Gender Equality, Human Rights and Sex Work in the Caribbean

Policy Considerations in the Context of HIV and AIDS

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1. Preface

Stigma and discrimination are both causes and consequences of HIV and impede universal access to prevention, care, treatment and support. It is for these reasons that confronting and eliminating discrimination has been a foundational objective of HIV policy and programming. Both are manifestations of deeply held beliefs and practices about acceptable behaviours and lifestyles. The implicit claim to cultural relativity, to the maintenance of certain ‘moral’ boundaries, can present a challenge to advancing the universality of human rights. Within the Caribbean, gender, HIV, human rights advocates and policy makers are seeking to cut the knot of stigma and discrimination through law reform and social policy development that ensure enjoyment of human rights and therefore reduce HIV-related vulnerabilities.

Sex workers are described in the PANCAP’s Second *Caribbean Regional Strategic Framework 2008-2012*¹ as an at-risk population. Infection rates suggest more than theoretical vulnerability; rather they show disproportionate levels of infection among sex workers relative to most other population groupings. The reasons for this are obvious while the policy implications are complex. Many engaged in sex work function in highly stigmatised environments; have lives structured by gender inequality and economic deprivations; function under the legal radar; and are therefore prone to harassment, exploitation, abuse and violence. For the most part, persons working in the most visible and best understood sectors of the sex economy are women. Many have limited economic means and given the sexual division of labour in the reproductive sphere, disproportionately carry the burden of familial care.

Economic need and unequal and silencing gendered power relations together explain in large measure why women sex workers may be unable to demand or negotiate safe sex practices consistently; why they are susceptible to violations of human rights, in particular physical abuse; and ultimately why HIV infection rates are amongst the highest of any population sector.

While the legal framework is not well understood, there is a generalised sense that sex work is illegal. In many Caribbean countries it is the procurement of sex work that is illegal and not the act itself. Still the sense of illegality combined with societal disapproval of sex work sustains the emotive atmosphere that has challenged policy development related to decreasing sex worker vulnerability to HIV and AIDS.

Notwithstanding stigmatisation, there is a parallel reality of pragmatic ‘acceptance’ of prostitution as ‘the oldest profession’, that is, for women. Evidence of this, arguably, can be found in the inconsistent policing of sex work and in particular of the organised spaces for sex work such as ‘brothels’. Yet this parallel reality of acceptance is accompanied by negative and contradictory judgments. Women sex workers are perceived as violators of the dominant feminine ethic of chastity even while this sex work reinforces dominant patriarchal notions of the accessible and sexualised female body.

The history of male sex workers in the Caribbean is associated with the growth of the tourism industry. The phenomenon of the ‘beach boy’ does not carry with it the same stigmatized connotations as the

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‘prostitute’. Such sex work is often couched in a romanticism that downplays the sexual-economic or tactical dimensions of these relations. There is as well a much reduced likelihood of violence and physical exploitation for heterosexual male sex workers. In contrast men who have sex with men as sex workers face additional stigma based on sexual orientation discrimination.

Discussions on a policy framework on sex work are associated with the public health response to HIV and AIDS. Dominated by the imperative of ensuring access to sexual health services, the focus is on the individual (condom use, safe sex) rather than the structural determinants of sex worker vulnerability and their myriad consequences. This approach does not generally confront the ways in which unequal power relations and stigmatisation severely limit the practice of condom use or the barriers to universal access.

The inadequacy of this individualised response to sex work is acknowledged and the regional discussions have skirted around the edges of the legal framework seen as reflecting and/or sustaining stigma and discrimination. The importance of addressing the legal framework was discussed at the 2008 AIDS Conference in Mexico by Prime Minister Denzil Douglas who called for the laws governing prostitution in the region to be reviewed, as they were hindering the fight against the deadly HIV/AIDS disease:

"What we are seeking to do at this level in the Caribbean is to raise the level of debate and information-sharing with regards to these practices and how there is a need to seriously discuss decriminalisation and how this can impact positively on our fight to reduce stigma and discrimination within the Caribbean region, and generally I would say within the AIDS global fight."³

But these calls for decriminalization as a method of containing HIV and AIDS have not addressed the relationship between sex work, gender and class inequality. This brief on Gender Equality, Human Rights and Sex Work in the Caribbean: Policy Considerations in the Context of HIV and AIDS speaks to the policy challenges related to sex work and identifies factors which ought to be considered in advancing rights and reducing sex worker vulnerability to HIV and AIDS. It seeks to address these policy challenges while situating sex work within the wider socio-economic, cultural and gendered context that shape decision making, vulnerability and resilience in the Caribbean.

The brief recommends that policy making must articulate an integrated framework grounded in the protection of human rights for persons who either choose to or take up sex work in the context of compounded exclusions- economic marginalisation and gender inequality for example. The policy framework must also take account of competing ethical and morality-based perspectives as well as public health issues. The challenge is to develop an approach which can bring these factors into consonance.

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² In both Barbados and Jamaica, calls have been made for decriminalisation of sex work to facilitate more effective programmes for sex workers to protect them both from HIV as well as from violence on the job, including rape. In Jamaica this view was offered by Dr. Peter Figueroa of the Jamaica National AIDS Programme and in Barbados by Professor Walrond in the Barbados Report on the ‘Legal, Ethical and Socio-Economic Issues Relevant to HIV/AIDS.'
Drawing on two studies commissioned by UNIFEM: i) A Legal Analysis of Sex Work and ii) a Three Country Policy Analysis of Sex Work in the Caribbean, this brief also draws on two consultations with sex workers and experts in the field of sex work and UN partners held on 21-22 February 2008 and 24-25 March 2009.

Finally the brief is informed by and necessarily complementary to the UNAIDS Guidance Note on HIV and Sex Work. That guidance note provides a policy and programmatic emphasis on a) access to HIV prevention, treatment, care and support for all sex workers and their clients; b) supportive environments and partnerships that facilitate universal access to needed services, including life choices and occupational alternatives to sex work for those who want to leave it; and c) action to address structural issues related to HIV and sex work.

2) Background: Sex Work in the Caribbean

HIV in the Caribbean is transmitted primarily through unprotected heterosexual sex. Recent reports on HIV rates suggest an equalising in the rates of infection for women and men though HIV infection rates appear to be significantly higher for women in the age group 15-24. There is therefore a nascent appreciation that halting and reversing the spread of HIV will require more effective gender-responsive prevention programming. Factors that explain HIV prevalence in the Caribbean include i) unequal and stereotypical gender relations between men and women; ii) cultures of sexuality and sexual behaviour; and ii) stigma and discriminatory practices that undermine the ability of certain populations to demand and negotiate safe sexual practices.

In identifying commercial sex workers as a ‘most at-risk’ population the CRSF 2008-2012 notes that the reported HIV infection rates among sex workers vary from 9 to 31% across the region. There are also indications of higher incidence of HIV/AIDS in tourist centres. A survey conducted by the Ministry of Health in Jamaica from 1982-1997, shows that the number of AIDS cases reported per 1000 was 252.7 in St. James, a major tourist hub.

The term “sex work” or “commercial sex work” is understood to include a wide range of sexual-economic activities accessed in a number of settings. Sex workers are a heterogeneous group of women, men and transgendered/transsexual persons across a range of ages. Some define themselves as prostitutes or sex workers and attribute the majority of their income from this activity. Others may engage in sex work on a part-time or episodic basis and may not self-define as sex workers. There is also diversity in the ways in which business is organized, from a degree of organisation (if illegal) as in

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4 Prepared by Tracy Robinson and Althea Perkins respectively.
5 At this last meeting, representatives of the Caribbean Coalition of Sex Workers articulated their perspective that decriminalization of sex work is essential to addressing stigma and discrimination that impedes access to health, social services and justice.
7 Caribbean Regional Strategic Framework on HIV and AIDS 2008-2012: Caribbean Community (CARICOM)
8 Ibid: 77
brothels and clubs to street walking, operating from homes and also located around other economic and social activities and sectors such as gold-mining and tourism. Sex workers may be self-employed and in control of the derived income while others may be in relations of employment and/or exploitation, with limited control of working conditions and income.

It is this empirical variety and multi-faceted nature of sex work that creates the policy challenge. Differing settings for sex work, rationales for involvement and the dichotomy of autonomy/exploitation have varying policy resonances and implications.

i) Gender and Sex Work

Cultural norms, informed by gender and class relations and religion, shape the discourse on sexuality and are significant contributors to the ‘tabooed’ and stigmatizing notions about the nature of the sex work. Traditional and still dominant social norms expect women’s expression of sexuality within monogamous heterosexual relationships; on the other hand, traditional expectations of masculine sexuality provide greater latitude (albeit within the confines of heterosexuality) including acceptance of multiple female partners and early sexual initiation. Consequently, although both male and female sex workers, whether engaged in heterosexual or same sex sexual activities, are socially discredited, the degree of societal disapproval and by extension legal responses differ among and within groups of female and male and transgender sex workers.

Fewer stigmas may be attached to the male heterosexual sex worker than either the female or transgender sex worker and men who have sex with men as part of an economic exchange. The first more closely corresponds to expectations of male gendered behaviour. For many female sex workers, unequal gender relations characterize the environment both within which this option for income generation is exercised and the conditions of work. Many women enter the sex industry in primary response to the need for income. Because the gender ideologies/value systems continue to limit women’s personal autonomy, resulting relations of dependence and exploitation of women engaged in sex work expose them to continuous and varied violations of human rights and heighten their vulnerability to HIV.9

ii) Women, the economy and sex work

The inter-locking gender division of labour in the private and public domains can facilitate or explain the movement into sex work for some. Women typically have lower rates of labour force participation than men although women’s participation rates are higher than that of many other regions10.

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9 Kamala Kempadoo also argues that the illegal and informal context of sex work facilitates the exploitation of women sex workers and gives specific examples of some organizational arrangements that exploit sex workers. She describes, for example, dependent relations with individual men, criminal organizations and representatives of the state, particularly where sex workers are undocumented migrant workers. Kempadoo 1998. pp. 129-130

10 Women labour force participation rates were 53% in 1997, as compared to 39% in Central America, 45% in South America, and 49% in Western Europe. In countries like Barbados the rate was 62.1% and Jamaica 59.0%.
Notwithstanding higher educational attendance and achievement of certification, a significant proportion of women continue to be concentrated in the lower paid sectors of the economy—services in particular—and experience higher levels of unemployment and underemployment, particularly for those with few educational or vocational qualifications. This channelling of unskilled women in a limited range of low paying jobs appears to be an important push factor for the presence of females in the sex industry particularly when women carry the burden of reproductive care. The 1998 ILO study found that “in many cases, sex work is often the only viable alternative for women in communities coping with poverty, unemployment, failed marriages and family obligations, in the nearly complete absence of social welfare programmes. For single mothers with children, it is often a more flexible, remunerative and less time-consuming option than factory or service work”.

This ILO finding is supported by organisations that work on or have researched sex work in the Caribbean. The Haitian Foundation for Reproductive Health and Family Education (FOSREF), a NGO that runs drop-in centres for young people and sex workers, reports motivations for involvement to include "Poverty, misery, and many of them have a child to support." A study of women sex workers in Barbados similarly has elicited that for the majority of women, their involvement in the sex industry was driven by economic need related to the responsibility for child care. That study points out that notwithstanding the threats of violence and of HIV, the income derived from sex work and the daily flexibility acted as pull factors in continued engagement with sex work. The women contrasted the money derived from sex work with the low paying jobs open to them in the unskilled labour market sector as service or sales workers. It is also activity that can supplement other income. The Red Thread study in Guyana in 2000, which shows the relationship between sex work and poverty found that 1/3 of the women interviewed also did other work, mostly in the low paid service sectors, particularly as domestic employees.

The growth of the tourism sector as the major contributor to regional economies is also related to the emergence of sex work. The Caribbean is marketed as a romantic and exotic tourist destination and researchers have documented an expansion of the sex work industry associated with tourism. The extent to which sex work is associated to the Caribbean tourist product, as an attraction, as a lure for foreign exchange was made apparent in the debate on temporary legalisation of prostitution for the period of the Cricket World Cup in 2006. And it is not coincidental that this call was made in response to the expected influx of men visitors to the region.

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11 Red Thread 1999:266
12 [http://www.ilo.org/public/english/bureau/inf/magazine/26/sex.htm](http://www.ilo.org/public/english/bureau/inf/magazine/26/sex.htm). This ILO study findings are echoed in a 2007 study on sex work in New Zealand which found that entry into sex work was predominantly for financial reasons and that financial incentives were more important to female sex workers than to male or transgender sex workers
The sexual/economic exchange at the heart of commercial sex work should be distinguished from transactional sexual relationships where the giving of gifts or services is an important factor. However there can be no doubt those transactional sexual relationships—particularly between young women and older men—contribute to the fabric of vulnerability. Organizations that work on the sex work agenda note that young women, some under the ages of majority and/or consent, are involved in transactional sex or sex work because of economic need of families, and in some cases are the main income earners especially where parents have migrated or are otherwise absent. Money derived from such relationships is used to meet livelihood needs such as school-related expenses, transportation, and food as well as to meet material wants.

The link between poverty, sex work and HIV has not been researched specifically in the Caribbean. Yet the Red Thread Study offers some insights. That study found that the sex workers who were less “empowered”, tended to come from poorer, urban areas, with poorer clients; did not use condom at last sex encounter; were more likely to have sex with client who refused condom use; and had their first sexual intercourse at an early age often with a man very much older. This study suggests quite strongly that the social and economic relations of gender are at the heart of understanding the HIV vulnerability of women sex workers.

### iii) Sex Work and Violence

Violence can be both a cause and consequence of sex work and in both cases it increases vulnerabilities to HIV. The Red Thread study in Guyana has given important clues to the ways in which violence against women can be a backdrop for involvement in sex work. That study documents how sex work by some of the women interviewees was perceived as an escape route from physical and sexual abuse and how the experience of sexual harassment and coercion can result in ‘forced’ sex work.

Global studies show that sex workers suffer a high incidence of sexual assault by clients, pimps, other men, and partners. Yet still, these are crimes that go under-reported given the reluctance of sex workers to seek police response and protection because of skepticism that complaints of rape will be treated with a serious and determined police response.\(^\text{14}\)

The literature and reported conversations with sex workers consistently elicit the spectre of violence as a present threat. Ninety (90) percent of the women interviewed in the Guyana study had been assaulted by clients. The 2006 study on sex workers in Barbados also shows that this threat is gendered with women sex workers speaking to this experience much more frequently than male heterosexual sex

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\(^{14}\) The difficulty of proving rape by sex workers was also embodied in the law. In common law jurisdictions such as the UK (followed in the Caribbean) evidentiary rules severely limited the likelihood of a sexual assault prosecution where the complainant was engaged in sex work. So for example, the sexual history of the complainant could be introduced to bring into question the main element of a sexual assault charge, that of absence of consent. In some jurisdictions, law reform has now prohibited reference to the sexual history of a complainant.
workers. The CAFRA study of sex work in Belize and St. Lucia similarly confirmed that violence is a reality and that much of this is not reported to the police.

Violence is a huge threat because of the illegalised context within which such violence is perpetrated. So for example, brothels can be spaces of sexual and economic exploitation and violence with sex workers describing situations of bondage and restrictions of movement. The perceived illegality of sex work, the expectations of indifference and harassment on the part of police, all undermine access to human rights protections. The threats are compounded for certain categories of persons engaged in sex work, in particular illegal migrants and young people.

Challenges faced by migrant persons engaged in sex work are specific and result in heightened vulnerability to HIV, exploitation, abuse and violence. Particular problems for sex workers arising from irregular residency status include indebtedness to and dependency on those persons facilitating the migration. Fear of deportation leads to avoidance of authorities, including health service providers and police.

iv) Sex Work and Discrimination

Sex worker discrimination, the unfair or unequal treatment of persons engaged in sex work to their detriment, is manifested in a number of ways that affect universal access. Discrimination can be both direct and indirect and embodied in the substance of the law, in administrative or policy actions and at the level of culture. Arguably discrimination is most deeply rooted where cultural attitudes are reinforced or supported by legal provisions or where there is absence of legal redress for unequal or unfair treatment.

Across the Caribbean, laws related to sex work create the climate of illegality, whether the act is itself illegal or solicitation or the procuring acts of third parties. Even where there is no legislation prohibiting sex work itself, police recourse to vague public decency or public order provisions are used to sanction sex work. Discrimination by police shows up both in the ways police choose to or fail to act to protect persons involved in sex work. Sex workers lament the arbitrariness of police actions related to arrest, detentions without charge and the exercise of discretion to charge offences that are vaguely defined. They speak about clients using police to extort back monies paid for services as well as police failing to

15 Indirect as in when policy making and programming fail to take account of the specific experiences of human rights violations experienced or where state actors fail to adequately protect, respect and fulfil the human rights of excluded or vulnerable groups.

16 Importantly, gender discrimination is another feature of the legal regime related to sex work as in some countries explicit reference is made to women and girls in the context of prostitution. So for example, immigration officers in The Bahamas under The Immigration Act provides officers with the authority to grant landing rights to someone who ...is not a person who is reasonably believed to have come to The Bahamas for any immoral purpose, or who being a woman or a girl, is not reasonably believed to be a prostitute or to have come to The Bahamas for the purpose of prostitution ..."

17 What they ask, for example, is the difference between the dress of carnival revelers and persons engaged in sex work that leave the latter exposed to the possibility of charges of lewdness and breaches of public indecency.
respond to experiences of sexual assaults. These actions or failures of action decrease the capacity of sex workers to self-protect and demand safe sex practices. Additionally, absence of redress or protection from sexual violence contributes to increased vulnerability of infection with HIV and other STIs for sex workers.

Similarly stigmatisation of the work presents a challenge to access to non-judgemental health and social care services, a denial of access that can filter down to the children of sex workers. The three country research on sex work policy and practice also showed how uncertainty about the legal status of sex work affected the provision of services by state actors who did not want to be seen as facilitating an activity that is illegal.

Discriminatory attitudes on the part of state actors undermine the state’s ability to protect, respect and fulfil human rights. In the context of sex work, the constitutional obligations to rule of law, to equal treatment, security of the person and privacy rights can be denied and these violations are experienced in sectors upon which successful universal access programmes are dependent—justice and health sectors in particular.

Uprooting stigma and discrimination therefore is at the heart of ensuring universal access. Where discrimination is supported by the legislative framework as where sex work or aspects of sex work are illegal, this will have to be addressed so that duty holders understand their unambiguous duty to treat, to care and to protect.

The discussion on the sex work and HIV has allowed a wider discussion on the wide net of illegality that surrounds sex work which has implications for all aspects of the sex workers’ lives, including immigration, and multiplies their vulnerability to unjust conditions of work and exploitation. It is within this context that policy informed by a human rights approach becomes an imperative.

3. The Policy Challenge: Ethics, Morality and Rights

Opposing philosophical views on the nature of sex work provides the backdrop for the policy discussions ongoing in the Caribbean, as elsewhere. From the religious perspective, sex work is immoral; an abuse of the sanctity of the body; unchaste and a violation of the norms of purity. It is the antithesis of a ‘life well-lived’. While rejecting chastity as a basis for moral objection, many gender justice advocates consider sex work in its essence demeaning of women, necessarily exploitative and furthering the unequal patriarchal power relations. Others even though they may not view the selling of sex as an intrinsically immoral activity, consider the social consequences so detrimental (pimping, child sexual abuse, spread of disease, degradation of women and their sexuality etc), that sex work is seen as an activity to be eliminated.

The social justice discussions on sex work are characteristically shaped by the forced/voluntary dichotomy. For those who see sex work as inherently forced, they focus on the structural factors that

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18 Robinson, 2008 pp. 6
make sex work a job opportunity for women and call for prevention programmes. At the other end of the spectrum, where sexual-economic exchange is considered as an expression of choice and free will, the policy responses considered necessary are decriminalisation and regulation as a field of work. Within this latter view prostitution is a victimless crime, an activity in which those engaged parties are consenting adults, only a crime because it offends the moral sensibilities of uninvolved and uninjured third parties. From this perspective, it is the stigmatisation that creates the environment for degradation and harm to the sex worker. Stigma and criminalisation (especially when unevenly enforced) make it more likely that sex workers will be harassed arbitrarily by law enforcement officials and that violence against sex workers will go unreported and therefore unpunished.

Responding to those who articulate the right of adult consenting persons to engage in sex work and prostitution as an expression of agency and autonomy, one strand of gender equality advocacy points to the significant economic asymmetry between the sex worker and the client that undermines autonomy of women sex workers in particular and therefore exposes them to exploitation, violence and harm. But beyond the impact on individual women, sex work is seen as reinforcing gendered unequal power relations because its organized practice perpetuates dominant gendered beliefs which oppress all women in many domains of their lives. And the fact that so many who engage in sex work do so as an economic survival strategy should not be taken to denote the real exercise of free choice.

These contesting perspectives on sex work may be irresolvable. An instrumental approach however is discernible by policy makers in the HIV field. In this approach, the questions on morality and ethics of sex work, while acknowledged as the environment within which sex work policy is to be considered, appear to be losing ground to public policy considerations for halting and reversing the spread of HIV.

As the chart attempts to show, whatever the motivation or cause for involvement in sex work, there are many commonalities in the experience of human rights violations. A policy framework aimed at decreasing HIV-related vulnerability would need to address not only law reform as instrumental for reducing the stigma, but also would need to advance an integrated set of responses that address the range of human rights issues raised.
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<td>Vulnerability to sexual and physical violence</td>
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<td>Dependency and loss of agency in intimate partner</td>
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**Possible Policy Responses**
- Social-economic assistance for poor single women households
- Skills training and employment opportunities particularly for young people
- Removal of barriers of equal access to justice/strengthening rule of law (law reform, police training, police oversight)
- Sexual offences law reform, justice sector training, police oversight
- Non-discriminatory access to reproductive and sexual health services

**Possible Policy Responses**
- Stigma limiting access to justice
- Stigma limiting access to health services, including for children
- Reform of the Justice System to protect the human rights of sex workers
- Non-discriminatory access to reproductive and sexual health services
- Removal of barriers of equal access/strengthening rule of law (police training, police oversight, clarity on law on sex work)
4. The Policy Context

Within Caribbean programming, there has been much concentration on the identification of most at-risk populations. Commercial sex workers, men who have sex with men, prisoners, sexually active youth and people with sexually transmitted infections are the groups that have been targeted for population specific interventions. However it is worth noting that the second CRSF also addresses vulnerability more broadly and acknowledges that:

Caribbean gender roles are also contributing to the spread of HIV. Women may be submissive to men in sexual decision making, a role that puts them at risk of HIV infection as a result of male behaviour patterns and limited power to negotiate condom use. Gender-based violence, including forced sex and rape, are also a problem. However, some young women are willing to use sex in order to gain favours, cash, or material things."

The CRSF, having identified commercial sex workers as a most at-risk target group, outlines one of its strategic objectives as achieving ‘universal access to targeted prevention interventions to reach and support the most at risk populations’. These prevention interventions are meant to target behaviour change communication interventions to increase positive sexual practices and encourage early HIV/STI diagnosis and treatment among most vulnerable groups.

The CRSF attributes stigma and discrimination against sex workers to existing legal statutes that criminalize aspects of prostitution. This criminalization reinforces prejudices and hinders the design of prevention interventions for this population, as does it for men who have sex with men. Stigma and discrimination are seen as discouraging sex workers from accessing prevention, treatment, and care services.

Beyond information and education programmes on safe sex practices and prevention generally, the Caribbean Coalition of Sex Workers call for comprehensive responses based on four strategic objectives:

- Ensure policymakers and duty-bearers protect the wellbeing and safety of male, female and transgendered sex workers
- Advocate for laws to ensure the protection of sex workers from abuse and provide redress.
- Build the capacity of persons engaged in sex work participate in national and regional responses.

• **Provide redress for non-national sex workers including migrant workers and trafficked persons in terms of access to services, upholding human rights and diminishing stigma and discrimination.**

• **Build capacity of civil society organizations and partners to provide comprehensive SRH services and foster greater resilience and social inclusion of sex workers.**

In implementing these objectives the CCSW has identified the following core issues:

**The need for law reform**

- Promotion and defence of human rights of sex workers, through repeal of laws that contribute to sex workers’ vulnerability to HIV infection and the stigma and discrimination associated with being HIV positive.

- Decriminalisation of sexual-economic exchanges between consenting adults

- Decriminalisation of consensual sex between persons of the same sex.

**Youth in sex work**

- Zero tolerance for the sexual abuse and exploitation of minors. This requires a legal framework that includes mandatory reporting by health, social, workers, teachers and parents and guardians of suspected cases of child sexual abuse.

- Provision of appropriate health and social services and support where persons under the age of 18 (or the age of consent as established by applicable national laws) are apparently involved in commercial sex work

**Diversity**

- Increased emphasis on reaching transgendered persons, men who buy sex and men who sell sex to women.

**Human Trafficking**

- Zero tolerance of trafficking in persons and prevention, through legal and ethical efforts to prevent all forms of coercion linked to commercial sex, including slavery for the sale and purchase of sex work.

- Provision of services for mobile sex workers, including women trafficked for prostitution.

The Coalition calls for policy guidelines that respond to the gender, social, political and cultural realities facing sex workers as well as the unique ways sex work is organized in the Caribbean.
5. Policy Principles and Considerations

The environment of stigma and discrimination which is a consequence of unclear legal frameworks and societal disapproval of sex work creates a maze of vulnerability to human rights violations regardless of the individual determinants for entering into sex work (i.e. motivated by gender and socio-economic inequalities or as an expression of agency). Many persons who are engaged in sex work have their decision-making and autonomy undermined by a legal framework that is so unclear that it exposes them to arbitrary and abusive exercises of power. This unclear legal environment also impedes access to health and social services. The gendered value system within which sex work takes place further reinforces vulnerability to physical harm for which legal redress is often unattainable.

Acknowledging the moral and ethical complexity in devising policy responses to sex work ought not to lead to stasis. This brief therefore aims to highlight policy options aimed at advancing rights and reducing HIV related vulnerability. It is guided by the UNAIDS Guidance Note on HIV and Sex Work. In particular, the technical guide calls for responses on three levels:

1) Assure universal access to comprehensive HIV prevention, treatment, care and support
2) Build supportive environments, strengthen partnerships and expand choices
3) Reduce vulnerability and address structural issues.

This brief also considers that the most effective way of reducing HIV related vulnerability of persons engaged in sex work is by addressing the conditions (including economic and gender inequality issues) surrounding sex work. As UNAIDS points out “strategies that expand educational, economic and social opportunities, especially for women and girls, represent an urgent necessity.”

This policy brief outlines 2 main areas of legal policy in the Caribbean:

1) Eliminating stigma and discrimination: law reform
2) Access to protective justice

It is guided by human rights principles as follows:

**Universality:** All persons are entitled to the full enjoyment of human rights

**Non-discrimination:** The enjoyment of rights should not be curtailed by the application of arbitrary and discriminatory principles

**Inter-dependence of rights:** Persons who engage in sex work are entitled to the have their economic, social, political and civil rights respected, protected and fulfilled

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**Participation and inclusion:** the active involvement of sex workers is necessary in all phases of project development, implementation and evaluation

**Accountability:** State actors have the primary responsibility to put into place policies and programmes that address the culture of stigma and discrimination and advance positively the human rights of persons who are engaged in sex work.

i) Law Reform and Regulatory Framework of the Caribbean

There is a wide range of criminal offences connected to the sex trade industry in the Caribbean. Prostitution is not criminalized but rather the adjunct offences which give effect to and perpetuate prostitution. Soliciting, living off the earnings of a prostitute and permitting premises to be used as brothel are offences which attract criminal penalties of varying levels. While in some instances there is no statutory definition, the common law defines a ‘prostitute’ as a woman who is engaged in common lewdness in return for payment. Acts of lewdness are not limited to sexual intercourse and include other sexual services provided for payment.

Contemporary statutes in the Caribbean now define a prostitute more broadly as a person of either sex who offers his or her services for the purpose of arousing or gratifying the sexual desire of another for payment in return.

Understanding the existing sexual offences in the English speaking Caribbean

In older statutes, sexual offences are dealt with in an omnibus criminal code, penal code or offences against the person statute. Many countries have enacted specific legislation related to sexual offences. These reforms do not merely reproduce and re-enact antique laws, they have initiated subtle but noteworthy changes to offences relating to sex work.

ii) Effects of the new laws on sex workers

The laws dealing with sexual offences address prostitution and assume gender neutral terms. Three types of offences implicate sex work and sex workers:

A. Criminalization of third party activities related to the business of prostitution
B. Criminalization of certain sexual activities as indecent or unnatural

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21 This section draws on the report prepared by Tracy Robinson- “A Legal Analysis of Sex Work in the Anglophone Caribbean’.

23 Antigua and Barbuda Sexual Offences Act 1995 (hereafter A&B SOA) s 2; Trinidad and Tobago Sexual Offences Act 1986 (hereafter T&T SOA) s 2.
24 These are the Belize Criminal Code 1981, Cap. 101; Guyana Criminal Law (Offences) Act 1893 Chap. 8:01; Jamaica Offences Against the Person Act 1864; and St. Kitts-Nevis 1873, St. Vincent and the Grenadines Criminal Code 1989, Cap. 124.
25 Belize has modestly reformed some of its laws dealing with sexual offences since 1999, including the introduction of offences relating to HIV/AIDS, mandatory testing and notification of sex offender status. The law in St. Vincent & the Grenadines can be found in a 1989 law, but does not reflect any significant modernization. The more modern approaches, beginning in 1986 with the Trinidad and Tobago Sexual Offences Act, addresses the issue by separating sexual offences from other crimes in a dedicated statute as has been done in Antigua and Barbuda (1995), the Bahamas (1991), Barbados (1992), Dominica (1998) and Trinidad and Tobago (1986).
C. Most sexual offences relating to prostitution focus on persons other than the sex worker who are associated with the business of prostitution: those who aid prostitution encourage persons to become prostitutes, live off the earnings of prostitution, and use premises under their control for prostitution.

Solicitation tended to be a minor offence under vagrancy laws and the emphasis was on solicitation in public places and included the persistent solicitation of prostitutes by men in public spaces. The newer sexual offences laws make solicitation a more serious offence which is no longer limited to public places. This enlarged offence is the closest Caribbean statutes come to criminalizing prostitution itself.26 The main elements of reform are:

a) Prostitution is now defined in gender-neutral terms, which means that a man can be a prostitute.

b) The penalties for offences dealing with activities relating to prostitution as a business have been increased and the offences are gender neutral.27

c) Solicitation has emerged as a more serious offence that is no longer restricted to solicitation in public places.

d) Acts of indecency and unnatural sex are more heavily penalized and new offences criminalizing sexual activities between women have been introduced.

Although the present legislation takes on gender neutral terms, it facilitates the reinforcement of prevailing gender norms and further stigmatizes and marginalizes sex workers. Solicitation by the prostitute and solicitation by the customer is not distinguished and therefore both the sex worker and the client can be arrested for solicitation. The increased penalties for solicitation are not limited to a public place and descriptions of indecency and unnatural sex locates street prostitutes, club prostitutes and MSMs and transgendered prostitutes within a higher level of vulnerability with the enforcement of new soliciting legislation.

iii) Vagrancy

The second main source of laws relating to prostitution is vagrancy laws which create minor offences aimed at protecting public peace and public order.

The provisions from old vagrancy laws can be found today in statutes dealing with small charges,28 summary jurisdiction,29 town and communities, minor offences and some have been placed in penal and criminal codes. They deem persons soliciting in public places or merely found in public places who

27 e.g. In Barbados, the now repealed provisions of the Offences Against the Person Act 1868 classified procurement and attempted procurement as a misdemeanour and the penalty on conviction was two years imprisonment. It is no longer a misdemeanour under the current 1992 Sexual Offences Act and the penalty has increased to 15 years on conviction on indictment. The Suppression of Brothels Act 1889 of Barbados provided for penalties of four months imprisonment and small fines for the use of premises as a brothel. The provision in the Sexual Offences Act provides for imprisonment of up to five years and/or a fine of $5,000.
28 e.g. Antigua and Barbuda Small Charges Act 1892, Cap 405, ss 19, 41; Dominica Small Charges Act 1891, Cap 10:39, ss 39; St. Kitts-Nevis Small Charges Act 1892, Cap. 75, ss 18, 29, 39, 43.
29 Belize Summary Jurisdiction (Offences) Act 1953, Cap. 98, ss 15 – 18; Guyana Summary Jurisdiction (Offences) Act 1894, Cap. 8:02, ss 155 – 156.
cannot ‘account’ for themselves vagrants and liable to imprisonment. In other jurisdictions, the language of loitering is used.

The statutes which speak to vagrancy, loitering and breach of public order have been recognised as vague and given to arbitrary as well as discriminatory implementation by police. Persons engaged in sex work complain that these vague provisions are conducive to misuse for the purposes of harassment, exploitation, abuse and corruption. These laws have come under scrutiny in the context of HIV for their likely impact for driving persons engaged in sex work underground, outside the reach of the public health system and information and services for prevention.

Robinson concludes that “Criminal statutes cast prostitutes in varied and contradictory ways. Sexual offences law and human trafficking tends to present prostitutes as the exploited in need of protection, but by criminalizing solicitation, sexual offences law also presents sex workers as immoral sex offenders. Vagrancy laws on the other hand treat sex workers as disruptive to public peace, morality and order.”

7. Models of Legal Approaches to Sex Work

There are at least four regimes of legal regulation of sex work ranging from complete criminalization to legalization: complete criminalization, partial criminalization, complete decriminalization and legalization. These different approaches reflect tensions and debates about whether the goal should be abolition of prostitution or tolerance and legitimation and regulation of voluntary practices.

i) Complete criminalization

This regime criminalizes the sale of sex work by the sex worker, purchase of sex work by the customer, and third party involvement (pimps, brothel-keepers, landlords and those in control of premises). Caribbean countries with ‘modern’ sexual offences laws come closest to this position.

ii) Partial criminalization

This regime only criminalizes some activities relating to prostitution. In some places, the activities of the sex worker are not criminalized but the law criminalizes purchase of sex work by the customer, and third party involvement (pimps, brothel-keepers, landlords and those in control of premises).

iii) Complete decriminalization.

This regime has no special criminal law dealing with sex work. Activities relating to sex work may fall afoul of other legislation, but these are not directly targeted by the criminal law.

iv) Legalization

This regime goes further than decriminalization by regulating sex work as a business including subjecting it to health regulation, licensing and labor laws. Legalisation is the government regulation of sex work

which determines the legal conditions under which the sex industry can operate. Legalisation can be highly regulatory or merely define the operation of the various sectors of the sex industry. It can vary between rigid controls under legalised state controlled systems to privatising the sex industry within a legally defined framework. However, it is usually takes the form of registration, licensing, taxation, mandatory health checks and a specific zone for the practice of sex work.\(^{32}\) It is often accompanied by strict criminal penalties for sex industry businesses that operate outside the legal framework.

### 8. Arguments for and against Decriminalisation/Regulation

Based on a study of prostitution in Asia and the United States, Brock has argued that criminalization has little impact on the supply or demand for sex workers but makes prostitution lucrative for organized crime syndicates\(^{33}\). More so, that criminalization promotes or supports an exploitative environment within which:

- Pimps and brothel managers use fear of law enforcement to force sex workers to comply with dangerous practices, such as prohibitions against condom use or refusing a customer;
- Pimps teach exploited children to fear the police and entrap them by threatening them with arrest and imprisonment;
- Because most law enforcement officials are male and socialized as men, they commonly demand sexual favors in exchange for better treatment—many are customers themselves, belong to professional associations with traffickers, pimps, or customers, and/or run their own brothels with impunity.

Legalization or decriminalisation is seen as beneficial to the fight against HIV as it can provide a framework for governments to engage in the following:

- Ensure that sex workers are empowered to negotiate condom use, improve their access to public services, and give them protection from violence and abuse.
- Empower sex workers to organize for better working conditions and supportive networks
- Facilitate control of sexually transmitted diseases including HIV/AIDS through regular medical examinations
- Organise more effective HIV prevention campaigns
- Eliminate ‘seedy, unsafe areas’
- Provide fiscal structures—licensing and registration fees, income tax and value added tax.

On the other hand, those who oppose decriminalisation and regulation argue that legitimating prostitution as “work” does not empower the women in prostitution but strengthens the inherently exploitative sex industry. It does not dignify the persons engaged in sex work so much as create legal

\(^{32}\) "Feminist Perspectives on Sex Markets", http://plato.stanford.edu/entries/feminist-sex-markets/

avenues of extreme commodification of women’s bodies, a commodification that flourishes because of women’s economic inequality and insecurity. Other arguments against legalisation/decriminalisation are that it increases sex trafficking and child prostitution. The legalisation argument also fails to take account of gender inequality as a structural determinant of the involvement of many women in sex work, an industry which the 1998 ILO to be one of the most alienated forms of labour; where women worked 'with a heavy heart,' 'felt forced,' or were 'conscience-stricken' and had negative self-identities.

9. Human Rights-based Legal Approaches:

Guideline 4 of the International Guidelines on HIV/AIDS and Human Rights recommends:

“With regard to adult sex work that involves no victimisation, criminal law should be reviewed with the aim of decriminalising, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work.”

New Zealand has gone in this direction with the 2003 Prostitution Reform Act. This Act permits and regulates sex work but prohibits sex work by those younger than 18. The Act was intended to safeguard the rights of sex workers and protect them from exploitation, to promote the welfare and occupational health and safety of sex workers and to be conducive to public health.

Early assessments of the impact of the Act conclude that the new regime has empowered sex workers who now have more control over their work (where and how they work) as well as to create a framework of employer accountability to employment and contract law and laws affecting occupational health and safety. In addition, the proponents of this Act argue that the ability to manage negotiations with clients to promote safe sexual practice is enhanced in a decriminalised environment.

The 2007 review of the impact of the reform found:

- Sex workers considered that the Act had positively impacted on their health and safety.
- Sex workers articulated increased power in their negotiations and dealings with clients and management
- Growing confidence to use the legal system
- Street-based workers remain the sector most likely to experience violent or abusive attacks from clients
- Little change in disclosure of occupation by sex workers to health professionals since the industry was decriminalized, as there were still concerns with stigmatization
- Requirements of the law provide many sex workers with the support they need in negotiation of safe sex

• Public health officials felt that legislation had a positive impact on health and safety on the sex industry
• No increase in persons participating in the industry

The legal way forward:

Difficult and complex inequality issues are raised in the consideration of the legal status of sex workers. For perhaps the majority of sex workers, whether or not they come to a personal accommodation with sex work as a survival strategy, sex work cannot be disconnected from structural conditions of inequality- gender or class. While pragmatic public health goals require law reform, such reform has to be accompanied by a wider range of policy initiatives aimed at prevention and social protection support which respond to the structural causes of sex work.

Law reform then has to be informed by clearly articulated human rights principles that emphasise personal autonomy, protection from economic exploitation and physical harm. Law reform considerations ought to distinguish between consensual and non-exploitative acts between adults in the private domain and sexual-economic exploitation which benefits third parties.

ACCESS TO PROTECTIVE JUSTICE

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women and sets a framework for national action to end such discrimination. In its General Recommendation on women and health, the CEDAW Committee has noted the particular vulnerability of prostitutes to HIV/AIDS, and has stated that States parties should ensure, without prejudice or discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country.

i) Ending Impunity for Violence and Exploitation

The stigmatisation of persons engaged in sex work, including by law enforcement officials, can and does result in the extreme vulnerability to sexual and physical violence and economic exploitation. Many violations go unaddressed and there is a culture of impunity associated with violent crimes against sex workers.

The perception that sex work is illegal has a number of negative implications of restricting life choices for sex workers. Some of these include:

- Many sex workers are more likely to come in to contact with the police force and are exposed to police harassment, and extortion attempts
- Exclusion from social protection frameworks
- Denial of same access to legal remedies to address crimes committed against them, including crimes of violence.

State responses to complaints of crimes by sex workers should be informed by the constitutional equality of treatment guarantees, including equal protection under the law. These complaints must be addressed and investigated by law enforcement agencies without victimisation. Furthermore, police who commit violence or other crimes against sex workers must be held accountable for abusive or discriminatory acts.

Human rights training for police are recommended for securing a better understanding of the necessity of policies and practices that honour the dignity of persons engaged in sex work and which limit the opportunity for arbitrary and discriminatory practices. In the latter regard, vague legal provisions used historically to police prostitution (loitering, vagrancy etc) should be reviewed and their application clarified.\(^{35}\)

### 10. Trafficking in Persons

The discussion on policies on sex work is to be sharply delineated from that on human trafficking. Human trafficking is defined as including `(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.`\(^{36}\)

Belize, Guyana and Jamaica are now parties to the 2000 United Nations Convention against Transnational Organized Crime. Jamaica and Belize are also parties to the two Protocols supplementing the Convention on trafficking in persons and smuggling of migrants by land, sea and air. Guyana is a party only to the protocol on trafficking in persons.

Sex trafficking in women and children is a complete violation of human rights; it is a crime. The policy framework for halting sex trafficking must be grounded in the criminal justice system. Sex trafficking is distinguished from sex work in this paper as it is a complete manifestation of violence, in many dimensions- from imprisonment to rape and other forms of sexual assaults.

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\(^{35}\) It has been acknowledged in jurisprudence from other jurisdictions that a statute on loitering was too vague because a person could be arrested for innocent activities and more to the point that known prostitutes could be arrested for standing in a public space. *Johnson v. Carson* (569 F. Supp. 974 M.D. Fla. 1983)

\(^{36}\) See US Department of State, Trafficking in Persons Report at [http://www.state.gov/g/rls/tiprpt/](http://www.state.gov/g/rls/tiprpt/)
Guideline 4 of the International Guidelines on HIV/AIDS and Human Rights also is instructive in its call for criminal law provisions which both protect children and adult sex workers who have been trafficked or otherwise coerced as well as for protection from prosecution for such participation.

11. Protection of the Underaged

Like the issue of human trafficking, child sexual exploitation is at its essence a violent crime against the person. There is evidence of high levels of child prostitution (and therefore child sexual abuse) in the Caribbean and growing attention to the trafficking of children for sex work in the region. Apart from the issue of child sexual abuse, forced or compulsory labour and exploitative forms of child labour are clearly proscribed under the ILO’s Declaration of Fundamental Principles and Rights at Work. The 1999 ILO Convention on Worst Forms of Child Labour describes the ‘use, procuring, or offering of a child for prostitution or pornography’ as exploitative child labour and in no circumstances permissible.

The laws dealing with sexual offences in many Caribbean countries explicitly penalize the prostitution of minors. The two main offences addressing the protection of children are procuring a minor to engage in unlawful sex and an owner or occupier permitting the defilement of a minor on their premises. Other offences, including statutory rape also apply to the commission of sexual intercourse with minors. New child protection regimes and human trafficking laws in the region also provide strengthened mechanisms for responding to child prostitution. Typically, their provisions provide for mandatory reporting of child abuse, including sexual violation, and for the removal of children at risk from the home and into facilities of care or with relatives. (Robinson 2008:35).

However there are striking inconsistencies across the region and also within individual territories in the required age of the minor for these offences to be committed. Laws relating to statutory rape and all other provisioning for the protection minors must be reconciled and harmonized in terms of the age of the minor.

Similarly the laws on age of sexual consent have to be harmonised with laws related to access to sexual and reproductive health services. In some jurisdictions, service providers consider themselves restrained from providing counselling or services in the absence of parental or guardian consent.

More generally child protection regimes must take into account the vulnerability of young people to sexual abuse and sexual exploitation. Child protection legislation is needed which defines offences clearly, which sets out the responsibilities for mandatory reporting and establishes protocols for mandatory justice and social service responses, including the provision of emergency housing. Such a

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38 See e.g. account of a 15 year old Columbian girl tricked into coming to Trinidad to work as a prostitute, Nazma Muller, ‘From Bogota to a brothel in Trinidad’, Trinidad Express, 9 December 2007.
regime must equally prioritise the ending of impunity for child and young person sexual abuse and exploitation through strengthening detection, investigation and prosecution regimes.

12. Social Policy

Sex workers in the Caribbean operate outside of social safety nets because of criminalisation, relations of inequality as well as stigma and discrimination. Law reform predicated on human rights principles will to some extent address stigma and discrimination. However law reform alone will not cause the eradication of economic and gender-based vulnerabilities of sex workers, neither as the New Zealand study shows will stigma and discrimination be completely eliminated. A multi-sectoral response is needed for the social protection of persons engaged in sex work which emphasises health, social services, and economic opportunities. The underlying assumption of this framework is that regardless of the legal status of commercial sex work, persons engaged in sex work are entitled to security of the person, to the protection of the law, to equal and non-discriminatory access to reproductive and sexual health services, and to social policy support.

For those who wish to move out of sex work and in particular those who are involved because of economic need, a multi-sectoral policy framework should promote livelihood skills, income generation; micro-finance programmes; education and skills training; and empowerment, autonomy and self-protection.

Inclusive Policy Development

Legal and social policy reform which addresses sex work must be informed by evidence, best practices and by the voices and perspectives of sex workers. Participation and inclusion of those most vulnerable and negatively impacted by an exploitive system must be sought and respected as a core human rights principle in policy reform. Policy reform therefore ought to be driven by a consultative process informed by human rights principles. A range of persons must be part of the reform discussions. These include the following:

- **Sex Workers**: Sex workers should be an integral part of the process of defining legal and social policy.

- **Social development agencies including national machineries for gender/women; family services; welfare departments; health ministries.** Additionally, given the vulnerability to abuse and exploitation, police must work closely with social services.

- **Civil society organisations** providing crucial and sensitive service in the areas of HIV/AIDS and sexual and reproductive health for sex workers and organisations providing services to survivors of sexual and physical violence.

- **Research Organizations**: Ongoing region-wide research must be undertaken on gender and sexualities to inform policies and programmes regarding HIV/AIDS prevention and care.
13. Conclusion:

Responding to sex work is inherently controversial as it raises complex issues of morality, ethics, unequal gender and economic relations. Sifting through this controversy requires conceptual leadership as well as widespread evidence-informed consultation. Already there is a growing consensus on the need for a more pragmatic public health approach which emphasises the goal of reducing stigma and discrimination as key to ensuring access to reproductive and sexual health services. Public health interests do not conflict with human rights though they may with the collectively held religious and cultural values. The public health interest is that of containing and halting the epidemic. Studies show that when rights are protected through appropriate and non-discriminatory law reform and support services, a supportive environment is created which empowers those most at risk to really be able to exercise a larger range of protective choices.

In the context of sex work part of that supportive environment requires that the structural determinants and consequences of involvement in sex work (unequal gender and economic relations) ought to be at the forefront of the state response.

Addressing culture

Policy makers and in particular parliamentarians in the Caribbean in their leadership on reducing vulnerability are compelled to respond to culturally rooted biases against actions that would imply an acceptance of sex work. It is a difficult area of policy making and politics and one which will have to be worked through in a sustained series of public dialogues. These dialogues would allow for a better appreciation of the human rights violations experienced by vulnerable populations and how those violations not only contribute to the spread of HIV but also harm the fabric of the rule of law.

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