

Joint stakeholder report by:

Sisonke Botswana Organisation

Sisonke Botswana was formed in 2010 and was officially registered on the 26th of March 2019.

Vision: A dynamic organization that promotes a social and inclusive society of empowered, inspired, and healthy people of Botswana.

Mission: A national organization that aims to promote, protect and create a safe environment where community and stakeholders work together to build dignified people of Botswana.

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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, criminalisation, violence against women, gender based violence, HIV/AIDS

Executive Summary

1. Whilst the buying and selling of sex is not illegal in Botswana, there are a number of legal provisions in place that prohibit a wide range of activities associated with sex work such as soliciting clients, public indecency or living on the earnings of sex work. This means that sex work is nevertheless criminalised - a status quo that poses a material risk to sex workers, and violates their rights to work, to health, to bodily autonomy and to be free from violence.

Introduction

2. Whilst the buying and selling of sex is not illegal in Botswana, there are a number of legal provisions in place that prohibit a wide range of activities associated with sex work such as soliciting clients, public indecency or living on the earnings of sex work. This means that sex work is nevertheless criminalised - a status quo that poses a material risk to sex workers, and violates their rights to work, to health, to bodily autonomy and to be free from violence.
3. Estimating the character and magnitude of sex work in Botswana is challenging, as there is limited data. However, there are an estimated 6718 female sex workers and 47 transgender sex workers in Botswana. The figures are expected to change as the 3rd Biological Behavioral study is expected to commence soon.
4. In addition to the restrictions imposed on sex workers because of criminalisation, sex workers in Botswana were also adversely impacted by the COVID-19 pandemic, and the response to it. Sex workers in the country lost income during the pandemic because their movement was restricted by the various lock down provisions. This left sex workers without income, with limited access to PPE, and with limited privacy as they were forced to be at home where they were exposed to more judgment for their work. The lack of privacy also affected their health, and had a negative impact on their adherence to ARV regimens and their ability to access ARVs and other health services. Individuals were expected to apply online for movement permits but most sex workers don't have access to the internet.
5. Due to the nature of their work, sex workers were not eligible for any kind of relief funds or social services, during the height of the COVID-19 pandemic, and sex workers found themselves indirectly excluded from government food relief programmes. Sex workers and sex worker organisations found themselves bearing the burden of organising mutual aid, and organised the distribution food packages and emergency supplies through out the community. Sex workers were also unable to borrow money from formal financial services, and many resorted to incurring large debts through exploitative moneylenders in order to meet their financial needs, including paying off debts to pimps and brothel-owners. The COVID-19 pandemic exacerbated the economic vulnerability of FSWs, the vast majority of whom report entering sex work for financial reasons due to lack of alternative employment opportunities
6. Additionally, Covid-19 exacerbated gender-based violence and increased police surveillance, and violence through arrests, leaving sex workers vulnerable to attack through the targeting of their safe spaces that were labelled as "infection hotspots".
7. The COVID-19 pandemic is far more than a health crisis and has affected societies at their core, jeopardizing lives and livelihoods for years to come. It has exacerbated and deepened pre-existing inequalities, and has exposed vulnerabilities in Botswana's social, political, economic and biodiversity systems.

Role of criminalisation in increasing violence against sex workers

8. We regret that Botswana did not receive any recommendations on sex work during the third cycle, but it did receive a number of recommendations on eliminating violence against women/ gender based violence which it accepted. These recommendations include:
 - 127.33 Punish the authors responsible of sexual violence against women and girls (France)
 - 127.30 Criminalize domestic violence and continue the elaboration and implementation of public policies to prevent, address, punish and eradicate all forms of violence against women, including building help centres for women victims of violence (Paraguay);
9. Sex work and/or the provision of sexual services is not explicitly illegal in Botswana, however, activities surrounding sex work are criminalised.¹ It is illegal to live off the proceeds of “prostitution” as well as to solicit for sex work in a public place. If a person lives with, or is habitually in the company of, a sex worker, and they appear to control, direct or influence their movement, or they seem to be aiding or abetting sex work, they will be presumed to be knowingly living on the earnings of prostitution and can be charged with committing an offence unless they can prove otherwise.
10. The Immigration Act, section 50 (2) and (3) also prohibits sex workers or people who live or who have lived on the earnings of prostitution from entering the country. The Minister of Nationality, Immigration and Gender Affairs can issue a deportation order against ‘undesirable’ immigrants and if they do not comply with a deportation order, ‘undesirable’ immigrants are subject to involuntary removal.
11. It is illegal to keep, manage or assist in managing a brothel, to be a tenant/occupier/lessee/ person in charge of a premises knowingly used for sex work, or to be the lessor/landlord/ their agent who knowingly allows a premises to be used as a brothel. If it is suspected that a house is used as a premises of sex work or that a person residing or frequenting it is living off its earnings, the magistrate will authorise police to enter and search the house, and arrest the person. These provisions affect sex workers’ ability to secure an adequate standard of living and to access housing.
12. Additionally there are a number of other provisions that are also applied to sex workers such as loitering, vagrancy, public disorder. Sex workers have been arrested and detained under section 176 of the Botswana Penal Code which broadly prohibits ‘common nuisance’ which is used to criminalise soliciting to sell sex in public areas.
13. Criminalisation of sex work has driven the sex industry underground, leaving sex workers vulnerable to violence and abuse as they are considered morally reprehensible and disposable, and operating in relative obscurity . Under the auspices of the clandestine and socially stigmatized nature of sex work in Botswana, sex workers are left without recourse to legal protection from threats to their safety, vulnerable to arrest and abuse, and without access to health and social services.
14. Criminalisation, including of clients and third parties, increases police repression of sex workers, permits discrimination against sex workers in accessing services and fuels all forms of stigma. This results in serious harm to sex workers, including experiences of violence and barriers to accessing justice. Physical, sexual, economic and emotional violence against sex workers at the hands of clients, police, healthcare workers and community members remains prevalent. The relationship between sex workers and the police is problematic and characterised by mistrust. Physically, FSWs are frequently subjected to violence perpetuated by pimps, clients, police, and madams.
15. Although more than half of sex workers (52%) received positive police assistance in the past year, another significant proportion (40%) experienced discrimination in doing so. For example, some sex workers approached the police for help after experiencing violence, were laughed at and were refused assistance. In the past 12 months of the sex workers that filed an incident with the police the majority of them (68%) were unhappy with the process.

Criminalisation and the HIV/AIDS response

16. Botswana received a number of recommendations on HIV/AIDS including:
 - Widen the programmes to combat HIV for non-Botswana nationals (France) (Noted)
 - 127.60 Strengthen targeted interventions on vulnerability to HIV and gender-based violence (Ethiopia); (Accepted)

¹ Key sections of the Botswana Penal Code are: 149, 154, 155, 156, 157, 184, 176

- 127.57 Maintain the Government's programmes on combating HIV/AIDS with the support of the World Health Organization and other international partners (Ukraine); (Accepted)
17. Sex workers are considered a key population in Botswana's HIV/AIDS response with an HIV prevalence rate of about 61.9%. The government of Botswana works with sex worker organizations and their partners to implement projects aimed at linking sex workers to health care services. However, there is still a service delivery gap with only 56% of female sex workers in the big cities had been reached by HIV prevention services, with a majority never having been tested for HIV.
 18. Stigma and discrimination against sex workers affects their ability to access HIV testing and other services, with sex workers routinely experiencing discrimination at the hands of health workers through being judged or verbally abused or neglected health workers. Criminalisation of sex worker fosters these conditions of stigma, which impacts sex workers on a deeper level and is associated with lower levels of self-esteem. Further, HIV criminalisation in Botswana also makes it an offence for an HIV positive sex worker to do anything which is 'likely' to spread the infection and may make some sex workers reluctant to know their status.
 19. Further, criminalisation of sex work means that sex workers have limited bargaining power with clients with regards to engaging in safer sex. Additionally, their being presented as disposable in society contributes to their being vulnerable to sexual assault and rape, as assailants know that sex workers are not in a position to report the violation.
 20. The literature on HIV interventions targeting FSWs underscores the inextricable connections between gender, political-legal, and economic structures on the vulnerability of FSWs and their susceptibility to HIV. The good news is that interventions that target sex workers are cost-effective, and they work. Analysis by the World Bank demonstrated that FSW-targeted interventions in Ukraine and Kenya have resulted in cost savings of \$39M and \$8.9M respectively, contributing to the avoidance of thousands of potential HIV infections. Despite evidence supporting the efficacy of structural interventions and the key role that economic vulnerability plays in contributing to structural vulnerability, there is relatively little research focused on the financial lives and needs of SWs. Furthermore, though control over resources has been identified as a central component of economic vulnerability, there is limited research on this topic as pertains to SWs.
 21. The probability of transmitting HIV during unprotected sex rises dramatically if either partner is infected with another sexually transmitted disease (STD), such as syphilis or gonorrhoea. These infections form ulcers and sores that facilitate the transfer of the virus. The sexually transmitted infections (STI) constitute one of the major public health problems in Botswana. It has been evident that when someone happens to be diagnosed with TB they are often required to test for HIV, this is because TB is a co-infection to HIV, or if someone has STIs they are required to take the HIV test also.

Recommendations for action

We urge the government of Botswana to:

1. Start national consultations and stakeholder engagement on decriminalizing sex work.
2. Protect, respect, and fulfill all the rights of sex workers beyond the public health arena
3. Improve the effectiveness of the gender-based violence units in local police stations.
4. Adopt national mechanisms to protect the rights of sex workers.
5. Respect, protect, and fulfill the civil and political rights of Botswana as there has been an exponential shrink in the civic participation space.