the courts to use international law as a guide when interpreting constitutional rights has been confirmed in Zambian courts - meaning that all of the human rights protections under international human rights law should also be applicable domestically. Indeed the African Commission on Human and Peoples’ Rights noted in *Legal Resources Foundation v Zambia*⁹ that “international treaties which are not part of domestic law and which may not be directly enforceable in the national courts, nonetheless impose obligations on State Parties.”
16. However, sex workers rights to, inter alia, bodily autonomy, to be free from violence, to health, and to work are routinely violated, with limited access to remedies. Sex workers in Zambia experience an inordinate amount of inequality, stigma and discrimination in the course of their work, and in accessing justice and remedies for violence as a by-product of the culture of criminalisation prevailing in the country, and the resultant police harassment, extortion and violence.
17. Various studies on the impact of partial criminalisation on sex workers raise the following concerns and about criminalisation:
 - a. It contributes to legal structures that tend to make sex workers responsible for their own victimisation, whereby sex workers are seen to “deserve what they get” due to not following a socially sanctioned moral code on what counts as good work, and what constitutes constitutes a good woman.
 - b. It makes sex work part of an illicit market, and creates an environment in which brutal forms of exploitation can take root with sex workers unable to work together, or to devise mechanisms to keep themselves safe, and unable to access social services.
 - c. It institutionalises an adversarial relationship between sex workers and police, thus depriving sex workers of the full protection of criminal law when they are victims of crime. It also leads to social and political marginalisation of sex workers, and makes them targets for violence.
 - d. It increases the isolation of street-based sex workers and increases their health and safety risks.
18. Criminalisation fosters stigma and discrimination against sex workers, disproportionate violence against sex workers, and creates an enabling environment for law enforcement officials to abuse their power.

HIV, violence, and the criminalisation of sex work

19. During the last UPR cycle, Zambia received and accepted five recommendations relating to HIV/AIDS, four of which addressed various aspects of non-discrimination and inclusivity, including the recommendation by Chile to:
 - a. 129.62 Ensure that access to HIV treatment is accessible to all who need it without any discrimination.
20. Additionally, in the last review, Zambia received and accepted 12 recommendation on eliminating violence against women and gender based violence, including:
 - a. Pursue the effective implementation of measures aimed at combating discrimination and violence against women. (Djibouti)
 - b. Continue with the implementation of national policies against gender-based violence. (Cuba)
 - c. In combating violence against women and girls, Zambia should swiftly and fully implement the Convention on the Elimination of All Forms of Discrimination against Women. This also includes the full implementation of the “Anti-GBV Act” of 2011 and the allocation of adequate budget resources for an “anti-GBV fund”. (Germany)
21. Criminalisation restricts sex workers’ enjoyment of the right to the highest attainable standard of physical and mental health, and impedes the Zambian response to its HIV epidemic. The Zambian

⁹ Comm. 211/98

National AIDS Strategic Framework 2017-22 specifically targets female sex workers as a key population for the promotion of HIV prevention, which means that they are at high risk of contracting and transmitting HIV. The Framework recognises that eliminating stigma and discrimination against sex workers plays a critical role in the HIV response.

22. The partial criminalisation of sex work has a direct, and adverse, impact on the transmission of HIV in two ways: firstly, it impacts sex workers' access to health services – including sexual and reproductive health and contraceptive services, as they are often subjected to stigma and discrimination by health workers. Secondly, partial criminalisation creates conditions for increased violence against sex workers through inter alia lowering their negotiating power with clients, and ability to work in safe conditions in groups, thus limiting their ability to protect themselves from HIV infection.
23. Reducing the violence experienced by sex workers would in turn have a significant impact on reducing HIV among sex workers. Sex workers' experiences of police and their willingness to open cases at the police station often directly affect the extent to which they can access healthcare services post-rape, including post-exposure prophylaxis and emergency contraception. Sex workers' vulnerabilities to violence also extend far beyond the risk of HIV infection, and it is important that health programmes don't just provide services to sex workers in relation to HIV, instead recognising sex workers' right to health more broadly.
24. The lack of laws protecting sex workers and sexual and gender minorities leads to them experiencing numerous human rights violations that are pervasive, including permanent bodily harm and psychological trauma. The current laws spur hate and violence against minority groups deemed to be sexually or morally deviant, including sexual and gender minorities, rendering them helpless and more marginalised in society. Due to the declaration that Zambia is a Christian Nation in 1996, the sex worker community has been further pushed away in society, to where they are now perceived as cursed by religious fanatics, or an abomination by the traditional moralists. These contexts increase the denial of social, health and legal services.
25. Criminalisation is often used in tandem with moral panic by the Zambian state. This is made easier by the categorisation of sex work as an issue of morality- not labour, and the framing of sex workers as harbingers of disease and dishonour, and as an urban blight. With regards to the former, police often justify operations to arrest sex workers, claiming they are necessary to prevent HIV transmission, sometimes even citing the Gender Equity and Equality Act, 2015 which provides, in section 21, that every person has the right to self-protection from sexually transmitted infections.
26. This has been a consistent tactic since 2004, when the Zambian government ushered in a period of increased state repression of sex work in the name of protecting the nation from HIV. Repression was articulated through the application of a new curfew ordinance, detention, and high levels of violence against sex workers by state actors in the public sphere.
27. Outside of the role that criminalisation plays in violating the rights of sex workers, it has also been proven to be an ineffective approach to curbing the spread of HIV. The UNAIDS Advisory Group on HIV and Sex Work noted that "there is very little evidence to suggest that any criminal laws related to sex work reduce demand for sex or the number of sex workers. Rather, all of them create an environment of fear and marginalisation for sex workers, who often have to work in remote and unsafe locations to avoid arrest of themselves or their clients. These laws can undermine sex workers' ability to work together to identify potentially violent clients, and their capacity to demand condom use of clients...Where sex work is criminalised, sex workers are very vulnerable to abuse and extortion by police in detention facilities and elsewhere"¹⁰.
28. To mitigate against the adverse impact of criminalisation, sex workers in Zambia have been coming together to generate solidarity and mobilise their collective power to address structural barriers to accessing their health and human rights. In this process, sex worker communities seek allies including governmental and non-governmental groups, as well as challenge institutions and individuals who inhibit progress towards social and policy change.
29. Sex workers have the right to live and work free from violence, but the legislative framework in place is inadequate to respond to the particular vulnerability to violence that sex workers face as a result of being perceived as immoral and disposable, and as a result of the context of criminalisation.

¹⁰ See UNAIDS guidance note on HIV and Sex Work:

https://www.unaids.org/sites/default/files/sub_landing/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

30. GBV is generally a problem in Zambia; 52% of women 15 years and older have ever experienced physical violence, and 23% have experienced sexual violence, with those who are divorced, separated, or widowed experiencing the most violence. These findings have implications for sex workers, as most of them are either single, divorced, separated, or widowed.
31. The main acts leveraged in addressing gender-based violence in Zambia are the Anti-Gender-Based Violence, and the Gender Equity and Equality Act was passed in 2015. Section 16(2) provides that a person or public or private body, shall not exploit or subject any person to abusive, violent or degrading treatment. Any person who violates these provisions is liable for criminal punishment.

Recommendations

The following recommendations are offered:

32. Full decriminalisation of all aspects of sex work
33. Zambia should swiftly and fully implement the Anti-Gender Based Violence Act of 2011 and allocate an adequate budget to resource the anti-GBV fund
34. Review the Zambian Penal Code to ensure that police officials do not unlawfully and unfairly target sex workers and other poor and vulnerable groups. There should further be adequate guidelines for the exercise of police discretion.
35. Increase funding for the health sector to the levels committed to in the Abuja Declaration, and particularly increase the general health infrastructure, the patient to medical staff ratio and improve healthcare access for sex workers.
36. Fully fund and implement the Anti Gender Based Violence Act, the Gender Equity and Equality Act, and other legislation and policies to protect girls from child, early and forced marriage and other forms of abuse.