

RIGHTS NOT RESCUE

A Report on Female, Male, and
Trans Sex Workers' Human Rights
in Botswana, Namibia, and South Africa



OPEN SOCIETY INSTITUTE
Public Health Program

Rights Not Rescue:

A Report on Female, Male, and Trans Sex Workers' Human Rights in Botswana, Namibia, and South Africa

By Jayne Arnott and Anna-Louise Crago

June 2009

Open Society Initiative for Southern Africa
Sexual Health and Rights Project

 OPEN SOCIETY INSTITUTE

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ISBN: 978-1-891385-92-6

Editing: Ari Korpivaara, Sarah Miller-Davenport, Paul Silva

Design: Judit Kovács

Layout: Judit Kovács | Createch Ltd.

Cover photo: Anna-Louise Crago. Sex workers in Kasane, Botswana (2008).

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Public Health Program

The Open Society Institute's Public Health Program aims to build societies committed to inclusion, human rights, and justice, in which health-related laws, policies, and practices are evidence-based and reflect these values. The program works to advance the health and human rights of marginalized people by building the capacity of civil society leaders and organizations, and by advocating for greater accountability and transparency in health policy and practice. The Public Health Program engages in five core strategies to advance its mission and goals: grantmaking, capacity building, advocacy, strategic convening, and mobilizing and leveraging funding. The Public Health Program works in Central and Eastern Europe, Southern and Eastern Africa, Southeast Asia, and China.

Sexual Health and Rights Project

The Sexual Health and Rights Project (SHARP) is an initiative of the OSI Public Health Program that works to increase access to health care and advance the health-related rights of those who are marginalized because of their sexual practices, sexual orientation, or gender identity. This includes work with sex workers and sexual minorities, including gay, lesbian, bisexual, intersex, and transgender persons. SHARP works towards this mission by building the capacity of civil society leaders and groups to effectively address the health of these populations and advocating for accountability and a strong civil society role in the design and implementation of rights-based policies and practices that have the most impact on the health of sex workers and sexual minorities.

Open Society Initiative for Southern Africa

OSISA works to build and strengthen the values, practices, and institutions of an open society throughout Southern Africa. As a foundation, OSISA provides African leadership in the definition and development, within the specificities of Southern African realities, of the concept and ideals of an open society. In this connection, Southern Africa is deliberately conceived of by OSISA as a unitary geo-political formation with a common history and, potentially, a common destiny.

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Acknowledgments

OSI would like to thank:

- ▶ All the individuals who participated in the research process for giving their precious time and sharing so much rich and invaluable information.
- ▶ Jayne Arnott and Anna-Louise Crago, the authors of the report, for their unflagging humor, flexibility, and commitment to the project and promoting sex worker rights.
- ▶ Penelope Saunders, who provided invaluable editorial assistance and content guidance.
- ▶ The staff of organizations and networks that provided contacts to sex workers and to other groups working with sex workers, including:

South Africa: Impala Platinum Mine HIV/AIDS Programme, Reproductive Health and HIV Research Unit at University of the Witwatersrand, Sex Worker Education and Advocacy Taskforce (SWEAT), Sisonke, and the Women's Legal Centre;

Botswana: Botswana Network on Ethics Law and HIV/AIDS (BONELA), Matshele Community Development Association (MCDA), and Nkaikela Youth Group;

Namibia: Walvis Bay Multi-Purpose Centre, Stand Together Centre, The Rainbow Project, and the Legal Advice Centre.

- ▶ Tamar Ezer and Jonathan Cohen from the Law and Health Initiative of OSI's Public Health Program, who gave generously of their time and knowledge.
- ▶ Paul Silva, Erica Pelletreau, and the OSI Office of Communications for their editorial work and for using the publication process in an innovative way to give a voice to sex workers in the region.

Finally, we especially thank the sex workers who had the courage and strength to share their personal experiences in an effort to improve the situation for others. The names of study participants have been changed to protect identities for security reasons. We hope this measure will not be necessary in future reports.

List of Abbreviations and Acronyms

ART	Antiretroviral therapy
ARV	Antiretroviral
BONELA	Botswana Network on Ethics, Law and HIV/AIDS
GLBT	Gay, bisexual, lesbian, and/or transgender
HAART	Highly active antiretroviral therapy
HIV	Human immunodeficiency virus
HIV/AIDS	Human immunodeficiency virus /Acquired immune deficiency syndrome
MCDA	Matshelo Community Development Association
MSM	Men who have sex with men
NGO	Non-governmental organization
PEPFAR	President's Emergency Plan For Aids Relief
RHRU	Reproductive Health and HIV Research Unit
SALRC	South African Law Reform Commission
SWEAT	Sex Worker Education and Advocacy Taskforce
STI	Sexually transmitted infection
TRP	The Rainbow Project
UN	United Nations
UNAIDS	United Nations Program on HIV and AIDS
UNDP	United Nations Development Program
USAID	United States Agency for International Development
WHO	World Health Organization

Executive Summary and Key Recommendations

The criminalization of sex work in Botswana, Namibia, and South Africa leaves sex workers vulnerable to sexual and physical abuse, as well as extortion, from law enforcement officers such as police and border guards. Human rights violations and a lack of safe and supportive working conditions render sex workers particularly vulnerable to HIV. These are some of the findings of this report on the health and rights challenges confronted by female, male, and transgender sex workers in Botswana, Namibia, and South Africa. The study is based on interviews and focus groups with 89 adults who have chosen sex work as their primary occupation. They work throughout the region on streets and highways, at truck stops, in brothels and agencies, or near mines and migrant settlements. Interviews were also conducted with 11 nongovernmental organizations (NGOs) in the region that work with sex workers. In addition to documenting widespread human rights abuses against sex workers, the report describes innovative organizing tactics among sex workers to redress these rights violations. The report highlights opportunities for NGOs, governments, donors, and UN agencies to expand rights-based approaches to sex work that will ultimately improve the health and well-being of sex workers.

Sex work is presently illegal in these countries and the predominant attitude is that sex work is immoral and exploitative of women. The experiences of men and trans people who engage in sex work are rarely recognized or acknowledged. Namibia and Botswana prohibit same sex activity in ways that further criminalize male and trans sex workers. Little to no dialogue has occurred in regard to legal and policy reform related to sex work.

Currently most social interventions in the region aim to “rehabilitate” female sex workers and prevent HIV transmission between sex workers and clients. Evidence-based approaches that protect and promote the rights of sex workers are extremely rare and the few that exist are underresourced.

The police come at least five times a month and take our money and take all our condoms.

Davidean, Windhoek, Namibia

Sex workers reported routine police abuse including sexual violence and beatings. Police are also known to extort money and confiscate workers’ condoms. These acts were most often reported to occur in the context of police raids in brothels or on the street where sex workers were both lawfully or unlawfully arrested and detained. Migrant sex workers, particularly those from Zimbabwe, are often targeted with more severe violence from law enforcement officials. Migrant sex workers also reported having experienced threats and sexual violence from border guards. Male and trans sex workers have faced not only physical and sexual violence from police but also public taunting and humiliation for their sexual orientation or gender identity.

Repeated violence, extortion, and detention by law enforcement officers leave sex workers feeling constantly under threat. Such abuse severely compromises sex workers’ access to equal protection of the law and creates a climate of impunity that fosters further violence and discrimination against sex workers in the community-at-large.

Violence and discrimination against sex workers, police raids, and incarceration, and a lack of accessible and relevant information, evidence-based prevention tools, and treatment services compromise the ability of HIV-positive sex workers to protect their health and receive adequate care, treatment, and support. Migrant sex workers who are HIV-positive are particularly excluded from access to treatment and care due to xenophobia and other barriers. Trans sex workers seeking trans-specific health care and gay male sex workers seeking nonjudgmental health care are similarly neglected in most of the region.

If you don’t pay off the police, they take you to jail for some days and that is not the right place for a human being. You can’t take antiretroviral drugs or any medication you need.

Carol, Johannesburg, South Africa

Sex workers confront other health concerns. Women sex workers are significantly affected by a lack of access to comprehensive sexual and reproductive health services, particularly access to safe and legal abortion in Botswana and Namibia. Trans sex workers cannot access the kinds of services needed to address hormonal therapies and other trans-specific health care.

In addition to the discrimination sex workers face from police and health officials, sex workers also face discrimination in other spheres such as education, employment, and banking. In some cases, sex workers are excluded from the very communities in which they live and must cope with constant harassment.

The criminalization of sex work has precluded the enforcement and protection of sex workers' labor rights. The disregard for sex workers as workers has left many of those employed in brothels in South Africa and Namibia vulnerable to labor abuses such as withheld wages, arbitrary fines, restrictions on mobility, and confiscation of belongings including medication. Sex workers on the street or working in brothels and other agencies have no recourse if customers refuse to pay them.

Despite enormous challenges, sex workers in all three countries are organizing to protect their rights. In some cases this organizing has taken place formally—with the support of funding agencies or registered and established NGOs—and sex workers have pursued official channels for redress of violations. However, in every locale included in this report, male, female, and trans sex workers are organizing informally for improved living and working conditions and taking concerted individual and group action in support of their rights. Both forms of organizing are crucial. The widespread informal organizing of sex workers belies the image of sex workers as helpless victims. They are, in fact, powerful agents of change. The organizing efforts documented in this report present important opportunities to support sex workers in achieving what they have chosen as their priorities for action.

Our government says what we are doing is wrong and we should stop but we cannot stop because of poverty. You cannot stay without eating and without clothes. For some it is a shame, for me, no. It is my life, it is my business.

Alice, Francistown, Botswana

Our aim is to unite sex workers, to improve our living and working conditions, and to fight for equal access to rights.

Mission statement of Sisonke, a sex worker-led organization in South Africa

Key Recommendations

To ensure the protection of the health and human rights of sex workers, this report recommends the following.

To governments:

- ▶ Decriminalize sex work
- ▶ Invest in evidence-based and rights-based health initiatives for sex workers
- ▶ Support sex worker–led antidiscrimination trainings for police and health clinic staff
- ▶ Ensure that sex workers have access to police protection
- ▶ Hold accountable police who violate sex workers' human rights
- ▶ End police raids against sex workers

To civil society organizations:

- ▶ Advocate for the human rights of male, female, and trans sex workers
- ▶ Advocate for evidence-based programs that reduce HIV transmission and defend rights
- ▶ Support mechanisms for redress of human and labor rights violations
- ▶ Support sex worker–led programs and initiatives

To funders:

- ▶ Fund and support sex workers' collective organizing and organizations that promote sex workers' rights and health
- ▶ Support mainstream human rights groups and other NGOs to collaborate with sex worker groups on projects to document and confront violence by state and nonstate actors
- ▶ Support health and rights initiatives dealing with the specific realities faced by migrant sex workers of all genders and of male and trans sex workers

Methodology

Information gathered directly from sex workers provides the most accurate account of the realities of their daily lives. This information can also constitute the basis for developing strategies for the protection of sex workers' human rights. This study gave priority to gathering testimony from sex workers themselves about their experiences of human rights abuses and of their efforts to redress them.

The study deployed qualitative methodologies to produce a rich data set illustrating the complexities of the issues confronted by sex workers in Botswana, Namibia, and South Africa. Researchers held focus groups in order to engage respondents in joint discussion regarding their working conditions and experiences before moving into collecting more in-depth information related to health and rights. Semi-structured interviews allowed researchers to explore issues with people agreeing to one-on-one discussions. All participants were provided with a consent form that explained the research and the process, and outlined issues relating to participation, ethics, confidentiality, and anonymity.¹ The questionnaires and focus group guidelines that were used can be found in appendix one. Once the research was complete, the proposed findings and recommendations were presented to a focus group of study participants. Their suggestions helped to refine and prioritize the recommendations.

Fieldwork

Fieldwork was carried out in Botswana, Namibia, and South Africa over a period of four weeks between May and June 2008. Two additional interviews were carried out in November 2008. A total of 89 sex workers across the region were interviewed.³ The majority of those interviewed, over 87 percent, were women. Seven trans sex workers were interviewed in Namibia and South Africa. All of the trans sex workers interviewed identified as women in work environments.³ Four male sex workers were interviewed in South Africa.

Respondents were contacted primarily through organizations that were currently working with sex workers or had some contact with other organizations or projects that were working with sex workers in the region. Additionally, researchers used the “snowballing” or social networking technique in Botswana and Namibia whereby sex workers who were interviewed then assisted in connecting the researchers with others in their community. This allowed the researchers access to a wider range of opinions from sex workers largely unconnected to a particular organization or project. Sixteen sex workers unconnected to projects were contacted through snowballing techniques.

Researchers contacted sex workers from a diversity of areas including border areas, a mining community, a harbor, and towns and cities. The majority of women interviewed were street-based sex workers and worked at truck stops, mining communities, on the freeway, or within towns and cities. Researchers also contacted sex workers working in brothels, clubs, bars, and hotels where they also lived. The trans sex workers and male sex workers who were contacted worked on the streets, in brothels, and small agencies. A number of sex workers interviewed worked privately as escorts. Migrant sex workers were also interviewed. Almost all were women and most were Zimbabwean. Those who were not from Zimbabwe were from Botswana, Lesotho, and Swaziland.

Researchers conducted interviews with 11 NGOs across the three countries, facilitated two discussions with individuals working in the field, and gathered information from three others by email. No interviews with donors or government departments were conducted due to the time limitations and the scope of this assessment.

Limitations

It was essential to meet sex workers in environments in which they felt comfortable so that they could speak as candidly as possible. Consequently, interviews were conducted in settings such as the clubs and bars where sex workers congregate to work or relax. The majority of these locations were not conducive to structured interviewing and note taking, limiting the amount of information researchers could gather. For example, researchers

met with sex workers outdoors at night with limited light, on a bridge over the freeway in Windhoek, Namibia, in crowded and noisy hotel rooms in Hillbrow, South Africa, and in a club in Walvis Bay, Namibia.

Efforts to contact sex workers were primarily carried out with organizations already working in the field with sex workers. This proved to be challenging because very few organizations of this kind exist in the region. The majority of those that do exist engage in HIV prevention or skills training to help sex workers leave sex work. These organizations had had relatively limited opportunities to explore rights-based frameworks, tended to view sex work as problematic, and viewed people engaged in selling sex as in need of rehabilitation. A very small number of organizations provide rights-based services with sex workers in the region. Some of the sex workers who were contacted through organizations working in HIV prevention or rehabilitation-style programming engaged with the researchers in terms of the parameters of the particular project and its objectives in which they had been involved.

Language was a constraint at times, particularly in Botswana and Namibia. The researchers did not use external interpreters due to concerns about sex workers being reluctant to speak freely in formally interpreted conversations. Sex workers within the groups contacted assisted with interpretation. This may have in some instances reduced the accuracy and depth of responses from interviewees. In Namibia, the majority of sex workers interviewed were Afrikaans speaking and one researcher who spoke Afrikaans was able to interview in this language. However, given that it was a language she was not accustomed to speaking on a daily basis, it was a constraint, particularly in relation to terminology around sexual health.



Sex workers in Windhoek, Namibia supply each other with condoms.
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1. Regional Overview

Sex work is, illegal in Botswana, Namibia, and South Africa. The prevailing attitude, as espoused by government and NGO officials and in media commentary, in all three countries is that sex work is immoral and exploitative of women. The experiences of men and trans people⁴ who engage in sex work are rarely recognized, and in Namibia and Botswana sexual activity between same sex partners is expressly prohibited.

1.1 Socioeconomic Context

The three countries included in this study—Botswana, Namibia, and South Africa—share borders and are independent and stable democracies. Botswana gained independence in 1966, Namibia in 1990, and South Africa overturned apartheid in 1994. Each country’s constitution includes provisions that promote and protect the rights of citizens and prohibit discrimination. South Africa has the most progressive constitution, which includes the prohibition of discrimination based on sexual orientation.

Namibia is classified as a “lower middle-income” country, while South Africa and Botswana are “upper middle-income” countries.⁵ These categorizations belie the huge gaps between rich and poor in the region due to high levels of poverty and unemployment. The majority of the population in each country lives on or below the poverty line.

Social security provisions and social services are very limited in each country overall. This situation is exacerbated in rural areas because government support is often located

solely in urban centers. Basic services including housing, water, and electricity are often prohibitively expensive. In Namibia, for example, where 40 percent of the country's 2 million people currently live below the poverty line of \$1 a day, households pay approximately \$4 per month to the national water utility in order to be able to collect water during a four-hour period each day.⁶ Governments have developed policies to provide free education for the children of parents who cannot afford school fees. However, many schools do not adhere to these policies because they are underresourced or discriminate against poor parents when they apply for admission of their children.

The feminization of poverty is evident across the region with more and more women providing the sole family income and many raising children on their own. Poverty, high levels of unemployment, limited social security, and the cost of basic services, coupled with the costs of education, disproportionately affect women.

1.2 Migration

Migration, including internal movement and migration across national borders, has had a significant impact on the region. Women are increasingly represented in migrant populations, especially in areas where the mining industry (which primarily employs men) has declined in relative importance. Women are more likely to be engaged in the informal commerce that thrives in border regions, often working as vendors, street traders, or hawkers.⁷ Migration in the region has been particularly impacted by the political and economic collapse of Zimbabwe. Large numbers of Zimbabwean citizens have moved to neighboring Botswana, Namibia, and South Africa and are working in informal sectors including sex work.⁸ Governments' responses to this migration have been largely punitive. South Africa arrests and deports 250,000 Zimbabwean refugees each year.⁹ Officially South Africa provides migrants access to fee-based health care and free antiretroviral therapy for HIV, but the reality is that undocumented migrants are, for the most part, unable to access basic social and health services.¹⁰ Human rights organizations have argued that Zimbabweans who have been forced to flee their country are not voluntary economic migrants, even if economic destitution is one of multiple reasons for crossing into neighboring countries, and that they should be treated as refugees and asylum seekers.¹¹

People who are gay, lesbian, bisexual, and/or trans (GLBT) may have added incentive to migrate from neighboring countries to South Africa. South Africa has large, visible, and well-organized sexual and gender minority communities in many of its largest cities. Male and trans sex workers may be attracted to the relatively lucrative sex work opportunities that exist in the country. Many trans people travel to South Africa to access health care because of the wider range of services available for trans-specific health issues.¹² Significantly,

South Africa is the only country in the region that bans discrimination based on sexual orientation.¹³ This contrasts strikingly to the criminalization and state persecution faced by sexual and gender minorities in Zimbabwe, Botswana, and Namibia.¹⁴

Irrespective of gender, many migrants must contend with xenophobia. Xenophobic attacks and violence escalated in South Africa in May 2008, the period in which this research was conducted. More than 60 people were killed across the country in anti-immigrant violence that started in Johannesburg.¹⁵ Civil society groups have been highly critical of the South African government's lack of leadership and management of the resulting human rights abuses, displacement, and reintegration of those affected.

1.3 Health Care Concerns

Botswana, Namibia, and South Africa are confronting numerous health care challenges such as maternal mortality, infant mortality, and morbidity and mortality due to infectious diseases such as malaria, tuberculosis, and HIV.¹⁶ The HIV epidemic has overwhelmed health care systems in the region.¹⁷ People living with HIV include 24 percent of adults in Botswana, 15 percent of adults in Namibia, and 18 percent of adults in South Africa.¹⁸ Tuberculosis coinfections are the leading cause of death for people with HIV/AIDS.¹⁹ Namibia, for example, has the highest rate of tuberculosis in the world—a coinfection rate of 60 percent.

Throughout the region public health services are fragmented and difficult to access. Treatment for sexually transmitted infections (STIs), testing for HIV, treatment for HIV and AIDS, family planning, and pregnancy are often located in separate clinics. People seeking a combination of sexual and reproductive health care services in Botswana, Namibia, and South Africa are required to make multiple visits to different locations placing stress on their finances and health. The integration of services treating HIV and other sexual and reproductive health concerns is a crucial need.

HIV and AIDS

To date, governments have targeted the general population for HIV and AIDS prevention, treatment, and care services. Access to treatment, such as antiretroviral therapy, is an essential part of governments' response to the pandemic, but the availability of treatments has been very limited in the region until relatively recently.²⁰ It is important to note that the South African government was very slow to react to the epidemic in part because of "HIV denialism," a belief that HIV is not the cause of AIDS.²¹ This denialist era, however, seemed

to end when Barbara Hogan, an outspoken advocate for HIV prevention and treatment, was appointed health minister in 2008.

The most recent AIDS plans from each country recognize the need for targeted interventions and make specific, if in some instances limited, reference to sex workers. Botswana's current three-year operational plan for HIV prevention aims to increase coverage of STI management and treatment for "sex workers and their partners" by 50 percent, increase condom use by sex workers and their clients by 30 percent, and increase access of sex workers and their partners to STI prevention and other services by 50 percent.²² The plan also recommends the rapid extension of peer education programs, including programs run by civil society organizations, as a cost effective way of addressing the epidemic among sex workers and clients. Namibia's national strategic plan on HIV/AIDS for 2004–2009 identifies sex workers as a "vulnerable population" and recommends the development of information, education, and communication materials for sex workers. The plan also calls for the provision of male and female condoms, voluntary counseling and testing, and postexposure prophylaxis (a preventive course of ARV drugs administered to those believed to have been exposed to HIV).²³ In both countries' plans, however, the term "sex workers" generally refers to female sex workers. Male and trans sex workers, much like same-sex practicing people in general, are unserved or underserved by available HIV interventions.²⁴

South Africa's approach to sex work and HIV and AIDS is, at least on paper, the most developed of all three countries. The country's 2007 to 2011 HIV/AIDS and STI strategic plan aims to reduce incidence rates among high-risk and other marginalized groups such as "commercial sex workers," men who have sex with men, economic migrants, and intravenous drug users.²⁵ The plan outlines a "prevention package for sex workers and their clients" that includes access to male and female condoms, promotion of voluntary counseling and testing, STI symptom recognition, and information on gender rights. The plan acknowledges sex workers' right to equal access to prevention, treatment, and support services and that "high risk groups, such as sex workers and drug users, face barriers to accessing HIV prevention and treatment services, because their activity is unlawful."²⁶ Significantly, the South African plan recognizes that criminalization of sex work undermines workers ability to access HIV-related services and recommends the decriminalization of sex work. The plan also includes a commitment to harm reduction measures for drug users and calls for the finalization of the "Prevention of and Treatment for Substance Abuse" bill that would guide measures for this group.

Other Sexual and Reproductive Health Services

Sexual and reproductive health services in the three countries are underresourced and limited. Some services are not available at all. Abortion is illegal in Botswana²⁷ and Namibia.²⁸ No services are available for trans people in Namibia and Botswana that could allow them to access hormonal treatments, gender reassignment surgery, or to address other health needs specific to this group. Public health services that target men who have sex with men (MSM) are also not available in Botswana and Namibia.²⁹ The existence of appropriate and nondiscriminatory services for GLBT people is an essential element to improving the sexual and reproductive health of these groups. One study in Botswana found, for example, that less than 15 percent of GLBT respondents shared information about their sexual orientation with their doctors.³⁰ Services that are provided for free in Namibia and Botswana, such as prenatal and childbirth services, family planning, postabortion services, infertility services, and treatment for STIs, do not reach all the population and are limited.³¹ Essential medications, for example, are often not available and staff may not be sufficiently trained in key issues.

South Africa has taken significant steps to improve its approach to sexual and reproductive health in the postapartheid era.³² Legislative and policy advances have occurred in key areas of reproductive and sexual health, including access to contraception, abortion, maternal health, cancer treatments, and services to address violence against women. In 1996, South Africa adopted the Choice on Termination of Pregnancy Act that provides for the provision of abortion services. In 1998 South Africa developed a new population policy discarding the country's old approach to contraceptive provision that had essentially been a heavy-handed population control device for people of color and replaced it with a model prioritizing the need for both women and men to make informed reproductive decisions. South Africa provides a variety of services, such as screening for STIs, for men who have sex with men.³³ While no state hospitals currently perform gender reassignment surgeries, a number of psychologists, general practitioners, and endocrinologists are available to provide trans people with hormonal treatments and breast implants.³⁴ Even though health policy in South Africa is significantly better than other countries in the region, many of the services are limited. One study found, for example, that many primary health care clinics did not provide cervical cancer screening, emergency contraception, or condoms, even though these were considered essential sexual and reproductive health components.³⁵

1.4 Legal and Policy Frameworks

Sex work is regulated under several national and municipal laws and policies. Municipal regulations against loitering are most frequently used to arrest sex workers. National laws against soliciting, brothel keeping, and living on the earnings of sex workers reinforce the illegality of sex work by criminalizing activities surrounding sexual commerce. Laws in Botswana and Namibia that prohibit homosexual acts affect gay and trans sex workers and provide the police with additional rationale to abuse, harass, and arrest them. Immigration laws are used to arrest and deport immigrant sex workers either in the context of antiprostitution raids or in anti-immigration raids.

South Africa

Sex work legislation

Sex work is illegal in South Africa under the Sexual Offences Act of 1957 that criminalizes soliciting, brothel keeping, and living off the earnings of a sex worker. In 1988, the Sexual Offences Act was amended to criminalize persons who repeatedly sell sex for compensation or “reward.”

After South African independence in 1994, the South African Law Reform Commission (SALRC) was instructed by the government to review the Sexual Offences Act. Adult sex work was designated as a subject area for review. In 2002, the commission published an issue paper³⁶ on sex work that presented legislative frameworks, such as criminalization, legalization, and decriminalization that could be used to address sex work in South Africa. This issue paper was followed by a discussion paper issued in May 2009, in aiming to consider the need for law reform in relation to adult prostitution. A forthcoming report will contain the final recommendations of the commission and will be accompanied by legislative proposals pertaining to adult prostitution.

Other sections of the Sexual Offences Act have been changed. In 2007, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, repealed the common law offense of rape and replaced it with a statutory offense applicable to all forms of sexual penetration without consent, irrespective of gender. This act also contains interim provisions related to trafficking in persons for sexual purposes and added a provision that criminalizes the clients of sex workers.³⁷

Municipal by-laws

Even though sex work is prohibited by national legislation, police find it extremely difficult to secure convictions under the Sexual Offences Act. Municipal by-laws are utilized

to arrest, fine, and prosecute sex workers working on the street and in public throughout South Africa. By-laws differ from municipality to municipality and across provinces. Many municipalities have adopted loitering by-laws that make specific reference to sex work and facilitate arrest of street workers.³⁸ Police also use by-laws regarding loitering, public indecency, and causing a disturbance to detain and arrest street workers. Under South African law, police may detain a suspect for up to up to 48 hours without filing an official charge.

Trafficking legislation

In 2004, SALRC fast-tracked an investigation into the issue of trafficking in persons. In 2004, South Africa ratified both the United Nations Convention Against Transnational Organized Crime and the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, particularly Women and Children (The Palermo Protocol).³⁹ The latter places an obligation on participating countries to adopt both legislative and other measures that may be necessary to combat trafficking. Trafficking is defined broadly in the protocol to include forced labor, slavery, and involuntary servitude that may occur in any form of work or industry. During its investigation of the trafficking issue, however, SALRC focused primarily on abuses that occur in sex work and confused the issue by suggesting that all sex work is a form of trafficking.

In 2004, SALRC released an issue paper about trafficking⁴⁰ and by 2006 the commission had developed a discussion paper⁴¹ that included draft legislation. Both papers emphasized trafficking into sex work without fully elaborating issues of trafficking into other industries such as mining work, agriculture, or domestic labor. The issue paper was emotive and included sensationalist materials drawn from anecdotal reports and media articles. In the discussion paper, SALRC equated sex work and trafficking, saying that they were both forms of “gender-based domination,” that the distinction between forced and voluntary prostitution was “meaningless,” and that “eliminat[ing] the demand” for sex work was an essential element to ending trafficking.⁴² There is no evidence that criminalizing the purchase of sex reduces trafficking in persons. Instead, this approach ignores the trafficking abuses that take place in a wide range of other industries. One study, conducted over a two-year period in Cape Town, found little evidence of trafficking in persons for the purposes of prostitution and a significant need for labor rights and protections for nontrafficked sex workers.⁴³

Other pertinent legislation

South Africa has very progressive labor legislation and mediation mechanisms.⁴⁴ These protections cover all people categorized as “employees” in South Africa, including documented and undocumented migrant workers.⁴⁵ A person is considered an employee if, for example, this person’s work or hours are subject to the control or direction of another

person. Labor legislation in South Africa thus presents opportunities to secure labor rights for sex workers working under management in brothels (more information in the sidebar “South Africa: challenge to labor laws”).

Sex between adults of the same gender is legal in South Africa, and in 2006 marriage rights were extended to same-sex couples.⁴⁶ However, high levels of stigma and discrimination remain and there have been ongoing reports of violence against GLBT communities, particularly lesbians, in South Africa.

South Africa: Challenge to Labor Laws

In 2006, a sex worker approached the Sex Worker Education and Advocacy Taskforce (SWEAT), a nonprofit organization in Cape Town, for assistance in regard to her alleged unfair dismissal from a brothel. With the support of the Women’s Legal Centre her complaint was taken to the Commission for Conciliation, Mediation and Arbitration (CCMA), an independent dispute resolution body established under the South African Labour Relations Act.

Her case was referred for arbitration. However, the presiding commissioner ruled that the CCMA did not have jurisdiction over the matter because, in his opinion, the work under consideration was illegal, rendering any contract of employment invalid.

The worker then presented her case to the South African Labour Court in February 2008. The key arguments in her case were that a) she was an employee according to the definitions of the Labour Relations Act and previous judgments, and b) that the definition of an employee in South Africa is not dependent on whether or not the employment relationship is underpinned by a valid and enforceable contract at common law. She therefore should have had the right to approach the CCMA for assistance regarding her unfair dismissal. The Labour Court has agreed that the sex worker should be considered an employee but declined to stipulate a remedy such as compensation. The case was referred to the Labour Appeals Court and, as of May 2009, is awaiting a court date.

If this appeal is successful, it would promote the status of sex workers as workers deserving of labor rights and would be a first step toward decriminalization.

*Information about this case was provided by Jennifer Williams,
director of the Women’s Legal Centre*

“Illegal foreigners,” or undocumented migrants in South Africa, can be arrested, detained, and deported under the Immigration Act.⁴⁷ Both documented and undocumented migrants experience discrimination and violence due to xenophobic attitudes held by many South Africans. The Immigration Act mandates that immigration searches and raids must be carried out “with strict regard to decency and order” and must respect migrants’ human rights. However, migrants are frequently abused by the authorities, and are unlawfully detained and deported in a manner that violates their human rights and South Africa’s own laws.⁴⁸

Laws and policies have been developed in South Africa to address violence against women and rape. Recently the definition of rape has been broadened to recognize male and spousal rape.⁴⁹ Yet, extremely high levels of violence against women continue. In 2004 and 2005, 55,000 women reported being raped and, given the underreporting of rape in South Africa, the actual number of assaults that occurred in that period has been estimated to be significantly higher.⁵⁰ Gay men and trans also suffer significant levels of sexual violence. One study found that 20 percent of gay and bisexual teenage males have been raped or sexually abused.⁵¹

Namibia

Sex work legislation

Namibia’s sex work legislation dates back to when the country was under South African rule.⁵² The Combating of Immoral Practices Act (1980) is therefore similar to South African legislation. Selling or buying sex per se is not illegal. However, sex workers are in fact criminalized by sections of the act that outlaw soliciting for “immoral purposes” in a public place, exhibiting oneself in an indecent dress or manner in public view, brothel keeping, procuring a woman to become a “prostitute or an inmate of a brothel,” living on the earnings of a sex worker, and facilitating the act of prostitution by providing information or any other assistance.⁵³

On paper the primary aims of the law appear to be the targeting of third parties (such as brothel owners) and prevention of sex work in public space. Many of the sections pertaining to third parties are framed as “protective” legislation aimed at preventing women from being enticed into, or procured for, sex work. In practice, some sections of the law concerning third parties have been used as punitive instruments to discipline sex workers. For example, a single sex worker working in her own home can be found guilty of brothel keeping.⁵⁴ Furthermore, law enforcement targets sex workers in regard to solicitation. Clients of sex workers are almost never charged. Walvis Bay, a deepwater harbor and tourism center on the Namibian coast, is an exception to the overall character of the implementa-

tion of Namibia's antiprostitution policies. Brothels there are tolerated by law enforcement officers and the sex workers who work in them are rarely arrested.

The Combating of Immoral Practices Act predates the Namibian Constitution and has been challenged on the basis of constitutionality.⁵⁵ In one challenge filed in 2000, five people charged with brothel keeping and living "on the earnings of prostitution" argued that the act was unconstitutional and violated their right to equality, privacy, freedom of association, occupation, business, and presumption of innocence.⁵⁶ The High Court ruled that some sections of the act were overly broad, such as a portion of the definition of a brothel that included places people "visit for the purpose of having unlawful carnal intercourse," and unconstitutional. However, for all intents and purposes, the core elements of the Combating of Immoral Practices Act that prohibit brothel keeping and receiving profit from prostitution were upheld by the High Court. The court also dismissed sex workers' claim to workers' rights, noting that the authors of the Constitution "never contemplated or intended to create a constitutional right to be or become a professional pedophile, assassin, kidnapper or drug lord."⁵⁷

Municipal by-laws

In some areas of Namibia, municipal regulations against "loitering" and "soliciting" are used to arrest sex workers. For example in Windhoek, the capital of Namibia, municipal street and traffic regulations prohibit loitering in areas around schools, churches, and hospitals, the congregation of people in public space if it creates "traffic" or obstructs the "free movement of persons," and solicitation for the purpose of prostitution. The Legal Assistance Centre, an organization providing free or low-cost legal services to Namibians in order to protect their human rights, reported that a number of people accessing the organization's services have been charged with either loitering or soliciting under Windhoek's municipal regulations.⁵⁸

Other pertinent legislation

The Prevention of Organized Crime Act of 2004 criminalizes trafficking in persons and carries sentences of up to 50 years' imprisonment or fines of up to \$140,000. However, it has yet to be put into practice. To date no human trafficking case has been prosecuted.⁵⁹

In 2000, Namibia updated laws against rape to recognize that rape can be committed by men or women, and against men or women.⁶⁰

The Immigration Control Act of 1993 bars entry to anyone who is "deemed by the Minister on economic grounds or on account of standard or habits of life to be unsuited to the requirements of Namibia" as well as people who are carriers of a contagious disease.⁶¹ In 1994, the definition of "contagious disease" was amended to include the "AIDS virus" prohibiting people who are HIV-positive from entering the country.⁶²

Antigay discrimination is prohibited by the Namibian labor code, but nowhere else in the country's jurisprudence.⁶³ In the last 10 years, homophobic government officials have called for gays and lesbians to be "eliminated" from Namibia and have suggested that sexual and gender minorities are responsible for the spread of HIV in the country.⁶⁴ Sex between same-sex partners is criminalized by the common law offense of committing "an unnatural sex crime."⁶⁵ Law and attitudes of officials have had a significant negative impact on male and trans sex workers who are often publicly visible as sexual and gender minorities. Furthermore, the law has been used as justification for forbidding the distribution of condoms in prison. This policy jeopardizes the health of prisoners, including female, male, and trans inmates who may trade sex with wardens or engage in sexual activity with other inmates.⁶⁶

Botswana

Sex work legislation

Legislation in Botswana, much like in South Africa and Namibia, does not criminalize the selling or buying of sexual services per se. Similarly, sex work is in effect criminalized by provisions that prohibit a wide range of activities associated with the act of prostitution. The Botswana penal code criminalizes solicitation and knowingly living on the earnings of prostitution.⁶⁷ The law also specifies that "in the case of a second or subsequent conviction under this section the court may, in addition to any term of imprisonment awarded, sentence the offender to corporal punishment."⁶⁸ The penal code criminalizes procuring a person for prostitution, detention of someone against his/her will in a brothel, brothel keeping, and living on the earnings of a prostitute.⁶⁹ Brothel keeping is defined very broadly and even criminalizes landlords who knowingly rent premises used as brothels.

Restrictions against loitering are included in the Botswana penal code, with direct reference to sex workers. Section 179 A criminalizes "idle and disorderly persons," including the "common prostitute, [who] behaves in a disorderly or indecent manner" and any person who "without lawful excuse [engages in an] indecent act" or "solicits for immoral purposes."

Botswanan police and prosecutors have found it difficult to enforce the sections of the penal code that criminalize solicitation and "living on the earnings" of prostitution. Between 1998, when this legislation was introduced, and 2006, no one has been convicted for such prostitution-related offenses. Prosecutors believe that in order to successfully convict sex workers under the legislation police would have to "catch sex workers in the act" or convince a client to testify against a worker.⁷⁰

As a result, police arrest sex workers on charges of idling for immoral purposes or public indecency.⁷¹ Sex workers interviewed for this study reported that they were usually charged with and fined for public indecency. Attorneys in Botswana acknowledged that sex workers will often admit to charges, even if they did not actually commit the offense, and pay a fine in order to be able to return to work as soon as possible.⁷² Clients of sex workers are almost never arrested, charged, or fined. The attorney general of Botswana, Susan Mangori, has explained that police generally do not press charges against sex workers' clients because they could only be apprehended when they are in their vehicles and, therefore, are not "idling" or standing in a public space. "Men just pick up the women and drive away," Mangori commented. "Ordinarily the police would target the merchant and if the service provider is removed then the trade is stopped."⁷³

Customary courts deal with a large volume of cases in Botswana. Defendants do not have legal counsel and rules of evidence are not uniform. Traditional leaders serve as judges. In 2006, a Botswanan judge sentenced 10 Zimbabwean sex workers to a year in jail for prostitution, despite the fact that prostitution in and of itself (the selling or buying of sexual services) is not a crime under the penal code.⁷⁴

Other pertinent legislation

Botswana's Immigration Act prohibits "any prostitute, or any person, male or female, who lives or has lived on ... the earnings of prostitution" from entering the country.⁷⁵

Botswana's laws prohibiting rape are gender neutral.⁷⁶

Botswana does not have laws specifically against trafficking in persons. However, existing laws that prohibit abduction, kidnapping, slave trading, and forced labor may be used to prosecute such crimes. According to the 2008 *United States Trafficking in Persons Report* there were no prosecutions or convictions for human trafficking in 2007 in Botswana and no victims of trafficking have yet been officially identified.⁷⁷

Botswanan law criminalizes sex between same-sex male partners as "carnal knowledge ... against the order of nature" and "act[s] of gross indecency."⁷⁸ These statutes have resulted in repercussions for male and trans sex workers similar to those in Namibia. Additionally, in 2007 the government in Botswana denied a registration request from the NGO Lesbians, Gays and Bisexuals of Botswana because the organization may be "unlawful."⁷⁹ The Botswana Network on Ethics, Law and HIV/AIDS (BONELA) is currently challenging this decision.

What Does Sex Work Look Like in Botswana, Namibia, and South Africa?

The term **sex work** is used in this report to refer to varied forms of sexual commerce engaged in by adults. Some forms of sex work are more informal and occasional; others are more regular and organized. This research focused primarily on the issues confronted by people who engage in the latter. The following descriptions of different work places in the research area are drawn from the researchers' observations augmented by information provided by sex workers during interviews.

Large-scale brothels

Even though sex work is criminalized in South Africa, large-scale brothels have been established in some locations such as Johannesburg. These venues operate under the guise of hotels renting rooms to consenting adults. The brothels can house hundreds of women who live alone or in pairs in upstairs rooms where they receive clients and pay daily rent. Usually a bar is located downstairs where workers meet clients.

Brothels differ in character. Sex workers may be able to charge more if the brothel is considered high quality offering safe and clean work spaces. Generally, high quality brothels are reputed to have a larger racial diversity of workers and customers. The brothels the researchers visited in the Hillbrow area of Johannesburg employed almost entirely black women. One brothel visited employed a mix of South African and Zimbabwean women.

Brothels operate in a legal grey zone. They are "tolerated" in that they are not shut down by local authorities but the venues are regularly raided by the police. Sex workers bear the brunt of raids. They may be arrested and lose income when detained. Brothel owners are rarely arrested. Owners expect workers to pay their daily rent even if workers have been arrested or detained.

Brothels are not legally recognized as workplaces and thus do not adhere to workplace health and safety standards. Sex workers are usually free to negotiate condom use, price, or services offered on their own terms. Brothel workers have also organized for collective action on many fronts. Security and management may support or attempt to thwart workers' efforts to secure good conditions or prices. Owners impose a complex system of rules and regulations governing sex workers' interactions with each other, the amount of time they can spend with clients, when they can leave the venue, and when they can have visitors. Workers who violate the rules pay steep fines.

Smaller brothels and agencies

The researchers also visited smaller brothels in Walvis Bay, Namibia. Each of these brothels may house up to 20 sex workers who solicit clients in the brothel bar or disco and bring them back to their rooms. The brothel bars are also frequented by other sex workers—including trans women, male sex workers, and on rare occasions, women with female clients and males with female clients—who do not live in the adjoining rooms.

These venues differ in many regards from the larger brothels of Johannesburg. Most of the workers are of mixed race and the client base is a mix of local men and many foreign sailors. Sex workers derive much of their income from longer-term “special” or “regular” clients who may also become boyfriends for a time. Such arrangements provide financial security and certain protections but may also, like most intimate relationships, make condom negotiations more difficult or make seeing other clients a complicated endeavor.

The police almost never raid these venues due to an informal policy of tolerance. In general, Namibian sex workers consider these brothels ideal sex work venues for women, trans women, and gay men. Workers in Walvis Bay brothels earn a relatively high income and the environment helps foster worker solidarity .

In South Africa, small indoor brothels not linked to bars or nightclubs are called agencies. Researchers visited agencies in Cape Town that employed women, and one that employed both women and men. Some agencies in Cape Town obtain business licenses and operate under the guise of massage parlors or escort services. Others operate in residential or mixed residential/business areas without licenses. These types of premises rarely attract raids. Police react only when they receive community complaints.

Each agency houses approximately 10 workers. Sex workers, as well as brothel owners, either live on the premises or come in to work. Usually clients come to the agency although some workers may also do out-calls. Rules, regulations, prices, and conditions vary. In some places, work schedules are very demanding and fines for violation of agency rules are draconian. Other places are more easygoing. Many agencies support sex workers’ ability to enforce health and safety standards by publicizing that services are “safe,” informing clients that they should engage in safe sex, and providing adequate lube and condoms. Some agencies require evidence from workers that they are regularly tested for HIV.

Private apartments

Many sex workers in South Africa work independently from private apartments and therefore avoid rules imposed by agency owners. However, they may face greater isolation and safety concerns.

Shebeens

Local bars in the region are called *shebeens*. Sex workers may use these venues to pick up customers. Alcohol may facilitate the social interactions leading to a transaction. On the other hand, alcohol may make negotiations more difficult and transactions less safe. Bar owners sometimes sell or provide condoms to sex workers and their clients.

Street, highway, and veld

In many urban and rural areas including mining towns, sex workers pick up clients on the street. Researchers interviewed workers operating on large streets or along highways in Johannesburg and Cape Town in South Africa, Windhoek in Namibia, and Gaborone, Kasane, and Francistown in Botswana. Some take their clients to nearby hotels, while others accompany their clients, on foot or in their vehicles, to sheltered locations, *veld* (open spaces of land), or sex workers' homes.

Sex workers in public spaces face frequent arrest and harassment by the police and may be at greater risk of violence. Some sex workers reduce this risk by arranging security or by watching out for each other. Sex workers who bring clients home to rooms in shacks, houses, or rooming hotels may rely on neighbors for additional security. At times, however, neighbors may also be a potential threat.

Border areas

Some workers interviewed worked on highways and at truck stops near the towns of Kasane and Kazungula on the Botswana-Zambia-Zimbabwe border and at Francistown on the Botswana-Zimbabwe border. Kasane and Kazungula are also very close to game parks frequented by tourists. Sex workers in these areas meet clients on the streets, bars, *shebeens*, and on rare occasions at the nearby tourist lodges.

Hotels, lodges, and upscale clubs

Some workers may pick up clients in upscale hotels in large cities and tourist destinations. Generally speaking, well-dressed, discreet sex workers, both male and female, are tolerated and considered a boon to business. However, in some instances sex workers are asked to leave the premises. On rare occasions trans sex workers also work in these locations.



Activists demonstrate for sex workers' rights during an international women's conference in Cape Town, South Africa. © Open Society Institute 2008

2. Human Rights

Sex workers, irrespective of whether or not their work is considered illegal, are entitled to the full range of human rights protections guaranteed by international agreements and national laws. This research found that the governments of Botswana, Namibia, and South Africa have failed to protect sex workers from violations of their fundamental human rights and have not created conditions in which sex workers can live freely and enjoy their human rights. Representatives of the state, such as police and border guards, routinely violate sex workers' human rights. Sex workers have little or no recourse. They cannot call on police protection or legal remedies when they are attacked, harassed, robbed, sexually assaulted, and subjected to other forms of violence. Governments have failed to address the discriminatory attitudes that lead many in society to believe that sex workers are not deserving of safe working conditions, social services, and rights. Furthermore, sex workers do not have access to the kinds of services they need, such as reproductive and sexual health care, and are often discriminated against when they attempt to access social support networks. Sex workers cannot enjoy safe and healthy working conditions because current law and policy approaches in the three countries undermine workers' safety.

Botswana, Namibia, and South Africa have ratified several international human rights instruments that have direct bearing on sex workers' human rights. These are: the International Covenant on Civil and Political Rights (ICCPR);⁸⁰ the African Charter on Human and Peoples' Rights ("African Charter");⁸¹ the Convention on the Elimination of All Forms of Discrimination Against Women;⁸² the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁸³ and the International Convention on the Elimination of All Forms of Racial Discrimination.⁸⁴ Namibia and South Africa

have signed the International Covenant on Economic, Social and Cultural Rights,⁸⁵ but Botswana has yet to do so.

These treaties advocate for the protection of rights that have specific reference to situations confronted by sex workers. These include the right to equal protection of the law; freedom from arbitrary arrest and detention; freedom from torture, cruel, inhuman, and degrading treatment; the right to information; freedom of movement; the right to enjoy just and favorable conditions of work; the right to organize; the right to adequate standard of living; equal access to public services, including health care; and the right to be free from discrimination. Many of these rights are also included in the constitutions of Botswana, Namibia, and South Africa.

2.1 Violence and Abuse

Police Violence

In all three countries, researchers found extensive evidence of police abuse toward sex workers, including sexual violence and beatings.

Sex workers are beaten by the police and in some cases left permanently injured by these assaults. “The police have beaten me four times. They hit my friend with their car. Her head was hurt and she isn’t able to talk anymore,” said Salinde, a street sex worker, during an interview with researchers in Windhoek, Namibia.

Violence is often associated with brothel raids or street sweeps in which sex workers are both lawfully or unlawfully arrested and detained.⁸⁶ In South Africa, there were reports of police using rubber bullets and spraying sex workers’ genitals with pepper-spray. “On the street, the police put pepper spray guns on our private parts on those who wear mini-skirts. On Friday, Saturday, and Sunday, they come and arrest all of us. They hit and beat and spray us, every week,” explained Zanele, a Johannesburg-based street sex worker.

Organizations working with sex workers have documented police violence against sex workers. For example, staff of the Reproductive Health and HIV Research Unit (RHRU), a South African NGO providing an outreach service and mobile sexual health clinics to sex workers in Johannesburg, detailed an incident in which police fired live ammunition at a sex worker outside of a brothel.⁸⁷

Many of the sex workers interviewed for this report said that they had been raped and sexually assaulted by police officers. Pinki, who works near the mines and on the street in Rustenburg, South Africa, described how police sexually assaulted her and others. “The police come to your shack. They take your money and sleep with you without

condoms. It is a rape because they force us. We are scared to report the rape because sex workers are illegal. We are too scared to go to court.”

Trans sex workers also reported having been raped by police. According to Amor, a trans sex worker from Windhoek, Namibia, “The police arrest us, beat us up and take advantage by raping us. But you can’t do anything against it. They say, ‘You are a sex worker—what were you doing?’ I saw it happen to several of my sex worker friends: ladies, moffis⁸⁸ and lesbians.”

In addition to forcing sex workers to have unsafe sex with them, police officers may also confiscate or destroy sex workers’ condoms, thus undermining workers’ ability to protect their health. “The police will take away your condoms,” reported Martin, a trans sex worker from Windhoek, Namibia. “They say [we] don’t deserve to be fucked with condoms.”

Every weekend, the police come. They kick the doors of our rooms in, wake us up and take us to the #4 police station. We try and hide on the roof if we hear them. Sometimes they shoot rubber bullets at us. The police usually beat us. Oh, and they like the [pepper] spray gun. If we are working in the bar when they come, they switch off the jukebox, they say “Sleep down, sleep down.” If you do not lie down, they spray you. They hit. Then they take you. Never the customers, just us.

—Babalwa, Johannesburg

Unlawful Arrest and Extortion

Police unlawfully arrest sex workers and use arrest as a means to extort money from them. In street settings police may invoke regulations about loitering or public conduct to detain sex workers. “When the girls are arrested, the police want us to pay 300 rand⁸⁹ to let us free. They say it is a fine for loitering,” reported Zanele, a street sex worker in Johannesburg. “But they refuse to give us an official receipt for our money or a paper that says we were arrested for loitering. Once we pay, there is no record of the charges, so we can’t go to court.” Sex workers in brothels and other indoor locations may also be arrested for “loitering.”

The amounts of money police take from sex workers constitute a significant portion of the workers’ income. “The police steal our money all the time. It makes it hard for us to pay our rent and our basic expenses,” explained Wendy, a worker in a large-scale brothel in Johannesburg, South Africa. The constant extortion of sex workers’ earnings by police further compromises workers’ health and safety by robbing them of the means to take care of their basic well-being.

Sex workers who are unable to pay police are detained for longer periods. According to Peccer, a Zimbabwean working at truck stops along the Botswana-Zambia border, “You have to pay the police ‘fines’ of between 300 and 1,000 pula.⁹⁰ Sometimes, there is no money—then you must be very careful of the police. If they arrest you, they will keep you in jail.” Failure to pay extortion money to the police influences conditions of incarceration

In the brothels, the police run in and run upstairs to where the girls live. [The police] steal and steal. They know sex workers cannot have bank accounts because you need a pay slip to open one, so they go through our things and steal all our money, all our savings. Then they arrest sex workers for loitering ... but [the workers] pay rent to live in those rooms! Now tell me what kind of loitering is that! When they load the girls in the police van, instead of counting them one, two, three, four, they count the sex workers by how much money they will take from us—300, 600, 900, 1200 [rand].

—Carol, Johannesburg

and even time spent in jail. Priscilla, a street-based sex worker from Windhoek, Namibia, spent several months in jail for failure to pay a fine. “[The police] arrested me again in January and kept me in jail until March,” she said. “They had no one to call who could pay 300 Namibian dollars⁹¹ to get me out. So they kept me that whole time, with just [a little] porridge and two slices of bread a day.”

Systems of extortion are often enforced with violence and sex workers may attempt to protect themselves by fleeing into situations that can prove to be equally detrimental. “Every day, the police come and attack us. You have to give 50 pula to be free or they will take you to jail. But if you have no money when they catch you, they will abuse you,” said Rashida, who worked at truck stops on the Botswana-Zambia border. “So, you have to try and hide by running into one of the trucks waiting at the weigh-station, but then sometimes if you have bad luck, the trucker will take advantage of you.”

Extortion seems to be the most important factor motivating unlawful arrest, but from time to time police use their power for other reasons. Police may unlawfully detain sex workers in order to perpetrate sexual violence. “The [police] arrest us and take us to their homes and rape us there,” said Priscilla. “Then, they release [us] on bail.” Sex workers in Johannesburg, South Africa, Windhoek, Namibia, and Francistown, Botswana, reported that police unlawfully arrest them and then drop them off in isolated or distant areas. “Sometimes, the police take sex workers in their cars and drop them very far off outside town with no money and they must struggle to come home,” said Carol, of Johannesburg. These acts cause both psychological terror and place sex workers at high risk of violence.

Under Siege: Arrest, Detention, and Incarceration

Arrest, unlawful or otherwise, was a frequent experience for many workers in all sites in which research was carried out. In Botswana, for example, police raids on local and migrant Zimbabwean sex workers are carried out daily.⁹² Sex workers who are arrested often spend several nights, if not more, in detention until they can see a magistrate.

Periods spent in detention destabilize sex workers' lives. Workers have no income yet have to find significant sums in order to be released. In Rustenberg, South Africa, sex workers reported that if they were arrested at a *shebeen* on a Friday, they were held in cells over the weekend until they could see a magistrate on Monday. They then paid a 500 rand fine in order to be released. In Johannesburg, sex workers have to pay 300 rand fines to be released. In Windhoek, Namibia, sex workers who could not obtain money to pay the fines said they were detained for up to three months. Sex workers in Botswana said that they frequently paid fines of 50 pula for "public indecency" and were sometimes detained for a few days.

If you don't pay off the police, they take you to jail for some days. You can't take antiretroviral drugs or any medication you need.

—Carol, Johannesburg

The constant threat of arrest leaves sex workers feeling as if they are constantly under siege, particularly since arrests are routinely accompanied by violence. Some sex workers are extremely fearful of leaving the brothels where they work or of anyone knowing about their work. Fear of arrest, therefore, is a major barrier to accessing basic services and can deeply affect sex workers' mental and physical health. Wendy, a sex worker in a Johannesburg brothel, said that since the anti-Zimbabwean riots in May 2008, the police come to the brothel three times a month: "It's horrible. It scares us so much we can't do our job properly. You always think of the trauma you are going to go through with the police, how cold it is in the cells, the horrible things they say to you."

Once in detention, sex workers living with HIV often suffer treatment interruptions. "If you don't pay off the police, they take you to jail for some days and that is not the right place for a human being," said Carol. "You can't take antiretroviral drugs or any medication you need."

Some sex workers are forced to perform unpaid labor in detention. "At the police station, they make us wash the toilets, the passages, and collect the papers in the station," reported Babalwa a sex worker in one of the large-scale brothels in Johannesburg. Rashida from Kasane, Botswana, had also been made to clean during her time in detention. "It is very dirty and unhealthy," she said. "They make you clean the station."

Systemic Targeting of Migrant Sex Workers

In Botswana and South Africa, migrant sex workers from Zimbabwe are more likely to experience severe violence from law enforcement officials than sex workers who are citizens of those countries.⁹³ Alice, a street-based sex worker in Francistown on the Botswana-Zimbabwe border, explained that migrant sex workers are often more vulnerable to police attack due to xenophobia and because they lived in precarious and unsafe conditions. “Mostly the Zimbabwean girls get raped, probably about three or four times a year,” she said. “Here in Botswana, we don’t like Zimbabweans. They [have nowhere to sleep] so they sleep at

Border guards make us sleep with them for free to get 14- or 30-day visas. Then they keep watch on us, they know when our days will be running out and they tell the police to come bring us back to the border. So we have to go back to the border and are forced to sleep with different border guards.

—Mary, a Zimbabwean sex worker in Botswana

the filling station [where] thugs or police rape them.” It is important to note that this research was carried out in a period in 2008 when xenophobic violence erupted in South Africa and Zimbabwean migrants in general were under attack.

In locations where migrants make up a substantial proportion of sex workers, police routinely check their passports or ask for passports during antiprostitution raids. Migrant sex workers are also vulnerable to anti-immigration raids in neighborhoods of Johannesburg. Sex workers who do not have legal visas to remain in Botswana or South Africa are detained and then deported in a manner that creates a “revolving door” effect. Peccer, a Zimbabwean working on the Botswana-Zambia border, described the typical experience of arrest and deportation: “If

you have over-stayed your passport, [the police] keep us a few days in the cell, then leave us with no money at the border. You cannot go back into Zimbabwe with no money, so we hide and wait and then sneak back in.”

Deportation places migrant sex workers at very high risk of physical and sexual violence from the police, border guards, and others. A sex worker in the border town of Francistown, Botswana, reported that the police “beat and rape the girls from Zimbabwe more. They push them inside the car like animals, and take them to the border. The same night the girls come back by foot. It is very dangerous. People rape them by the bushes when they are coming.”

Many sex workers who have been deported attempt to return to Botswana or South Africa. The return journey is dangerous, and some sex workers have been killed in the process. In one area, deported Zimbabwean sex workers cross the border by traversing a wild

life preserve. “The girls stay out in the bush hiding and come back the next day or when no one is watching. It is very dangerous, because the border is on a game park. There are elephant and lions. There have been four sex workers killed, from staying in the bush, trying to get back,” explained Mary, a Zimbabwean sex worker interviewed in Kazungula, on the Botswana-Zambia border.

Undocumented sex workers, referred to as “border jumpers,” face greater problems with the police. Migrant sex workers try to avert this by obtaining visas if possible. “The police never take my money because I have [temporary visa] in my passport,” said Mary. “But the border jumpers, the girls with no passports, the police get them all the time, it can be every day. The police arrest them and force them to have sex in order to release them. However, the process of applying for a visa exposes migrant sex workers to abuse. Sex workers said that border guards and immigration officials colluded with the police to extort money and coerce them into sex. “We are harassed by the immigration officers when we try and get the visas to come in to Botswana,” Mary explained. “They make us sleep with them for free to get 14- or 30-day visas. Then they keep watch on us, they know when our days will be running out and they tell the police to come get us bring us back to the border. So we have to go back to the border and are forced to sleep with different border guards.”

Antiprostitution stigma often compounds xenophobia and as a result some women are denied visas outright. Zimbabwean women are often presumed to be sex workers simply because of their nationality. According to Takesure, a Zimbabwean sex worker in Kazungula: “They refuse to give us visas to enter Botswana. They say ‘You women from Zimbabwe, you are coming here to do [whoring]. Prostitution is not allowed here. Go back to Zimbabwe.’”

The discrimination and abuse experienced by migrant Zimbabwean sex workers are fundamental violations of their human rights. Additionally, their deportation may in some cases be unlawful in and of itself because it violates the human rights principle of non-refoulement, which stipulates that people who are considered refugees or asylum seekers should not be forcibly returned to their country of origin.

Systemic Discrimination and Targeting of Trans Sex Workers

Five trans people were interviewed in Namibia and two in South Africa. All the trans people interviewed worked as women. Some also identified as women outside of work. Others identified as *moffis*—a reappropriated derogatory term for gay men or men who dress as women. Some identified alternately as gay men and as women. Some trans people were, where possibilities existed such as in South Africa, seeking to physically transition and change sex.

Trans sex workers reported that they often faced significant police violence for being trans. Police also devised methods to humiliate trans people such as forcing them to strip naked in public. Martin, a trans woman sex worker in Windhoek, Namibia, shared her recollections of finding a friend, Carolyn, another trans sex worker, badly beaten by the police. “They had ripped her clothes off,” she said. “It aggravates them more that you are a man so they give you a heavier beating.”

In general, trans sex workers, because they are perceived as having nonconformist gender identities, can sometimes be more visible to police than male or female sex workers. Police are known to harass trans people as they go about their daily lives. Jeannette, a trans woman from Windhoek, reported that, “Even if I just walked to town, I would get picked up by the police and had to pay 450 Namibian dollars or do four and a half months in jail.”

If detained, trans sex workers are systemically submitted to violence by being locked in jail with men. “The men in prison beat you,” recounted Catherine, a trans sex worker in Windhoek. “You are locked up in a cell with 20 or 30 men. They take you into the shower and rape you. Our president says ‘no condoms in prison’ so everything goes down with no condoms. But we feel like women ourselves, so we don’t see why they don’t put us with the other women in the cells. We are not a danger to them.” In some instances, such as in Cape Town, South Africa, trans sex workers reported that they were increasingly being detained for short sentences in isolation instead.

Systemic Discrimination and Targeting of Male Sex Workers

This section deals specifically with male sex workers who present as men in sex work and have a male clientele. Four male sex workers were interviewed in South Africa, and a sister and a former colleague of a male sex worker were interviewed in Botswana. Although researchers were unable to interview male sex workers with a female clientele, sex workers mentioned that this exists.

Male sex workers reported problems with the police. The police make trouble “for the boys on the street,” explained Jabu, a male sex worker interviewed in Cape Town, “The police drive them out of their areas and harass them.”

Homophobia fuels bad treatment from police and is part of the impetus to arrest or drive male sex workers and gays out of neighborhoods. “The police hate male sex workers. Local people hate gay people,” said Rashida, the sister of a male sex worker in Kasane, Botswana. “The police will create a fake story just to put them in jail.” In detention, police may humiliate male sex workers or encourage other prisoners to harm them. Ken, a brothel owner in Cape Town, South Africa, commented to researchers, “I knew a 19-year-old street boy and the police arrested him and put him in the cell and they taunted him,” telling the other detainees, “There’s a street whore for you. Have your way with him.”

Reporting Abuse and Violence: The Climate of Impunity

Sex workers who participated in this study were very reluctant to seek protection or remedies from the authorities for either personal or work-related cases of abuse, rape, and other forms of violence. Sex workers have no recourse when the people who abuse them are police officers. Additionally, the general public is well aware that sex workers cannot access protection of the law and this fosters a climate of impunity for community members who perpetrate violence against sex workers.

As detailed in previous sections, sex workers interviewed reported many instances in which police officers are the perpetrators of abuse. Many sex workers felt that it would be impossible to report abuse by police to the police with the hope of remedy. Zanele, a street-based sex worker in Johannesburg, explained that police regularly harassed her and other sex workers and forced them to have sex. “We consider it rape but we cannot go to the police because they say we are lying,” she said. “We do not know names because they take off their nametags when they do it. My friend tried to report it and they pretended to open up a docket but [did] nothing.” With the exception of one known case against police officers in Windhoek, Namibia, sex workers’ efforts to denounce police violence against them have been futile.

I was run into by a car on the street and had a bad head trauma. The police wouldn't help me. They told me to dial the number for the ambulance myself.

—Kim, Cape Town

Sex workers often face high levels of violence in general. In Windhoek, sex workers reported that in the past few years, six sex workers had been murdered along the highway where they worked.⁹⁴ In Rustenburg, South Africa, murders occur with alarming frequency. Valentine, a sex worker from Rustenburg, estimated 15 to 20 sex workers have been killed since 2000. “The police say they did investigations but found no information,” she said. Violence perpetrated by customers is an issue for many sex workers. In Windhoek and in Francistown, Botswana, some sex workers reported that clients would abandon sex workers in remote locations. Alice, a street-based sex worker in the Francistown area reported that, “some customers take you and leave you on the Nambula Road.”

This research also found that violence occurred outside of the context of sex work. Gang members, also known as *tsotsis*, target and rob sex workers. People in sex workers’ local communities who know or suspect them to be sex workers may attack them. In South Africa, for example, men strip the clothes off women dressed in mini-skirts in order to humiliate them for being “loose women” or prostitutes. A sex worker in Johannesburg who survived one such attack reported that a man left her “naked on the street” and that no

one would help her. This kind of violence is often condoned due to the pervasive stigma attached to sex work.

Sex workers are as unlikely to receive police protection when a crime is committed against them by members of the public as they are when the crime is committed by law enforcement officials themselves. Reporting a crime may require sex workers to communicate with the same officers who have harassed or arrested them in the past. For example, in South Africa a rape must be reported to the police station in the area that the attack occurred.⁹⁵ This means that sex workers seeking to report rape are obliged to seek assistance from local police stations in the areas in which they work.

Throughout the region, sex workers report that at “best” police simply ignore their requests for help. “If someone harasses me, I cannot go to the police. They tell me it is my fault, that sex work is illegal,” explained Lovers of Kasane, Botswana. At worst, police may take advantage of sex workers who approach them for help by humiliating, arresting, raping, or robbing them. Other research has reached similar conclusions in regard to sex workers’ unequal access to protection of the law. In one survey of 50 sex workers in Johannesburg, interviewees overwhelmingly said that they did not feel they could approach the police for assistance if they had been assaulted or subjected to violence by clients, brothel security guards, or managers.⁹⁶

Lack of documentation is an additional barrier for migrant workers who might seek police protection. “The police will only help you if your passport is valid. If it isn’t and someone harasses or rapes you, you just keep quiet [or else the police] will arrest you, put you in jail and send you back,” said Peccer. Migrant sex workers were doubly stigmatized by police because of xenophobia. “You can report [an attack] to the police but they don’t care because you are from Zimbabwe,” said Mary. “Even if you are being raped, you keep quiet because you are Zimbabwean.”

The lack of decisive action in response to violence against sex workers was perceived by interviewees to have created a climate of impunity that fuelled further violence. “Men are worse and worse now,” explained Joane, a sex worker in Windhoek. “They will be violent and say, ‘No one will catch me, they will blame it on that robber who is attacking sex workers.’” Research and opinion polls support sex workers’ perception that many people believe that they should not and will not receive equal protection. A market research study in South Africa found that 41 percent of respondents did not believe a sex worker should go to the police if she were raped or experienced violence.⁹⁷

Sex workers have organized to defend themselves and many examples of this are presented in the next chapter. However, it is important to note that in some situations where sex workers have united to protect themselves, police have undermined this solidarity by arresting them. “Police come after sex workers who stand together. But we must, [as aggressors] are killing us ladies on the highway. The girls who were killed were all working alone. We cannot afford to,” said Johanna from Windhoek. In an environment in which they

are under siege from police and entirely unprotected from violence, some sex workers have turned to the only forms of protection that they feel may be left to them. For example, sex workers in some communities have turned to drug dealers to protect themselves from violence and prolonged detention. Benecia, a sex worker from Cape Town, explained that, “dealers will protect you from *tsotsis* and violence. If the police bust you, dealers will come straight away and bail you out. They see that they can make themselves invaluable to us. It makes it hard to stay clean. If we could do sex work without arrests, with a safe place to stay and work, and with better sex worker camaraderie, hard drugs would be a lot less appealing.”

Walvis Bay, Namibia, provides a different picture—an exception that may point to ways in which sex workers can be protected from violence. Sex work in certain clubs is tolerated and relations between police and sex workers are not as negative as in other parts of the region. Sex workers in Walvis Bay reported very few instances of violence perpetrated by police officers. Furthermore, police addressed sex workers’ concerns by helping them with clients who refused to pay or who became abusive. The fact that sex workers can turn to the authorities for assistance reduces the perception that sex workers are easy targets. Susan, a sex worker from Walvis Bay, summarized the situation there, saying that “police don’t raid or arrest the brothels here. We can make charges against someone who is violent and get help from the police.” Violence against sex workers in general was significantly less frequent in Walvis Bay in comparison to other research sites. Sex workers in other parts of the research area longed for similar protections. In Botswana, Peccer suggested the development of a system to “protect the sex workers, so we are not arrested anymore. So we are free to report abuse.”

2.2 Unequal Access to Health Services

HIV and AIDS

The HIV epidemics in Botswana, Namibia, and South Africa are severe. Low-income and marginalized communities, often the locations where many sex workers live and work, are disproportionately affected by HIV compared to communities with greater resources.⁹⁸ This research found that sex workers were unable to access adequate prevention, testing, counseling, and treatment services.

Sex workers are acutely affected by HIV stigma. Many people in the region believe that sex workers are a threat to the health of society because they have been described as “AIDS carriers” or “reservoirs” of HIV.⁹⁹ Government officials have fuelled such discrimination by publicly denouncing sex workers and blaming them for infecting others. In 2006, for example, a Botswanan judge who sentenced 10 Zimbabwean prostitutes to

12 months in jail justified his decision saying that, “[i]t was time the courts took serious action against these people who are responsible for the spread of HIV/AIDS.”¹⁰⁰ Public

The government turned against us. They said we bring AIDS into the land.

—Jeannette, Windhoek

health workers may tell sex workers that they will inevitably get HIV or that HIV is a form of punishment for what they are doing. This attitude only decreases the willingness of sex workers to protect themselves against HIV or seek treatment.¹⁰¹ Sex workers living with HIV are marginalized and humiliated. Rashida recounted that in Botswana when sex workers who are known, or suspected, to have died of HIV, “at the funeral, people will say bad things to everyone, even to their children, about them being a sex worker. There is so much stigma for HIV-positive sex workers.”

Access to HIV prevention services

Testing for HIV is a cornerstone of prevention and treatment services. Many sex workers interviewed for this research did not know their HIV status. Costs associated with tests are a barrier. In Namibia, for example, testing is supposed to be free for those who cannot afford it. Yet, sex workers interviewed say they were denied tests even when they showed up with a letter from a local clergy member attesting to their impoverishment. Such denials humiliate sex workers and discourage many from seeking to know their HIV status.

Sex workers report avoiding testing because they worry about the emotional repercussions of a positive result and because they fear that they might be prevented from doing sex work.¹⁰² Fears regarding legal sanctions that could be brought to bear on HIV-positive sex workers are not unfounded. New legislation criminalizing the transmission of HIV has been adopted in eight West African countries, and draft bills have been proposed in three Southern African countries (Mozambique, Angola, Malawi). According to a report in August 2008, Botswana and South Africa have edged toward this trend by criminalizing exposure to HIV in the course of a sexual assault.¹⁰³

Access to safer sex materials is another key element of efforts to prevent HIV and empower people, whether HIV-negative or living with HIV, to protect their health. This research found that many sex workers were unable to access sufficient quality condoms. For example, in South Africa, condoms were only occasionally, but not regularly, supplied at an indoor sex work agency in Cape Town and were not available at all at the hotels in Johannesburg where sex workers live and work. Management at some hotels charge sex workers for free government-issued condoms or restrict the number handed out to sex workers. Other sex workers reported repeated shortages in their brothel or bar. Wendy, a sex worker in a large-scale brothel in Johannesburg, reported that, “sometimes at the brothel reception, they tell you there are no condoms left. There were none yesterday. None last week.

It is too late to go buy some. Maybe a friend can help you, but even she probably won't have enough, because we depend on the condoms downstairs." Sex workers in Botswana reported difficulty accessing sufficient condoms at clinics, with staff either restricting the quantity workers were allowed to take or embarrassing sex workers by commenting on how frequently they requested condoms.

This research revealed only three sites in which female condoms were provided for sex workers (all in South Africa). However, even in these locales, supplies were not always sufficient. Zanele a street sex worker in Johannesburg, explained that, "it is difficult to get female condoms, they get finished so quick at the clinic. I prefer female condoms because no one can cheat—we control it—and we don't need lubricant."

Lubricant, for use with latex condoms, is an essential HIV prevention commodity for sex workers but its importance has yet to be recognized and supported by governments or other funders. None of the sex workers interviewed was able to access free lubricant. As a result, many sex workers reported discomfort or injury after prolonged work hours, particularly when work involved anal sex. Sex workers attempted to palliate such problems by using Vaseline and oils. Unfortunately, use of oil-based lubricants with latex results in condom breakage. "Most of us used Vaseline," said Martin in Windhoek. "We had so many condoms break. We did not have proper education about lubricant. We recently learned about it from The Rainbow Project [an NGO providing HIV and AIDS services]. Distributing lube would help because then sex is less painful, but it is expensive. Most of the trans sex workers still use Vaseline." These research findings are consistent with other assessments that have found that sex workers in Botswana and other parts of Southern Africa use Vaseline and other oils when they do not have access to, or information about, appropriate water-based lubricants.¹⁰⁴

It is difficult to get female condoms, they get finished so quick at the clinic. I prefer female condoms because no one can cheat—we control it.

—Zanele, Johannesburg

Sex workers interviewed needed more prevention information that would help them use safer sex materials correctly and effectively. The numerous reports of condom breakages that emerged during interviews indicate that condoms may be of low quality, or stored or used incorrectly. Many sex workers interviewed had not received any education on how to put a condom on and even fewer had witnessed a condom demonstration. Some sex workers concluded that it would be safer to use two condoms rather than one because this would protect them from possible breakages. There was little or no awareness that using two condoms actually increases likelihood of breakage due to friction between the condoms. Some sex workers said that clients requested two condoms—some clients like to use two condoms so they can then "perform" longer.

Sex workers reported that despite their efforts to encourage condom use, many clients pressure them to engage in unsafe sex or, in some instances, threaten them with violence if they refuse to comply. Interviewees reported very limited access to information that could assist them in developing negotiation skills to promote condom use with clients. Younger sex workers are even less able to negotiate condom use because they have less experience and more fear of abuse and violence. Sex workers also said that they lacked explicit, relevant, and sex-positive information that would help them eroticize safer sex for their clients. “Some men understand why they need to use condoms; others don’t,” said Rose Pink, a sex worker in Kasane. “Some are HIV-positive and don’t care. Others say, ‘If I die of AIDS, at least I will have enjoyed myself, rather than having died in a road accident.’ Education for them would help.”

Sex workers interviewed repeatedly emphasized that education programs for clients are needed to change their attitudes toward safer sex and that programs which assume sex workers would take sole responsibility for enforcing condom use are insufficient. Education efforts that reach the male clients of sex workers are reported to make a difference. For example, sex workers in South Africa reported that their clients were receiving more information about HIV and sexual health via programs for clients, groups of male workers (i.e., truckers, sailors, miners, etc.), or the general public, and this had changed the men’s feelings about safe sex. “Most of our customers are aware of condoms now. They are getting peer education through their work. It definitely helps sex workers because less customers are asking for skin-to-skin sex,” explained Zanele in Johannesburg. One sex worker in Rustenburg, whose clients received peer education from programs targeted at mine workers, said, “I have seen the changes. Since the peer education with men and in the taverns, clients don’t disagree with using condoms as much as they used to.”

Despite these successes, all of the client education projects that researchers encountered had either ended or were expected to end in the near future.

Access to treatment for HIV

All three countries offer free ARV treatment to citizens living with HIV who cannot afford medication. However, in South Africa, inefficiencies and other barriers have hampered access to these programs for many people living with HIV.¹⁰⁵ Researchers received reports in all three countries that many sex workers who are living with HIV cannot or do not access treatments. Financial concerns were frequently cited as barriers to accessing care. Sex workers in Namibia, for example, could potentially access free HIV treatment but many are stymied by the need to present a fixed address to be eligible.¹⁰⁶ Sex workers also said that they were unable to afford the cost of transportation to medical centers and other costs associated with medical services or treatment.

In addition to financial barriers that are experienced by all low-income people in the region, sex workers who are living with HIV have to confront the double stigma of their

profession and of being HIV-positive. Fear of discrimination is so strong that many sex workers who are living with HIV fail to get treatment and die prematurely. In Windhoek, Martin told researchers that she had known 23 sex workers who had died. None of the 23 received medical treatment and ARVs, she explained, because of “fear of discrimination, of what would be said and done to them, abuse for being trans women because it is something that everyone sees and the doctors say nasty things.” Alice, of Francistown, Botswana, made a similar observation, saying, “last year, three sex workers at my location died of HIV, including my sister. Two were under 25 and my sister was 29. They didn’t go to the hospital or go see doctors because they were ashamed. [Medical staff] are mean to sex workers and insult us.”

Sex workers who do attempt to access treatment may be denied care at clinics or medical offices if they are known to be sex workers. Pedzisani Motlhabane, the director of the Matshelo Community Development Association (MCDA), a nonprofit organization working with sex workers in Botswana, described their struggle to overcome the discriminatory attitudes of health staff in public sector clinics.¹⁰⁷ “Originally [in 1993], it was a fight for sex workers to be allowed to receive any kind of treatment at all in government clinics,” she recalled. “We had to argue with them to treat sex workers’ STIs. They would say, ‘Why bother, it is their fault and they are getting sick because they sleep with foreigners.’ We argued that sex workers are like teachers or office workers or anyone else.” Despite the efforts of nonprofit organizations like MCDA, these problems continue. Betty, a street-based sex worker in Francistown, reported: “The nurses are aggressive. They shout at us because we are sex workers. If we have an STI, they say, ‘You don’t know how to use condoms!’ Sometimes, we stop the treatment, because we go with a customer to Kasane or Zimbabwe and leave our pills. If they see we didn’t finish the treatment, they won’t give us any new treatment.”

HIV-positive sex workers also lacked basic and vital information that would help them comply with treatment and maintain their health. Almost no information was available to sex workers on subjects such as HIV reinfection or harm reduction strategies for taking ARVs and alcohol consumption.

I am positive, and at the hospital, they don't treat us like humans. Some women have chosen to die with no ARVs rather than go there, because if you are a sex worker and HIV-positive, you are in for it! They get angry at you if you are not using condoms, but we tell them: give us the skills to negotiate using a condom. We want these skills because we can see that like this we are dying slowly but surely.

—Rashida, Kasane

Sexual and Reproductive Health Services

Sexual and reproductive health services in the region lack coherence and integration. Any person seeking sexual and reproductive health care services in Botswana, Namibia, or South Africa, is required to make multiple visits to different locations, which places stress on finances and health. Sex workers experience this fragmentation of sexual and reproductive health services more acutely because they need to access these services frequently in order to obtain safer sex commodities, STI testing, advice, and information.

The majority of sex workers interviewed said that they do not disclose that they sell sex to health service providers. Nondisclosure has implications for treatment, advice, and education that is potentially available at health services. The main reason given for nondisclosure was fear of discrimination, condemnation, and bad treatment from staff.

There is a free clinic but it is too far. So here we pay for STI treatment, but sometimes we don't have the money.

—Valentine, Rustenberg

Because they could not access acceptable sexual and reproductive health services, interviewees often sought alternatives that were inadequate to treat their health problems or dangerous to their health. Many sex workers reported self-medicating by securing, for example, an antibiotic from the pharmacy rather

than face discriminatory treatment by clinic staff. Other sex workers were unaware that services were potentially available for them. “We were using traditional medicines for STIs. We just found out that you can get treatment for STIs free at the clinic two weeks ago. We didn’t know,” commented Rashida of Kasane.

Sex workers who are pregnant and living with HIV experience health needs that span both HIV-related services and reproductive health services, highlighting problems associated with lack of integrated, appropriate care. These workers cannot access services that prevent mother-to-child transmission and as result their babies are more likely to be born with HIV. “There are ladies we know working under the bridge. They are HIV-positive and the family won’t take them in,” reported Sunny, a sex worker in Namibia. “They don’t get ARVs because of the stigma of testing HIV-positive and because of the fees you need to pay. So their babies get sick and die with no medicine. More than 10 children have died like that this year. There is no money for funerals, so when babies die, all they can do is put them in the river. We have NGOs fighting for women’s rights but they won’t talk to these ladies. Only TRP, The Rainbow Project, goes to the ladies.”

Some family planning services may not be available at all in the public health system. Abortion, for example, is illegal in Botswana and Namibia. This issue had an important impact on female sex workers who often faced additional stigma in trying to get medical assistance following unsafe abortion attempts. A number of sex workers in Botswana and

Namibia reported the deaths of colleagues due to unsafe abortions. “Abortion is illegal. We do it by ourselves, we use knitting needles, pens, traditional medicine. Many have died,” reported Betty in Francistown, Botswana. Sex workers were unable to access abortion services even in the most extreme circumstances, such as rape. “A man raped me when I was living on the farm. I brought a case against him, but nothing happened. I was pregnant and tried to abort without success,” explained a sex worker from Namibia. A number of sex workers interviewed had accessed health services following illegal abortions and faced extreme discrimination from staff. “You go to Zambia, and they trigger a miscarriage for you. But then if you need to go to the clinic here, the sisters get angry at you. They threaten you with jail,” explained a sex worker from Kasane, Botswana.

In South Africa, abortion is legal and relatively progressive family planning services are available. South African sex workers interviewed for this study reported that they were able to access family planning services.

Migrants’ Access to Health Care Services

Migrant sex workers have great difficulty accessing health care. In South Africa, migrant sex workers are very reluctant to leave the brothels where they work due to fear of police or violent attacks. This greatly limits their access to any kind of comprehensive treatment or care or assistance in cases of emergency.

Migrants usually have to pay higher fees for the services that citizens receive for free or low cost at public clinics. South Africa is the only country in the region that offers ARVs to migrants for free. Fees were an insurmountable barrier to care for many of the migrant sex workers interviewed in Botswana and Namibia. Some opted to wait and attempt to access services when they got home but this was a gamble given the disastrous state of health care in Zimbabwe, the country of origin for most migrant sex workers interviewed. “There is no medicine in Zimbabwe, even paracetamol [acetaminophen] is rare. ARVs are scarce and difficult to get. You will be on the queue for three to four months, so people end up dying, and then you need the food to go with the ARVs. If you are lucky, there is a church and a Catholic hospital in Wange that can help you get them,” explained a migrant sex worker in Kazungula on the Botswana-Zambia border. Many migrant sex workers from Zimbabwe give up on receiving treatment from government clinics and resort to black market medicine and traditional medicines for treatment.

Migrant sex workers who do make the effort to seek health services in the countries in which they are living are deeply affected by the xenophobic attitudes of health staff. Gladys, a sex worker in Johannesburg, provided an example of the kind of poor treatment migrant sex workers experience: “After [my friend] was attacked, we went to the clinic. They didn’t clean the blood away, just gave her a paracetamol for the pain and stuck a plaster on the wound and commented, ‘You are a Zimbabwean.’”

Consequently, many migrant sex workers said they avoided public health facilities all together. This compromises their access to safer sex materials and other essential health services. “Zim girls struggle to get condoms, because they won’t go to the clinics. They depend on getting them from us,” explained a Botswanan sex worker who worked on the Botswana-Zimbabwe border.

Health Care for Male and Trans Sex Workers

The governments of Botswana, Namibia, and South Africa, when conceptualizing interventions for sex workers, such as in the context of national HIV plans, assume that all sex workers are women. Male sex workers are thus “invisible” to health providers and

Zimbabwean girls can't get ARVs from the state here, so they wait until they are really too sick and go back to Zimbabwe. Two recently went back to look for ARVs. We don't think they are still alive; they were too sick by the time they went back. Their families tried to help, but the girls were the breadwinners supporting everyone, so who can help them?

—Mary, Kazungula

policy makers. This means that the health of many male sex workers is jeopardized because they do not access services. Slender, a male sex worker in Johannesburg, explained, “There is no program for us, to educate us around protection, even though we have very low condom use. Nothing to empower us and tell us about our rights. When services see us, it is too late, they can only refer us to the hospital.” Similarly, women sex workers serving a female clientele are also ignored by service providers and policy makers.

Trans sex workers interviewed in Namibia were unable to avail themselves of hormone therapy or sexual reassignment surgery unless they traveled to South Africa. The costs of doing so were prohibitive to all those interviewed. In South Africa, some trans sex workers reported that black market hormones and contraceptive

pills are used in order to avoid stigma and hostility from doctors. They had no medical supervision and were unaware of possible side effects—such as blood-clotting, increased risk of thrombosis, heart attack, and strokes—that could occur if hormones are used in combination with smoking or if used without proper health monitoring. Hormone replacement for trans women and other trans-specific medical treatment is not available in South African prisons because it is not considered primary health care.¹⁰⁸

2.3 Labor Rights Abuses

Human rights treaties such as the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights recognize the "right of everyone to the enjoyment of just and favourable conditions of work" including "safe and healthy working conditions." The right to fair, just, and safe working conditions is inalienable regardless of legal status. This has been an important tenet in defending the labor rights of undocumented or "illegal" migrant workers and holds equally true for sex workers. However, this research found that sex workers have no recourse if customers refuse to pay, if management withholds workers earnings to pay illegitimate "fines," or if they experience violence and other problems in the workplace.

Criminalization means that the places in which sex work occurs are not subject to health codes and other protective measures. Owners of the large-scale brothels in Johannesburg, for example, are under no obligation to adhere to health and safety standards because the venues are not considered "legitimate" work places. So-called brothel security measures may make problems worse. Elizabeth, who worked at a brothel in Johannesburg, felt that her life was threatened when a security guard evicted her after she defended herself against an attack. "A client hit my head with a bottle last night. It broke and cut me. I hit back to defend myself," she said. "I called for security but all they did is throw me out of the brothel on to the street. I was beaten more outside by others."

Brothel management and security guards may prevent sex workers from seeking assistance from the police, and they sexually harass workers. "Security doesn't help in the cases of violence," explained Wendy, who works in a Johannesburg brothel with many migrants. "Zimbabwean women are treated badly by management and security, you can see that they hate them. If you get hurt at all from violence, management says you cannot go to the police. Security wants to abuse you sometimes. The management also wants to sleep with you for nothing."

Brothel owners violate sex workers' labor rights in other ways. They exact punitive fines, confiscate sex workers' belongings, including medication, and restrict who can visit sex workers on site. "If you do not pay your daily rent at the brothel, then after two or three

Security won't help you negotiate money if a client won't pay you what he owes. But on the other hand, the management was charging us 10 rand for a box of condoms that they got free from the clinic. If you're imprisoned in a police raid, your room is locked up but you still owe rent for the night.

—Wendy, Johannesburg

days, you lose your clothes and all your stuff,” said Zanele in Johannesburg. In some cases, owners’ regulations were so detailed that sex workers were instructed about what they could eat on site and when they could leave the brothel. These problems were not restricted to large-scale brothels. Sex workers at a smaller agency in Cape Town said that owners withheld wages and fined workers for not making beds properly or calling in sick.

In most sex work situations, sex workers are expected to negotiate and receive payment from clients. If clients do not pay, sex workers usually have no support from management or the police to retrieve their earnings. Sex workers in all three countries reported that customers who refused to pay, or people who robbed them, did so with total impunity. Mary, a Zimbabwean sex worker working at truck stops and along the highway near the Botswana-Zambia border explained: “So many men cheat us out of our money because they know we can’t report them to police because we are sex workers and from Zimbabwe.” Sex workers may be forced to gamble with their health in order to make up lost earnings, she said. “You can make enough money by only having sex with condoms, [which pays less than sex without condoms]. However, the major problem we face is customers who refuse to pay or take back their money. Then you don’t have money, and skin-to-skin to sex with another client is very difficult to refuse in those moments,” said another worker in Kazungula, near the Botswana-Zambia border.

Many sex workers feel the best remedy would be a more systemic response that would recognize and protect them as workers. “If the government could give us a safe place to work, we could enforce payment and condoms and good prices. Because working like this, you can die any time,” said Takesure in Kazungula, Botswana.

3. Pervasive Stigmatization and Social Exclusion

Sex workers are cut off from systems of community support because of stigma about their profession and HIV status. They are denied access to basic social services, such as child-care, and are not able to open bank accounts. Workers' children are taunted by neighbors and marginalized from schools. Issues of discrimination are intensified for sex workers who live in small communities, where neighbors are more likely to know about their work, and for migrant sex workers who face intense xenophobia.

3.1 Discrimination in Employment and Banking

Many sex workers reported that they had been fired from other jobs they held when evidence of their involvement in sex work emerged. "I was fired from the church where I looked after children after they heard what I did for work," said Tessa of Windhoek, Namibia. People who are known to be sex workers will be denied employment in other professions. "If your community knows you are a sex worker, then you cannot get other work, even as a maid. They will say she will sleep with my man," said E. Botter, also of Windhoek.

In some localities, sex workers find that they cannot open bank accounts because they do not have the required documents. Opening a bank account is even harder for trans sex workers. "When it comes to the banks, it is difficult for me to get an account for two

reasons. One they ask to see my pay slip, and I can't just point between my legs! Two, my ID cards say male even though I live and dress as a woman," said Benecia in Cape Town.

3.2 Community Persecution

Many sex workers interviewed spoke about harassment and taunting in their communities because of their work. Social exclusion is particularly marked in smaller towns or places where neighbors are aware of the sex workers' occupations. Sex workers are cut off from

In our country, people think sex workers are the worst people in the world. They will point at you, stigmatize you. They blame us all for HIV. No one will let their girlfriends or wives talk to you, they are afraid you will influence them. No one in the community will ever share water, food, or bowls with us. They are afraid we all have AIDS. Only other prostitutes will invite you to their homes.

—E. Botter, Windhoek

especially at school. Our kids are scared and they all want to drop out of school," said E. Botter. "They are told that they are HIV-positive because their mothers are prostitutes. Every time my kids have to go to school, they look at me so sadly and with such a heavy heart."

crucial communal sharing and social safety nets. "The neighbors yell that we sell our bodies and tell our children that their mothers are bad and sell sex," reported Priscilla in Rustenberg. "Sometimes the neighbors fight us. We are afraid to report these cases."

Sex workers are more likely to be targets for violence and theft because of social isolation. A sex worker from Botswana shared her experience: "At my location, they know I am a prostitute. They insult me and won't share food with me if I have none. They say cruel things to my children. So, we live together, five sex workers to a home. But then, we are easy targets. If they see us coming back home with money, the *bococos* [gangsters] will come and rape and steal from us."

Sex workers in Botswana and Namibia reported that their children often faced a great deal of stigma and harassment from the community. "People bother and point at our kids,

4. Redressing Violations

Despite enormous challenges, sex workers in all three countries are organizing to protect their rights. In some cases such organizing has taken place formally, that is to say with the support of funders or registered and established NGOs, and sex workers have pursued official channels for redress of violations. However, even where this has not taken place, in every locale included in this report, male, female, and trans sex workers have been organizing informally and taking concerted individual and group action in support of their rights and for improved living and working conditions. Both forms of organizing are crucial and equally important. The evidence presented here of widespread informal organizing within these communities belies the image of sex workers as helpless victims. They are, in fact, powerful agents of change. The organizing efforts documented in this report present important opportunities to support sex workers in achieving what they have chosen as their priorities for action.

4.1 Formal Organizing

In South Africa, sex workers have organized Sisonke, a national network of sex workers supported by SWEAT in Cape Town. The word Sisonke means “togetherness” and the organization aims to “unite sex workers, to improve living and working conditions and to fight for equal access to rights.”¹⁰⁹ Sisonke was launched at a national meeting of approximately 70 sex workers, hosted by SWEAT, in October 2003. SWEAT played a crucial role in lay-

ing the groundwork for the formation of Sisonke by marshalling resources for sex worker rights and linking sex workers across South Africa to national campaigns for sex work law reform.¹¹⁰

Since 2004 Sisonke has focused on developing a core leadership and supporting this group to organize within their constituencies and recruit more sex workers to the move-

They are stepping on our rights. We are human, we are women, the [government] ministers are stepping on our rights even though they are our clients. We are not being recognized. Now we are together and fighting for our rights. Tomorrow, we will change the world.

—Rashida, Kasane

ment. In 2006, Sisonke members, in partnership with SWEAT, wrote to the Justice Portfolio Committee to oppose the inclusion of a provision criminalizing clients within the Sexual Offences Legislation. Members have been able to represent sex work issues at national and international meetings, and have participated in human rights campaigns calling for the recognition of the human rights of sex workers.¹¹¹ The Sisonke chapter in Cape Town has organized campaigns concerning access to housing. In Johannesburg, the local chapter has begun to organize to stop unlawful arrests and police extortion. The chapter has also secured an office space and a computer with assistance from RHRU and SWEAT.

Sex worker-led rights groups like Sisonke have yet to emerge in Botswana and Namibia. Researchers did find evidence, however, that formal organizing is beginning. In Botswana, Rashida testified in front of a parliamentary committee demanding recognition of sex workers' rights. The experience galvanized sex workers in her community to begin meeting regularly to collectively defend their rights.

It is important to note that sex worker organizing in the region faces some challenges that, while not insurmountable, need to be taken into consideration when planning actions to support sex worker rights in the three countries. Sex workers place themselves at considerable personal risk when they openly identify as sex workers working for change. Police in some areas have targeted sex workers who have set up support networks. Sex workers who raised their public profile by attempting to organize for rights suffer recrimination and persecution within their communities. Rashida explained, "Everyone is talking about me, since I started the sex worker group. They are calling me names. They do it to other sex workers too. We have to talk about it. Something needs to be done to change the shame it causes. We have to come together and say 'Here we are.'"

Additionally, sex workers face more prosaic challenges concerning the day-to-day operation of their organizations and networks. Members have, for the most part, been

marginalized from training programs that would have provided them with the basic skills needed to establish an organization and run an office. Intensive, culturally appropriate mentoring and skills sharing, especially peer education, can help them to overcome these barriers.

Partnerships for Sex Worker Rights

Partnerships between sex workers and supportive groups have been important in the fight for sex workers' rights in the region. In South Africa, SWEAT and the Women's Legal Centre have participated in cases of strategic litigation for sex workers' rights that have challenged the criminalization of sex work, unlawful arrest and detention of sex workers, and the exclusion of sex workers from protection under labor laws.

South Africa: High Court Rules Against Unlawful Arrest of Sex Workers

SWEAT, with the assistance of lawyers from the Legal Resources Centre, filed a case with the High Court against the unlawful arrests of sex workers. This strategic litigation challenged the current policing practice in which sex workers are arrested, kept in jail overnight or for the weekend, then released without being charged or seeing a magistrate. On April 20, 2009, the Cape High Court ruled that police in the Cape metropolitan area cannot arrest sex workers without just cause.

SWEAT argued that the police detain sex workers knowing that they will not be charged or prosecuted in order to punish them and clear the streets, thus violating the laws that govern arrests. Even though certain acts associated with sex work are illegal, no one can be arrested and detained for *being* a sex worker. SWEAT argued against the arrests on the grounds that there is no evidence that a crime has been committed.

This case was a group action with SWEAT acting on behalf of the group, thus ensuring support and anonymity for the sex workers concerned.

*Information from SWEATSCENE May–June 2007
and SWEAT Notice, April 20, 2009*

A partnership between Sisonke, SWEAT, and the Treatment Action Campaign has resulted in an ongoing communications strategy to promote sex work issues, including the need for the decriminalization of sex work and the recognition of sex workers' human and labor rights.

SWEAT has documented abuses against sex workers and worked with Sisonke members to publicly campaign in the media against sexual and physical violence by police, backing up their claims with personal experiences. For example, in Johannesburg Zanele worked with a television program to expose police misconduct. "I talked to them about police corruption and how they rob our money. I showed them the spots where police used to come. Some police were arrested in 2005 after their TV investigation with hidden cameras."

4.2 Informal Organizing

Informal organizing includes the myriad and everyday ways in which sex workers defend and uphold their human rights, their dignity in the face of stigma, and their claim to a livelihood in safe and just conditions. Every sex worker interviewed offered examples of ways in which he or she collaborated actively with other sex workers toward these aims. The following sections examine how sex workers deploy informal organizing to improve working conditions, support health, resist abuse and discrimination, and improve living conditions.

Improving Working Conditions

All sex workers interviewed organized either individually or collectively to improve their working conditions, and in so doing, protect not only their livelihood but also their health and human rights.

Sharing safer sex supplies and information

Sex workers often pool their safer sex supplies, such as condoms, and share work-related information. These strategies are a powerful measure to help sex workers ensure the protection of each other's health and income. Promise, a worker in a large-scale brothel in Johannesburg, explained how workers in these venues distribute condoms among themselves. "When they run out of condoms at reception, we ask around at each other's rooms," she said. "If others have enough, they will share with us. Otherwise we can't work for the night." In Francistown, Botswana, sex workers supplied condoms to Zimbabwean sex

workers who, as discussed in the previous chapter, did not have their own supply because of problems accessing clinics. In Windhoek, Namibia, Davidean, a trans sex worker, reported that police routinely confiscate trans and female sex workers' condoms more than once a week. She has devised a strategy to preserve and share her life-saving prevention supplies: "I was very, very clever. I didn't take a handbag, instead I have very tall white boots and I hide all my condoms in the boots. When the police come and steal everyone's condoms, I share with all the girls and moffis from my boots."

Sex workers collaborate to share sex tips, safer sex tips, information on clients, and health information on topics such as abortion for women or hormone therapy for trans sex workers. For example, in Windhoek trans sex workers and their female friends debrief weekly on the best sex techniques for different partners. "We tell each other: touch this guy here or there. If you want it to go fast, do this and he will come quickly. We share skills," explained Martin. Sex workers reported that such conversations aid their professional development and provide emotional support.

Organizing security

Sex workers often work together in order to keep each other safe.¹¹² Sex workers will sometimes give advance payments from clients to a colleague for safe-keeping. This prevents theft—which is a common occurrence—and facilitates receiving payment upfront. Sex workers in Rustenberg, South Africa, communicate by cell phones to alert each other of where they are going or to provide license plate numbers of problem clients.

In Windhoek, sex workers working along the highway have devised a number of safety strategies that have become all the more crucial following a series of murders of sex workers in recent years. Sex workers cooperate together in a group. Women sex workers often work with trans women sex workers for protection, believing them to be stronger and better at fighting back. Other sex workers in Windhoek pay a male relative or acquaintance to act as their security guards and come to their defense if they need help. "It is better if you can pay someone to be your security. You can give him maybe 20 pula to stay nearby, and if he hears you are in trouble, he comes and helps you," explained Lynne of Windhoek.

Sex workers on the street in Johannesburg have made arrangements with underground parking guards to use their spare rooms for sexual transactions. This system buys them security and safer work locations. "On the street, when girls pick up customers they sometimes go with them, but it isn't safe, so it is preferable to go to a nearby hotel. But since sometimes there is no money for that, girls have made deals with security guards who work in underground parking lots," explained Carol. "It is safer because you have got security and it is safer than going somewhere you don't know."

Increasing prices

In some cases, sex workers have united to raise their prices. In March 2008, the managers at one large brothel in Hillbrow raised the daily rent by almost 40 percent. Failure to pay the increased rent would result in sex workers losing their rooms and possessions. The brothel workers feared that in order to pay the additional rent they would be forced to increase the number of clients seen each day, or, if they were unable to do so, have unprotected sex, which pays more, in order to make an adequate income. The sex workers decided to approach the situation through collective action. “We came together and came up with a plan to raise the price for sex. We talked to Caroline, the local Sisonke president. She set up a meeting during the day at the bar. That bar is big: there were like 100 girls. The whole building was there! We decided we would all charge 50 rand a client. We let the manager know and it mostly worked,” explained Babalwa, one of the brothel workers. The united action meant that they lowered the number of clients they needed to make sufficient income and reduced the attraction of having unprotected sex due to inadequate earnings.

Unity on condom use in South Africa

Of all the places researchers visited, condom use was most frequent among sex workers in the brothels and on the street in the Hillbrow area of Johannesburg and in the agencies in Cape Town. In Johannesburg a concerted effort among sex workers had created consensus

regarding condom use. “There is a lot of unity on condom use. We saw HIV destroy a lot of our sisters’ lives. I saw 15 other girls die. So, it was important to know about condoms, and to know that extra money wasn’t worth our lives,” said Zanele.

If we could have a big meeting of sex workers from all over the world, we could talk about our status as sex workers. As sisters, we could convince each other to use condoms so we can be alive for our children.

—Priscilla, Windhoek

Group agreement to use condoms has reinforced individual sex workers’ ability to ensure that clients engage in safer sex. The group’s consensus gives them the confidence to demand condom use. The lack of, or reduced, competition with others offering unsafe sex means that condom use does not result in forsaking clients

or income. In Botswana and Namibia, sex workers reported that service without a condom was set for a certain rate, and clients paid half to a third of this fee for sex with a condom. Workers in Johannesburg brothels, on the other hand, reported that they only had one fee, so there was no incentive for workers to have sex without condoms.

Even in places where many sex workers struggle to ensure regular condom use all the time, sex workers have articulated the need for the solidarity and communal self-worth that underpins collaboration on condom use. “The best way I can help another sex worker and take care of her is to use condoms with my clients,” said Felicia, who worked at truck stops and along the highway near the Botswana-Zambia border. Sex workers’ ability to agree to promote condom use is linked to the existence of environments that promote security.

Negotiating more favorable terms of trade

Migrant sex workers protect their earnings both individually and collectively by trading sex for petrol, large crates of foodstuffs, or appliances that hold or increase their value when brought home to Zimbabwe where they can be shared or re-sold. “The South African clients phone me when they leave South Africa to tell me they are coming, to ask me what I want them to bring,” explained Rose, a sex worker in Kasane, Botswana. Zimbabwean sex workers working in Botswana near the border are able to use such negotiations to obtain crucial goods to support large extended networks of family and community members experiencing shortages in Zimbabwe. For example, shortages frequently escalate the price of petrol, making it a commodity that has a high cross-border resale value. Truck drivers have easy access to diesel fuel and may use this to barter with sex workers.

Stockvel

Stockvel, a traditional South African savings system, is common among sex workers in brothels and on the street in the Hillbrow area of Johannesburg. Members of a stockvel pay into a communal pot and then each person, by turn, receives the entire pot. Sex workers use this system to circumvent problems associated with not having access to bank accounts. The stockvel mitigates the risk of keeping savings in one location for a long time, a situation that leaves sex workers vulnerable to robbery by *tsotsis* (gang members) and the police. The long-standing tradition of stockvel in South

We have sex for food. Sometimes we get too much groceries! Some truck drivers from South Africa, they bring you boxes and boxes, crates and crates of groceries. You have to plan for what boxes of what you want, because at the border they only allow you to bring back a box of each: one of soap, one of oil, one of food, or they charge you more. So we plan it, and the taxi [takes] all our boxes to the border and we provide for our whole families, even other people in the town.

—Mary, Kazungula

Africa means that individuals take their responsibility in it seriously, which in turn creates great trust in the system.

Zanele explained the importance of the system to workers: “Most of us do it because you can pay 500 rand a week, and then when the money comes to you, it can be 8000 rand. We are building our houses, paying for our own school fees and those of our children.” The ability to accumulate this amount of savings allows sex workers to play important roles in their families and communities, which in turn gives them increased status that counteracts some of the stigma they face as sex workers.

Stockvel has a direct bearing on working conditions and health. Sex workers can make a special request that they be chosen to receive the payout for a particular week if they are facing acute financial distress due to lost earnings or illness. The economic security of having savings allows workers to compensate for their lack of formal labor benefits such as sick days or workers’ compensation. The system operates as a social safety net, allowing sex workers to manage illness or injury or an unexpected drop in income. This in turn means that it is much easier to refuse unsafe sex for more money. “Stockvel could help a lot of girls to use condoms. Or if you are sick, stockvel will give you money,” said Zanele.

Supporting Health

Testing and treatment adherence

Sex workers face significant barriers to testing including having to interact with judgmental health care staff. Some workers draw on the strength and support of their peers to

One girl had full-blown AIDS. She was too weak and she was scared because she is supporting her family, putting food on the table. We took her to the clinic. She got ARVs and she is healthy now. This is why we must fight jealousy and get to know each other.

—L., Johannesburg

get tested for HIV. “I went with three of my friends when they got their HIV tests and to get their results. It was good because two found out they were HIV-positive,” commented a sex worker from Kasane, Botswana.

Peer support is also crucial in enabling sex workers to adhere to treatment for HIV. In Johannesburg, Carol reported that many HIV-positive sex workers reminded each other to take their treatment every day. Friends of HIV-positive sex workers, particularly roommates, she said, gave reminders and encouragement.¹¹³ Furthermore, she reported, if an HIV-positive sex worker’s belongings were confiscated due

to eviction or lost through theft, other sex workers taking the same medicine would share theirs until she got hers replaced.

Safer sex with intimate partners

Many sex workers, like other men and women in sub-Saharan Africa, remain vulnerable to contracting HIV from intimate partners.¹⁴ Sex workers in some brothels in Johannesburg encourage each other to use condoms with boyfriends, lovers, and husbands. Some sex workers even brag to others of bringing their boyfriends to get tested at the mobile clinic on the days when it sets up shop in one of the brothel rooms.

Resisting Abuse and Discrimination

Challenging aggressors

In almost all locales, sex workers share information on dangerous aggressors, whether they are police officers, clients, or members of the general public. In Gaborone, Botswana, for example, sex workers have engaged in group activities and skills projects that have allowed them an opportunity, away from work, to discuss dangerous clients or police.

Assisting victims of violence

Sex workers are often the first and, all too often, the only ones to bring immediate assistance to their colleagues when they are in danger or have been attacked.

During one interview, Gladys, a 19-year-old South African sex worker, spoke of intervening on behalf of her friend, a Zimbabwean sex worker who had been violently attacked by a customer in a large-scale brothel in Johannesburg. Brothel security had blamed the Zimbabwean sex worker for “fighting” and had thrown her out on to the street where she was further beaten by bystanders. Her friend followed them outside.

“I jumped in to protect her and security yelled at me,” Gladys said, “But I didn’t care. I got her in a taxi and took her to the clinic. That night, she was very traumatized and her room was full of blood. Management wouldn’t clean her room, so I washed the blood off all the walls myself. She was very afraid, so I wanted to stay with her in her room that night but management told me they would fine me if I did. I told them to get lost, that someone needed to stay with her so she would be okay. And I did.”

Neutralizing police abuse

Sex workers in some areas organized to defend themselves against arrest and police abuse. In Hillbrow, Johannesburg sex workers took direct action to defend themselves from police harassment. Carol recounted what happened on one occasion when sex workers organized to neutralize police activity: “Now, the police have caught on that the girls bring their client[s] to the parking lots to be safer. Last month, the cops went into the parking lot as

usual looking for sex workers. But the sex workers were tired of how the cops come and rape them. So, they locked one of the police officers up in a little room. Then they ran and called the *Daily Sun* newspaper and told them. The police officer had broken down the door by the time the media arrived but they managed to get pictures of him running away! You see, sex workers want to fight back against the system. But it is hard, and sometimes we do not know where to start, so we just start somewhere.”

Even though making a case against the police in the courts is extremely difficult, researchers collected one example in which workers united to use legal means to protect their rights. “I was in jail with three ladies who were raped,” recalled Priscilla in Windhoek. “The police forced them to have sex in order to let them out of jail and then didn’t release them. I told the girls, ‘you must make a case or the police will rape us everywhere they go, they won’t stop with us.’ There are good police at the child and woman abuse department. So, they reported it to them, made their case, and won, and three police officers lost their jobs.” Attempts to pursue a claim against the police were very influential within the community, no matter what the outcome, because other sex workers came to see that they also had a right to claim justice.

Improving Living Conditions

Building community

Stigma, discrimination, and marginalization mean that many sex workers cannot access existing community systems developed by Southern Africans to share water and other resources. Sex workers often form their own networks to provide for their social needs.

Sex workers often share child care duties during work hours. Children of sex workers often faced tremendous stigma because of their mother’s profession. Shared child care provides children with nurturing from other sex workers and an important model of tolerance and self-acceptance. Sharing child care is especially common in situations in which sex workers live communally, for example among women who work on the streets in Botswana and Namibia.

Communities of sex workers come together to obtain education. In Windhoek, trans and female sex workers work and often live together. These young sex workers will sometimes pool their sex work earnings to pay the school fees for those among them believed to have the most promise of succeeding.

Access to water is a key issue for many sex workers. “You build your shack, you can burn firewood for cooking but for water you need to buy a card that costs 100 [Namibian] dollars and then you must put money on it regularly to get water,” explained one worker in Windhoek. Sex workers reported sharing water with colleagues who were without, with the expectation of future reciprocation.

Sex workers also share financial resources to ensure the well-being of all in the group. In Windhoek, among an organized community of sex workers who struggle to eke out a living wage, the first sex worker to earn money for the day is expected to buy food for all other sex workers. Similarly, in Kasane, Botswana, sex workers share customers and income. Rose, a worker in that area, explained: “We assist each other. Someone can come to me and say, ‘Rose, I am not feeling well.’ I will give her money for her financial problems. If I have five clients and my friend has none, I can give her one so that she has something.”

Solidarity across ethnicity and gender

Support systems devised by sex workers extend across different social groups. At the time of fieldwork in 2008, xenophobic attacks against Zimbabweans were erupting across South Africa, with deadly consequences. Some sex workers in the brothels united to shield each other from the violence. “Inside here, we are sisters all together. We help the Zimbabwean girls when it gets bad. If there are a lot of police, we say, ‘Don’t go outside, they will send you back, we will get you what you need,’” explained Babalwa, who worked in a large brothel in Johannesburg that housed a significant number of migrant workers from Zimbabwe.

On the streets, in clubs, and in brothels in Namibia, trans and female sex workers work together across gender lines. This occurs in parts of South Africa as well. These ties are an important means of resistance to stigma and persecution. As Amor, a trans sex worker from Walvis Bay, Namibia, explained, “Among us sex workers, ladies always accept moffis as friends. They know I am not a gay man, but a woman. We are women together, we stick together.”

Trans houses and community events

Young trans sex workers in the research area almost always lived in the homes of older trans sex workers or “mamas.” Young female sex workers, many of whom were lesbian or bisexual, may also live in these communal environments. Jeannette, a mama in Windhoek, houses 20 trans sex workers and five female sex workers. Mamas’ homes offer a place where young trans people can live freely as themselves and avoid persecution at home or in the community.

“You feel safe and happy with a mama,” explained Martin, who had lived in one of the houses. “You can dress up and make jokes. It gives you a family and an older nurturing person. It’s based on lessons, to teach you to take care of yourself. What to do when a man gets violent with you. How to convince a customer to use a condom. Mamas teach you all about safer sex.”

If trans people choose to live in these situations, they are expected to make financial contributions to the operating of the home. Most obtain money to cover their costs through sex work.

The security of communal living makes it easier for some sex workers to refuse unsafe sex. “Mama always showed us condoms and would demonstrate on a bottle,” said Davidean in Windhoek. “She would say, ‘If there is ever a man who doesn’t want to use a

If a sex worker is sick, we get the Sisonke president to take her to the clinic. If she is really sick and wants to go home, we will donate money for her to go. Everybody, even security, will donate money for her.

—Babalwa, Johannesburg

condom, don’t have sex, just come back home.’” Mamas in the communal home in Windhoek host weekly dinners where workers share a variety of skills. “Saturday, we work till sunrise and go to bed at 8:00 or 9:00 a.m.,” said Martin. “Then, on Sundays, we all go to the shopping center and buy food and have a big family lunch. We talk about the week. We talk about our times with the clients and sex. We teach each other skills. I learned how to cut hair and do nail extensions. We don’t keep what we know just to ourselves.” The houses also participate in fashion/talent/beauty pageants for trans

women that are held from time to time and are attended by lesbians, trans men, other queer groups, and some heterosexuals.

Care for sick or dying sex workers

Although many sex workers return to their family for care when they are sick, others cannot because of homophobia, transphobia, or sex work or HIV-related stigma. Other families do not have the resources to care for an ill person. Some sex workers are orphans or widows and simply have no family to turn to. As a result, care for fellow sex workers has become a large part of many sex workers’ lives. E. Botter, a former street sex worker in Windhoek, provided an example of this, saying, “I am caring for two ill sex workers now. But it is difficult, because I have a small baby and cannot walk long distances.”

Sex workers often intervene on behalf of each other’s health, facilitating access to medical care or raising money to pay for medical expenses. Researchers found that solidarity was particularly strong among Zimbabwean sex workers living in South Africa and Botswana. “We know the girls from Zim in all the other [large brothels]. Some of them we know from Zim, some from here. If a girl from Zimbabwe is sick or in trouble, we all give money to send her home. If she is too sick, everybody pays for bus fare and food to get her home,” explained Gina, a Zimbabwean sex worker living in Johannesburg.

Such actions of collective care extend to sex workers in death. In South Africa, colleagues will often go to great lengths to find a sex worker’s identity and attempt to return her body to her family, or, in cases where this is impossible, assure her burial. L. from Johannesburg explained, “This year alone, in my hotel, we lost five sex workers. Two from

Zimbabwe, two somewhere outside and one from South Africa. We buried one sex worker in Soweto, because we tried and tried to find her family and couldn't." Such actions assert sex workers' right to dignity in death, often in the face of hostility or indifference from the wider populace. For those sex workers who are still alive, such gestures reaffirm their own right to dignity and strengthen bonds of trust and community among each other.

Decriminalise Sex Work

**Sex workers
cannot fight
HIV without
human rights
and worker
rights.**

Calling all sex
workers: join
Sisonke and fight
for your rights!



A sex workers' rights poster produced by SWEAT, Sisonke, and the Treatment Action Campaign in South Africa.
Photo courtesy of SWEAT.

5. Beyond Rehabilitation

Sex workers are facing a health and human rights crisis in Southern Africa. Despite this fact, very little is being done to protect the most basic human rights of sex workers. Instead, a significant proportion of funding is going toward initiatives focused on “rehabilitation,” which have not been proven to reduce health risks or decrease rights violations. There is no evidence that these kinds of programs achieve their stated goals, such as lowering the number of people in sex work or reducing the transmission of HIV.¹⁵ Rather, emphasizing “rehabilitation” may further stigmatize sex workers and limit the amount of resources available to provide evidence-based programming.

The following sections describe the current programming and funding landscape in the research areas, and what kinds of programs sex workers themselves demand and the support in public health literature for such interventions.

5.1 Existing Programs

The two most common types of projects targeting sex workers in the region are HIV programs and “rehabilitation” interventions geared toward assisting women, and sometimes trans women, to stop doing sex work. Most of the groups the researchers visited offered a combination of these two types of services. Health interventions are mostly funded from national HIV budgets and include condom distribution and the promotion of testing. Programs to prevent violence against women, often funded from gender budgets,

support skills-training and rehabilitation. Rehabilitation programs generally involve skills-training courses (including classes in sewing, cooking, gardening, candle making, computer literacy, and HIV counseling) and sometimes include Christian doctrine or social lessons.

Some sex workers do desire further skills or access to mainstream educational opportunities without the barriers caused by discrimination or school fees. They are quite clear, however, that any conditionality based on leaving sex work is not only discriminatory but also untenable, as most of the skills taught in these programs do not bring in adequate income.

They wanted to help me stop sex work, so they set me up with a stand to sell fruits by the road, but I could not survive on that income.

—Johanna, Windhoek

None of the interviewed sex workers who had completed rehabilitation programs had managed to obtain gainful employment from their training. They repeatedly emphasized that all of their colleagues who had stopped doing sex work had found a partner to financially support them, switched to a formal job unrelated to program training, or, in a few cases, had used their earnings from sex work to pursue formal education or invest in a business. Some sex workers said they felt betrayed by rehabilitation

projects that were no longer interested in their health or welfare once they had left sex work. “They supported me with food and money for school fees so I would stop sex work and be rehabilitated. Then when I was rehabilitated, I needed money for exam fees for my son and for food and I asked for some but they said I could no longer have any, it was for other women so they would stop prostitution,” said Sunny, a Namibian sex worker. Thus, after initial support provided by NGOs runs out, and in the absence of a steady income from sex work, former sex workers may be worse off financially than they were before they entered the rehabilitation program.

Rehabilitation projects do not appear to reduce violence against sex workers or improve working conditions except in one regard—that of bringing together sex workers as a community. Sex workers in one city in Botswana had found that some activities, such as rehabilitation-oriented gardening projects, had allowed them a chance to talk together in a group and share strategies for problems with customers and police. This outcome refutes the logic of rehabilitation projects and supports what sex workers in all three countries have concluded themselves: rehabilitation projects have little impact on reducing the number of sex workers.

Rehabilitation projects are often predestined to fail for several reasons. The programs do not match individual skill bases with training and often fail to read the economic and employment market. The programs do not provide follow-up support and many do not

provide seed funding or financial assistance to start small businesses. Discrimination from potential employers and the community against current or former sex workers also limits the possibility of program success.

Certain rehabilitation projects tend to further stigma and discrimination against sex workers by presenting sex work as an unacceptable practice and by urging participants to pressure their former colleagues to stop. This study found that groups that offered both rehabilitation services *and* HIV prevention and condoms created a significant tension for sex worker program participants. Sex workers who want to win the approval of staff or benefit from skills-training will sometimes lie about no longer doing sex work, which means they can no longer receive condoms or other HIV-prevention services. This dynamic has the potential to severely compromise sex workers' access to adequate information and support around HIV and violence. This conundrum may arise more frequently in the future as HIV groups targeting sex workers are encouraged to develop rehabilitation projects *as* HIV interventions.

They make us feel guilty. They want us to say that we want to change. But even if we want to do these projects, we don't see ourselves quitting sex work. No, it is our baby that one, it is not going anywhere. They may want us to stop but don't cross that line with us.

—Rashida, Kasane

5.2 Funding Restrictions

The kinds of programs described above exist for many reasons. NGOs may not have been exposed to information about the kinds of programming that is most effective for working with sex workers. Governments may be convinced by conservative political and religious lobbies that sex workers are “immoral” and need to be rehabilitated. National laws criminalizing sex work and homosexuality hamper needed HIV and AIDS programs for male, female, and trans sex workers. More recently, funding restrictions on foreign aid have undermined evidence- and rights-based interventions and bolstered inappropriate measures in the region. One such measure is the U.S. requirement that organizations that receive U.S. funding for HIV and AIDS efforts sign an “antiprostitution pledge,” an oath not to promote prostitution or the legalization of prostitution.¹⁶ In other parts of the world, grantees have come under attack for “promoting prostitution” when they support sex workers who remain in sex work. This has put a certain amount of pressure on grantees to prove

they are not contravening the pledge and to offer rehabilitation programming as part of their HIV programming.

At least two of the NGOs engaged in HIV-related work encountered during this research had signed the required antiprostitution pledge in order to receive funds from the United States Agency for International Development (USAID). Two other organizations said they were willing to sign the pledge to receive support from USAID because they were running out of funds. Restrictions such as the antiprostitution pledge make it very difficult for groups receiving HIV funds to support sex worker-led initiatives or to move toward giving greater emphasis to advocacy for sex workers' rights and law reform.

5.3 Approaches Recommended by Sex Workers

Sex workers in each country had clear views about the kinds of services they needed and their priorities for change. Focus group sessions with sex workers in Botswana, Namibia, and South Africa generated ideas for specific interventions that could be developed in each country.

*HIV, HIV, HIV, that's all anyone
from the outside will talk to us
about!*

—Amor, Walvis Bay

Sex workers prioritized programs to promote law reform, reduce violence and discrimination, and create safe working environments that support their ability to use condoms. The interventions proposed by sex workers are significantly different than the kind of programs that currently dominate the sector in Southern Africa. Current work to end violence against women, for example, does not address violence

and harassment by the police but is instead channeled into rehabilitation efforts. Much HIV and AIDS programming is framed too simplistically and narrowly and fails to engage sex workers who are attempting to survive in environments where they confront problems with law enforcement, discrimination, and social marginalization.

South Africa

The highest priorities for sex workers in South Africa are legal advocacy services and law reform. During focus groups, South African sex workers positioned themselves as agents of change, capable of participating in programs for reform. Specific programmatic needs included support to document and report rights infringements and arrest; strategies to

address violence; legal aid; technical assistance to support sex worker-led organizations; and assistance to achieve the decriminalization of sex work.

Currently several advocacy opportunities exist in South Africa that dovetail with sex workers' priorities in this area. The World Cup soccer tournament will be held in South Africa in 2010 and public discussions about how sex work will be "managed" during this international event have already begun. Rights-based organizations could seize this opportunity to promote, in partnership with sex worker communities, practical solutions regarding laws around sex work, as well as the health, safety, and working conditions for sex workers. The World Cup may also fuel debates about the presence of migrant sex workers in South Africa. Sex workers and advocates could intervene in these discussions to highlight the need to end discrimination against migrants and reduce the barriers they face in accessing health and legal services.

The current South African national AIDS plan recommends that sex work be decriminalized and supports rights-based HIV and AIDS interventions for sex workers. AIDS advocacy organizations, as well as sex worker advocacy groups, could support sex workers in their efforts to mobilize and pressure the government to implement the national AIDS plan. Furthermore, South African sex workers are adamant that the provision of basic safer sex materials, such as free high quality condoms and free lubricant, is an immediate program need. Given the crucial role these commodities play in safer sex, this intervention should be prioritized. In order for such interventions to be effective, sex workers have recommended that condoms and lubricants be available to sex workers when and where they need them including on the streets, at indoor venues, and for their personal use. Additionally, police activities that undermine the provision of safer sex materials, such as the confiscation of condoms, should be halted, as they are antithetical to the health promotion efforts of other arms of the state such as the Department of Health.

In addition to advocacy, sex workers need unconditional access to resources like computers in order to independently develop work skills and to develop their own organizations. Sex workers have emphasized that while skills-training courses are important, they also need financial assistance to sustain businesses. None of these services should be conditional on exiting from sex work and, perhaps more crucially, should acknowledge that sex workers are already engaged in work.

Key Principles for Sex Worker Programs in Southern Africa

- ▶ Ensure that sex workers are meaningfully involved in all aspects of assessing, developing, implementing, monitoring, and evaluating services and interventions.
- ▶ Prioritize the concerns and needs expressed by sex workers.
- ▶ Support sex worker-led initiatives and interventions.
- ▶ Frame sex work as work—and sex worker concerns as labor issues—and position services and interventions accordingly.
- ▶ Recognize that programs that aim to rehabilitate sex workers or are predicated on their “exit” from sex work are not effective and may in fact reduce sex workers’ access to training and health care.
- ▶ Recognize the diversity of sex workers and the importance of including women, men, trans people, and migrants in services and interventions.

These principles were developed by sex workers attending focus groups held during the research period.

Botswana

Sex workers in Botswana have prioritized low cost or free user-friendly health services as a key intervention for their communities. Significantly, Botswanan sex workers have suggested that dedicated health services run by sex workers themselves would help address barriers that sex workers face in terms of accessing user-friendly care. They emphasize programs that respect sex workers’ privacy, provide nonjudgmental care, and integrate practical and meaningful safer sex education, including tips such as how to check clients for STIs and how to get payment from clients in advance. Currently, there are no dedicated nongovernmental health services for sex workers in Botswana.

Botswanan sex workers are interested in addressing law reform in their country so that they can work without fear of arrest and harassment. They also strive to form their own organizations in order to advocate for themselves. Rights-based organizations that could potentially be allies for sex workers have not yet taken up the issue of law reform and, in general, the government has been silent on sex work issues. No support or spaces are currently available to sex workers to assist them in organizing around their own agendas. Providing such spaces could be a first step to supporting sex worker-led initiatives.

Sex workers in Kasane near the Botswana-Zambia border who are not connected to any particular service or organization have begun to advocate for sex work to be recognized as work. These workers are optimistic about various skills-training opportunities available to them and view them as a means to help supplement their sex work earnings. Allies and partnerships to support to sex workers on this level are needed. This entails moving from a rehabilitative approach to a proactive engagement with sex workers on access to education and income security initiatives where this is an articulated need.

Namibia

Namibia, in comparison to the other two countries surveyed, has the least resources allocated to provide services for sex workers. The services encountered during the research primarily focus on rehabilitation and target people struggling to survive economically.

No health services specifically designed for sex workers are available in Namibia at present. Sex workers want more user-friendly, high quality health services that cater to a full range of sexual and reproductive health needs. For example, trans sex workers wishing to obtain hormonal treatments and other therapies were unable to access user-friendly public health agencies to receive such services. A first step in changing this situation would be to sensitize health personnel to the rights and health needs of sex workers. Of interest is that sex workers in Walvis Bay reported no service needs. Rather they expressed a frustration with existing HIV and AIDS education interventions that seem irrelevant to their lives. This perspective emphasizes the need for interventions to be peer-led and engage those who sell sex in order to determine their service needs and interventions, if any.

Some Namibian sex workers interviewed opined that rehabilitation programs perpetuate stigma and marginalization. These workers will not engage with these services. They want a place where sex workers can convene to discuss their problems and organize. Currently, no organization or service offers such a space for sex workers to meet on this basis.¹⁷ Sex workers have also sought legal services to address issues of harassment, violence, and assault by clients and police, as well as arrests and detention by police. One group in Namibia, the Legal Assistance Centre, advocates for decriminalization through research and publicizing findings but does not provide any direct service.

Sex workers with children reported that they are unable to access free education for their families. Namibia has a policy that allows those who cannot afford the fees to be exempt, but some schools do not follow this policy. Many sex workers with limited income are also struggling to obtain child support from fathers, particularly since paternity tests are costly in Namibia. These women need to be linked to organizations and services that address these issues.

5.4 Evidence-Based Support

Research and evaluation of program models validate the kinds of health interventions recommended by sex workers in Botswana, Namibia, and South Africa. Peer-education initiatives—programs implemented by sex workers for sex workers—have been found to be effective in lowering STI rates and increasing condom usage among female sex workers in South Africa, Malawi, Zimbabwe, Zambia, and Mozambique.¹¹⁸ Sex workers in all sites, especially in Namibia and Botswana where health programs for sex workers are almost nonexistent, have recommended peer-based programs. Research has also shown that the more sex workers are engaged in running programs and establishing priorities, the more successful service provision will be. A recent systematic review of HIV prevention interventions with sex workers in resource-poor settings found that “policy support for sex worker interventions plus strategies to empower them improve participation in, and coverage of, the intervention.”¹¹⁹ It is important to emphasize that the sex workers surveyed are demanding much more than simply being included as peer educators or employees in HIV programs. They want resources—such as funding, equipment, and meeting space—in order to develop their own organizations to fight for both health and rights.

Sex workers’ demands for access to essential safer sex supplies, rather than rehabilitation “for their own good,” have also been supported by the literature. In environments in which sex workers have access to condoms and are supported in using them, sex work is not particularly “dangerous” in terms of HIV transmission. In one study, sex workers who reported up to 50 sexual contacts a week and used condoms consistently remained HIV-negative, reinforcing claims that regular condom use can substantially protect sex workers.¹²⁰ Sex workers surveyed want to be recognized as workers and to be able to access services that identify them as such. An evaluation of a brothel-based clinic in Hillbrow, South Africa, found that such an approach helps sex workers overcome discrimination and other barriers to accessing health care; provides effective, quality services; increases condom usage among sex workers; and helps challenge the stigma of brothels as “dirty places.”¹²¹

Finally, the right to treatment for all sex workers living with HIV, including migrant workers, has emerged as a fundamental demand. The provision of ARV treatments in combination with other services is recommended as a health intervention for individuals that also benefits the whole of society. Health projections indicate that the provision of prevention commodities, highly active antiretroviral therapy, and STI treatments for female sex workers in Botswana could curb the epidemic in the country as a whole.¹²²

NGOs and civil society organizations in the region have also illustrated the benefits of providing sex workers living with HIV with the services they need. In Botswana, MCDA’s sex workers’ project had assisted sex workers living with HIV. “We provided a

strong support system among HIV-positive sex workers to protect their lives,” explained the director of MCDA, Pedzisani Motlhabane. “We did public education and anti-stigma work so families support HIV-positive sex workers. There was a palliative, ARV, and [preventing mother-to-child transmission] component with sex workers. Sex workers say if we had continued without the education, all of us would have died.”

6. Conclusions and Recommendations

The governments of Botswana, Namibia, and South Africa have the responsibility to protect and respect the rights of all people in their countries irrespective of whether or not they are engaged in activities that are criminalized or are migrants. This study has found that law enforcement agents and other state actors such as border guards are the greatest violators of sex workers' human rights in the three countries under review. This study also found that sex workers cannot access protection from the state and that a climate of impunity exists in regard to rights violations against sex workers, among both the police and the general public.

The following recommendations to governments will enable them to create a system of accountability for its law enforcement officers and create the conditions for sex workers to be safe from human rights violations. It would serve the interests of sex workers and be in accordance with international human rights standards for lawmakers to decriminalize sex work by repealing national laws and removing local and municipal regulations that criminalize sexual transactions between consenting adults. Law reform will constitute a first step in reducing the high levels of violence against sex workers and create the conditions in which sex workers can obtain protection, recourse, and services from the state.

This study found that services provided by the government, especially those relating to HIV and sexual and reproductive health, fail to protect sex workers' right to health care. Civil society organizations and funding bodies have also failed to provide sex workers with the support and services they need to protect their health. The recommendations to govern-

ments, civil society organizations, and funders will enable them to reorient programs to address the most pressing concerns of sex workers, such as access to condoms and treatments for HIV, from a rights-based perspective.

Finally, an essential part of a human rights approach is the inclusion of marginalized communities in actions taken to improve their lives. Support for sex worker leadership in antidiscrimination campaigns, in service organizations, and struggles for rights will truly address the problems faced by communities of sex workers. It is also essential to recognize the diversity of sex worker communities in the countries in which this research took place and ensure that migrant, trans, male, and female sex workers are all part of the solution.

6.1 To Governments

1. **Decriminalize sex work.** Governments should recognize and address the relationship between laws criminalizing sex work and the human rights violations that result from these laws and policies. Law reform must include repealing national and local laws against sex work and activities surrounding sex work.
2. **Invest in evidence-based and rights-based health initiatives for sex workers.** Governments should invest resources and engage in partnerships with relevant civil society groups and sex worker organizations to develop and implement evidence-based and rights-based health interventions. This recommendation is consistent with commitments identified in national AIDS plans across the region.
3. **Support sex worker-led antidiscrimination and human rights trainings for police and health clinic staff.** Government ministries, particularly health and justice ministries, should allocate resources and engage with rights-based organizations to develop antidiscrimination and human rights training materials. These materials and programs can address the knowledge gaps, address stigma and discrimination, and promote the rights of sex workers.
4. **Ensure that sex workers have access to police protection.** Sex workers should have access to the same protections as others in each country in order to address crimes committed against them.
5. **Hold police accountable.** Appropriate disciplinary measures must be taken against police officers who misuse their position and power to extort money and sex from sex workers, subject them to degrading treatment, illegally detain them, or otherwise abuse their human rights.

6. **Oppose policies implemented through police raids against sex workers.** Governments, UNAIDS, and other UN bodies should explicitly oppose HIV or sex work policies that are implemented through police raids or that give police more power to exploit sex workers or to use physical or sexual violence against them.

6.2 To Civil Society Organizations

1. **Advocate for the human rights of male, female, and trans sex workers.** Rights-based NGOs promoting the rights of women, GLBT communities, migrants, and people living with HIV can create awareness about the ways in which sex workers' rights are violated in a broad range of constituencies. These organizations can advocate for, and disseminate information about, the ways in which sex workers' rights may be protected, respected, and fulfilled. These organizations can also train staff to interact sensitively and appropriately with communities of sex workers and provide services to support these communities.
2. **Advocate for evidence-based programs that reduce HIV transmission and defend rights.** Human rights violations and poor working conditions fuel sex workers' vulnerability to HIV. It is imperative to address these fundamental underlying causes in order to fight HIV.
3. **Support mechanisms for redress of human and labor rights violations.** NGOs can disseminate information about, and facilitate access to, official mechanisms and processes whereby sex workers can challenge human rights violations. These mechanisms include patient and victim charters, official complaint procedures for mistreatment by health and/or police personnel, access to legal aid and mediation, and arbitration around labor issues.
4. **Support sex worker-led programs and initiatives.** Sex workers are part of the solution in terms of developing efforts to support them and make change. Sex workers are best placed to understand what their constituencies need. Civil society organizations should invest time and resources into supporting the development of sex worker leaders who can represent their communities and inspire change.

6.3 To Funders

1. **Fund and support sex workers' own collective organizing and other groups that promote sex workers' rights and health.** In many parts of the world, sex worker-led or rights-based projects have shown that they are best suited and best equipped to fight HIV and promote human rights. Their successes are documented in both the public health and human rights literature. They offer a powerful example of how funding and institutional partnerships in support of sex worker organizing can achieve tremendous results.
2. **Support mainstream human rights groups and other NGOs to collaborate with sex worker groups to document and confront violence.** In the three countries studied, violence against sex workers—including by government officials—has been allowed to continue in a climate of almost total impunity. Documenting and publicizing human rights violations is an important advocacy strategy for change.
3. **Support health and rights initiatives dealing with the specific challenges faced by migrant and GLBT sex workers.** Migrant sex workers face major obstacles when they attempt to access health care and other social services. This systemic exclusion is linked to xenophobia and stigma against migrants and must be redressed. Male sex workers often face homophobia and stigma when they attempt to access appropriate health services. Trans sex workers, particularly those undergoing physical transition, lack access to respectful and adequate medical care.

Appendices

Appendix 1: Organizations Visited and Individuals Interviewed

South Africa

- ▶ **Reproductive Health and HIV Research Unit (RHRU)**
Tryphina Matsena
Joyce Make
Fundiswa Mtsha
Zanele Ngwenya
Lauren Jankelowitz

- ▶ **Sex Worker Education and Advocacy Taskforce (SWEAT)**
Eric Harper
Vivienne Lalu
Priscilla Baleni

- ▶ **Women's Legal Centre**
Jennifer Williams

Botswana

- ▶ **Botswana Network on Ethics, Law and HIV/AIDS (BONELA)**
Christine Stegling
Oratile Moseki
Yorokee Kapimbua
- ▶ **Matshelo Community Development Association (MCDA)**
Pedzisani Motlhabane
- ▶ **Nkaikela Youth Group**
Beauty Mahgoshia

Namibia

- ▶ **The Rainbow Project (TRP)**
Friedel Dausab
- ▶ **Walvis Bay Multi Purpose Centre**
Olivia Namkomba
- ▶ **Legal Assistance Centre**
Dianne Hubbard
- ▶ **The Stand Together Shelter**
Father Herman Klein-Hitpass
- ▶ **The Council of Churches in Namibia**
Mr. Beukes

Other Individuals Interviewed

- ▶ Marlise Richter, Lecturer at Steve Biko Centre for Bioethics, University of Witwatersrand, South Africa, who has carried out research into sex work issues.
- ▶ Debie LeBeau, a U.S.-based anthropologist who has carried out research into sex work issues in Namibia.

Interview and Focus Group Participants

► *South Africa*

- | | | |
|--------------|---------------|---------------|
| 1. Carol | 15. Valentine | 29. Monique |
| 2. Mtwana | 16. Maria | 30. Benecia |
| 3. Beautiful | 17. Thembi | 31. Kim |
| 4. Slender | 18. Bonolo | 32. Joyce |
| 5. Fatima | 19. Lopez | 33. Ray |
| 6. Penelope | 20. Bongos | 34. Jabu |
| 7. Zanele | 21. Zodwa | 35. Sebastian |
| 8. Tumi | 22. Thabo | 36. Ken |
| 9. Lucky | 23. Gladys | 37. Kleyo |
| 10. Babalwa | 24. Natasha | 38. Shana |
| 11. Linda | 25. Promise | 39. Stacey |
| 12. Dona | 26. Elizabeth | 40. Monique |
| 13. Pinki | 27. Wendy | 41. Lee |
| 14. Priscila | 28. Gina | 42. L |

► *Botswana*

- | | | |
|--------------|--------------|----------------|
| 1. Rose Pink | 10. Takesure | 19. Mokhelele |
| 2. Rose | 11. Peccer | 20. Gumide |
| 3. Felicia | 12. Daizy | 21. Khudu |
| 4. Rashida | 13. Alice | 22. Meguel |
| 5. Hope | 14. Connie | 23. Mmamphae |
| 6. Karen | 15. Betty | 24. Bogosi |
| 7. Lovers | 16. Nomsa | 25. Shado |
| 8. Cathy | 17. Barbados | 26. Semakaleng |
| 9. Mary | 18. How | |

► *Namibia*

- | | | |
|------------------|--------------|-----------|
| 1. Salinde Uiras | 8. Johanna | 15. Paula |
| 2. Priscilla | 9. Joane | 16. Logan |
| 3. E. Botter | 10. Lynne | 17. Ann |
| 4. Rosina | 11. Jeanette | 18. Amor |
| 5. Lökkies | 12. Martin | 19. Aisha |
| 6. Aileen | 13. Davidean | 20. Susan |
| 7. Tessa | 14. David | 21. Sunny |

Appendix 2: Research Tools

A. Questionnaire for Sex Workers

Working environment	
1	Can you tell us how you work and where you do business?
2	What are the good things about working this way?
3	What are the bad things about working this way?
4	What could support sex workers to maintain their prices, work more safely, and protect their health at work?
5	If you have another income do you use any of this income to make your sex work easier and safer?
6	Can a sex worker working where you work make enough money if she insists on condom use?
7	What are the charge/price ranges for sex work in your area?
Legal context and policy environment	
8	Can you tell me how the laws have been used against you as a sex worker or others that you know?
9	Can you give us examples of how you have experienced different people using the law against you? (Probe) <ul style="list-style-type: none"> • By the people you work for • By the police • By the clients • By service providers • By the community
10	Are there any laws and policies directly related to HIV and AIDS that you know of that affect you in your work?
Human rights	
<i>Right to safety</i>	
11	Do you have examples of being discriminated against, being abused, or treated differently because people know you are a sex worker?
12	Do any groups of people threaten your safety? If so who?
13	What are the ways they threaten your safety the most often?
14	Have you been forced to pay off police or anyone else in the past two years? If so, who?

15	Have you ever been arrested or fined for sex work?
16	Have you ever been detained/kept in police cells or prison for sex work? If so for how long?
17	Have the police ever threatened you with violence? If so, please explain.
18	Have you the police ever been rough or physically violent to you in the past two years? How often?
19	Have the police ever forced you to have sex against your will in the past two years? How often?
20	Has anyone else been physically violent to you in the past two years? Who were they?
21	Has anyone else forced you to have sex against your will in the past two years? Who were they?
Right to health	
22	Have you experienced problems in getting health or social services for yourself or your children when the people you approach know you are a sex worker? If yes please explain.
23	Do most sex workers that you know know their HIV status? If not why?
24	Do most sex workers you know get tested for STIs? If not, why?
25	Have you ever been tested for HIV or STIs against your will? Please explain.
26	Have you ever been treated for medical procedures against your will? Please explain.
27	Have you or other sex workers you know been able to access medical treatment for STIs or HIV if and when needed? If no, please explain.
28	Are you or other sex workers able to get as many male and female condoms as you need or more? If no, why? If money is an issue, what did you do?
29	Have you ever faced condom shortages? Have the places you get condoms ever had shortages? If so, for how long? If so, what do you do? Did you do anything to get condoms? (Probe)
30	Do you use lubricant at work? If so what? Are you able to get as much water-based lubricant as you need for work?
31	Are there any groups/people who make it harder for you to have safer sex with clients? If so, who?
32	Do you know of any programs that promote abstaining from sex or being faithful to one partner in order to reduce HIV infections? If so, how? What is their approach to sex workers? Does this affect your working conditions? Has this meant less clients for example.

33	Are there any programs or projects that you know of that are against sex work? If so, how do they affect you?
Other	
34	Have the authorities ever made you engage in any work or training courses against your will?
Ability to organize to improve rights and sexual health	
35	What can sex workers themselves do to end discrimination and violence against sex workers and improve health and safety in sex work?
36	Would it be easier to achieve changes if sex workers cooperated together as a group? Explain
37	What kinds of support and resources do you think you need to organize as sex workers? <ul style="list-style-type: none"> • Resources (people, money, organizations, infrastructure) • Information • Skills • Partnerships
38	If you are already working with other sex workers can you say what you have achieved, what are the difficulties, and what are the future plans?
39	Have you joined, organized with, or supported other groups of people around demands like better housing or access to better services? <ul style="list-style-type: none"> • What made this possible/what helped you to do this? • What were your experiences? • What did you learn?

B. Revised Methodology for Focus Groups

The revised methodology involved the following:

1. Introductions
2. Consent procedures
3. Mapping of work environments through drawing and comment on flipchart paper
4. Depiction of the good and bad things about working in this environment through drawing and comment
5. Depiction of “wishes” in relation to services and interventions through drawing and comment
6. Participants present their drawings and interviewees facilitate discussion and elaboration

C. Questionnaire for Organizations

Legal context and policy environment	
1	Can you describe the legal and policy framework related to sex work?
2	What other policies and/or laws disproportionately affect or are targeted at sex workers?
3	What are the human rights abuses experienced by sex workers? <ul style="list-style-type: none"> In what ways have you documented these and do you have any resources available that create awareness around these violations?
4	Can you describe the range of working conditions in the sex trade and how these conditions compromise or foster human rights protection?
Human rights	
5	Can you give examples of existing mechanisms that have been used to redress human rights violations against sex workers? Can you describe your existing and planned programs/interventions in relation to working with sex workers? <ul style="list-style-type: none"> It would be useful to get copies of funding proposals, reports, and evaluations—and also needs assessments and surveys if they have.
6	Can you describe any specific legal action taken that has improved the situation for sex workers more broadly?
7	What laws were addressed and what national and/or international laws or instruments were used?
8	Do you have any examples of sex workers organizing informally to defend their rights?
9	Do you have any examples of sex workers organizing more formally to defend their rights?
10	If you are engaged in supporting sex workers to organize more formally what are the opportunities and challenges in this regard and what would further facilitate and support this work? If not, are you envisioning initiating this type of work? <ul style="list-style-type: none"> Here one could also include issues pertaining to the positioning of the organization and their relationship with sex workers (strengths) and the threats in society (which then speaks to attitudes, knowledge, police behaviors, etc).
Access to services	
11	If you are rendering direct services to sex workers what are these services?
12	What is the level of involvement of sex workers in this service delivery?

13	Describe the range of (health, social, human rights and legal) services available to sex workers, the quality thereof, and their utilization. <ul style="list-style-type: none">• Maybe also add a question around accessibility and affordability.
14	Where are the gaps in services and how best can these gaps be filled?
15	What are your views on developing specialized services for sex workers or advocating for and/or developing better general service provision for what services?
16	What is your view on provision of health services to sex workers in terms of the quality of care?

Appendix 3: Consent Form

CONSENT FORM

Situational Assessment of Sex Worker Health and Rights
in Namibia, South Africa, and Botswana 2008

City: _____

Date: _____

Purpose

The assessment is an initiative of the Sexual Health and Rights Project (SHARP) of the Open Society Institute (OSI) in collaboration with the Open Society Initiative for Southern Africa (OSISA). The assessment will be used to advocate for sex workers' right to health and rights in the region.

If you have any questions about this research or your rights as a research participant, please contact Heather Doyle, Director of SHARP, at hdoyle@sorosny.org.

Procedures

- ▶ To preserve your privacy and safety, you have the option of making all the information you give anonymous. If you wish to do so, you will be asked to give your consent to participate verbally and you will be asked to give a fake name to attribute to your comments. If you choose to do so we will have no record of your full real name.
- ▶ If you choose instead to give your full real name, you will be asked to sign this consent form. Your comments will be attributed to your full real name in all publications. Please bear in mind that these will be made public.
- ▶ The information gathered from this survey may be published or disseminated in the media. It will be used as the basis for a report and publication that will be available to the general public, donors, non-governmental organizations and government agencies, and possibly for a blog or audio recording. If you do not wish to have the recording of your voice used in any recording, please specify this and your wish will be respected.

- ▶ The researchers will do an interview or a focus group. It will either be tape-recorded or recorded using notes. They will ask about your experiences of work, of services, of human rights violations and of organizing. They will ask you what you think about different subjects. There are no right or wrong answers; they want to learn more about your experiences, thoughts and opinions. The interview or focus group should last around two (2) hours.
- ▶ Some of the questions are about violence and may be emotionally difficult. You are free not to answer any question you do not want to. If at some point during the questionnaire you wish to stop for any reason, your wishes and privacy will be respected. If you wish, the partially completed interview can be immediately destroyed. You can withdraw from participating at anytime without any negative consequences.
- ▶ There is no pressure to participate. Choosing to participate or not to won't have any effect on your access to any physician/health care worker or services that you are now receiving.
- ▶ You will be offered _____ for your travel-related expenses regardless of your completion of the interview or focus group.

When the survey is done, you can receive information on the results by giving the researcher an address or email to which they can send a written or oral copy. The report will also be available on-line through www.soros.org.

(For anonymous participants)

If you wish to participate, you must say the following sentence out loud to the person giving the questionnaire:

Yes, I fully understand the consent form and I give my consent to participate in this study.

Interviewer Name

Interviewer Signature

Date

Witness Name

Witness Signature

Date

Name to attribute comments to: _____

(For named participants)

Yes, I fully understand the consent form and I give my consent to participate in this study.

Name

Signature

Date

Notes

1. See appendix three.
2. A full list of people interviewed is included in appendix two.
3. This report uses the language of “trans people” and “trans” with the awareness that these terms do not always capture the subtle ways in which identity is expressed locally. For example, some trans people interviewed identified as women outside of work but others identified as *moffis*—a re-appropriated derogatory term for gay men or men who dress as women. Some identified alternately as gay men and as women.
4. This term denotes a person whose inner gender identity differs from the physical characteristics of his or her body at birth.
5. As classified by the World Bank. See www.worldbank.org (accessed June 1, 2009).
6. N. Mseyamwa, “Rights-Namibia: Government Considering Water Subsidies for Poor,” *IPS News*, February 5, 2008, <http://ipsnews.net/news.asp?idnews=41082> (accessed January 7, 2009).
7. T. Hughes, A. Kajee, and S. Peberdy, *Gender, Remittances and Development: Preliminary Findings from Selected SADC Countries* (South Africa: UN-INSTRAW and South African Institute of International Affairs, 2007).
8. The South African government estimates that three million Zimbabweans may be living in South Africa. Other estimates put the figure at 500,000. See, for example: J. Crush, *South Africa: Policy in the Face of Xenophobia*, July 2008, <http://www.migrationinformation.org/Profiles/display.cfm?ID=689> (accessed January 7, 2009).
9. Ibid.
10. *Neighbors in Need: Zimbabweans Seeking Refuge in South Africa*, <http://www.hrw.org/en/reports/2008/06/18/neighbors-need-o> (New York: Human Rights Watch, 2008).
11. Ibid.

12. Personal communication by email with Lesbians, Gays and Bisexuals of Botswana (LEGABIBO), March 6, 2009.
13. Clause 9 (3) of the South African Constitution enshrines lesbian and gay rights and states that the state may not unfairly discriminate directly or indirectly on the grounds of, inter alia, sexual orientation.
14. *More than a Name: State-Sponsored Homophobia and Its Consequences in Southern Africa*, <http://www.hrw.org/reports/2003/safrica> (New York: Human Rights Watch, 2003).
15. "Experts Slam SA Over Migration Policy," *Mail and Guardian*, August 28, 2008, <http://www.mg.co.za/article/2008-08-28-experts-slam-sa-over-migration-policy> (accessed August 29, 2008).
16. For example, in 2005 the maternal mortality ratio (MMR) was 400 per 100,000 live births in South Africa, 210 per 100,000 in Namibia, and 380 per 100,000 in Botswana. These rates are lower than neighboring countries such as Zimbabwe and Zambia but are significantly higher than rates recorded in other geographic regions. The rates are 40 to 80 times higher than many countries in Europe where MMR is approximately 5 per 100,000 live births. Similarly, infant mortality rates are between 15 to 30 times higher in South Africa, Botswana, and Namibia than Scandinavian countries. For more information, see: World Health Organization Statistical Information System, <http://www.who.int/whosis/en>.
17. *Botswana Human Development Report: Harnessing Science and Technology for Human Development*, (Gaborone, Botswana: UNDP, 2005).
18. *Report on the Global AIDS Epidemic*, http://www.unaids.org/en/KnowledgeCentre/HIVData/GlobalReport/2008/2008_Global_report.asp (UNAIDS, 2008; accessed May 27, 2009).
19. *Namibia Fiscal Year 2008 Country PEPFAR Operational Plan*, PEPFAR, <http://www.pepfar.gov/about/opplano8/102014.htm> (accessed February 12, 2009).
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21. One study estimated that 365,000 premature deaths would have been prevented if during the period between 2000 and 2005 the South African government had provided ART to people living with HIV and treatment for pregnant women that would have helped prevent the transmission of HIV to their babies. See: P. Chigwedere, G.R. Seage, III, S. Gruskin, T.H. Lee, and M. Essex, "Estimating the Lost Benefits of Antiretroviral Drug Use in South Africa," *AIDS*, December 2008, 410–415.
22. *National Operational Plan for Scaling Up HIV Prevention in Botswana, 2008–2010*, final draft 2007, 16.
23. Republic of Namibia, *The National Strategic Plan on HIV/AIDS: Third Medium Plan, 2004–2009*, 42.
24. C.A. Johnson *Off the Map: How HIV/AIDS Programming is Failing Same-Sex Practicing People in Africa* (New York: International Gay and Lesbian Human Rights Commission, 2007).
25. See: <http://www.info.gov.za/otherdocs/2007/aidsplan2007/index.html> (accessed June 1, 2009).
26. *Ibid*, 120.
27. G. Mookodi, O. Ntshebe, and I. Taylor. "Botswana." In *The International Encyclopedia of Sexuality*, Volume I–IV, 1997–2001 (Francoeur RT, editor), <http://www2.hu-berlin.de/sexology/IES/botswana.html> (accessed February 23, 2009).

28. In Namibia, 16 percent of maternal deaths are related to unsafe abortions. "No abortion law reform soon in Namibia," *Reproductive Health Matters*, November 2004, http://findarticles.com/p/articles/mi_hb264/is_24_12/ai_n29141533 (accessed February 23, 2009).
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34. Personal communication with Carol Bowley, Gender Dynamix, South Africa, March 6, 2009.
35. A. Ramkissoon, I. Kleinschmidt, M. Beksinska, J. Smit, J. Hlazo, Z. Mabude, *National Baseline Assessment of Sexually Transmitted Infection and HIV Services in South African Public Sector Health Facilities* (Johannesburg; Reproductive Health Research Unit and University of the Witwatersrand), 81.
36. "Issue Paper 19, Project 107, Sexual Offences," SALRC, July 12, 2002. http://www.doj.gov.za/salrc/ipapers/ip19_prj107_2002.pdf (accessed Feb 28, 2009).
37. Chapter 2, part 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act prohibits anyone from engaging "the services of a person 18 years or older ... for financial or other reward, favour or compensation ... for the purpose of engaging in a sexual act ... irrespective of whether the sexual act is committed or not." The Sex Worker Education and Advocacy Taskforce (SWEAT) campaigned against the inclusion of this provision against clients of sex workers and is currently working with the Women's Legal Centre to challenge the inclusion of this provision on procedural grounds. The provision was inserted into the act without sufficient time for the required public participation process.
38. For example, Cape Town's 2007 By-Law Relating to Streets, Public Places And The Prevention Of Nuisances prohibits people in public space from "perform[ing] any sexual act" and "solicit[ing] or importun[ing] any person for the purpose of prostitution or immorality."
39. South Africa signed both treaties in December 2000 and ratified them on February 20, 2004.
40. "Issue Paper 25, Project 131, Trafficking in Persons," SALRC, March 31, 2004, http://www.doj.gov.za/salrc/ipapers/ip25_prj131_2004.pdf (accessed February 28, 2009).
41. "Discussion Paper 111, Project 131, Trafficking in Persons," SALRC, June 30, 2006, http://www.doj.gov.za/salrc/dpapers/dp111_prj131/Cover%20and%20Index.pdf (accessed February 28, 2009).
42. "Issue Paper 25," SALRC, 61-67.

43. Only 8 women out of 164 interviewed recalled experiencing trafficking-like practices. G. Gould and N. Fick, *Selling Sex in Cape Town: Sex Work and Trafficking in a South African City* (Cape Town: Institute for Security Studies and SWEAT, 2008).
44. All workers in South Africa are constitutionally guaranteed the “right to fair labor practices” according to the Constitution of the Republic of South Africa, chapter 2, section 23, <http://www.info.gov.za/documents/constitution/index.htm> (accessed February 16, 2009). The Basic Conditions of Employment Act of 1997 (amended in 2002) mandates the basic conditions of employment in the country and is a part of South Africa’s obligations as a member state of the International Labour Organization.
45. *Unprotected Migrants: Zimbabweans in South Africa’s Limpopo Province* (New York: Human Rights Watch; 2006) 19–20.
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47. Immigration Amendment Act of 2004, No. 19, <http://www.unhcr.org/refworld/docid/42cco4254.html> (accessed February 18, 2009).
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51. H. Wells and L. Polder, *Hate Crimes Against Gay and Lesbian People in Gauteng: Prevalence, Consequences and Contributing Factors*, (South Africa: Joint Working Group, OUT LGBT Well-being, UNISA Centre for Applied Psychology), 50. http://www.out.org.za/images/library/pdf/Hate_Crimes_Research_Findings.pdf (accessed February 29, 2009).
52. South Africa controlled Namibia, then known as South-West Africa, from World War I until 1989.
53. *Whose Body Is It: Commercial Sex Work and the Law in Namibia*, Legal Assistance Centre, <http://www.lac.org.na/projects/grap/Pdf/commsex.pdf> (Austrian Development Corporation, 2002).
54. *Ibid.*, 73–74.
55. For example, in 1998 sex shops in Windhoek, Walvis Bay, and Swakopmund challenged the constitutionality of Section 17(1) of the Combating of Immoral Practices Act after police raided their premises and confiscated videos and magazines that were considered “indecent photographic material.” The High Court found that that this section of the Combating of Immoral Practices Act, which prohibited the manufacture, sale, or supply of any item that is intended to be used to perform an “unnatural sexual act” was so vague and broad that it violated the applicants’ constitutionally protected freedom to engage in trade or business. Legal Assistance Centre. Key judgments 1990-2000. Available at: <http://www.lac.org.na/cases/keyjudgments.html> (accessed January 13, 2009).
56. Shamielah Hendricks and 4 Others V Attorney General of Namibia and two others. CASE NO. (P) A 140/2000 2002/08/20. Available at: <http://www.saflii.org/na/cases/NAHC/2002/4.html> (accessed January 13, 2009).
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62. *Ibid.*, Section GN 134/1994 (GG 895)
63. Johnson, *Off the Map*, 17.
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69. *Ibid.*, sections 149 and 153 to 159.
70. “Prostitution Not Punishable by Law DPP,” *Botswana Press Agency*, January 20, 2006.
71. *Ibid.*
72. “Police Fight Prostitution,” *Botswana Press Agency*, October 20, 2003.
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74. “Neighbours from Hell,” *Sunday Standard*, October 30, 2006, http://www.sundaystandard.info/search/search_item.php?NewsID=593 (accessed January 13, 2009 Jan 13).
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81. The African Charter was ratified by Botswana July 17, 1986, acceded to by Namibia on July 30, 1992, and acceded to by South Africa on July 9, 1996.
82. CEDAW was acceded to by Botswana on September 12, 1996, acceded to by Namibia on December 23, 1992, and ratified by South Africa January 14, 1996.
83. CAT was ratified by Botswana October 7, 2000, acceded to by Namibia on December 28, 1994, and ratified by South Africa on January 9, 1999.
84. CERD was acceded to by Botswana on March 22, 1974, acceded to by Namibia on December 11, 1982, and ratified by South Africa on January 9, 1999.
85. ICESCR was acceded to by Namibia on February 28, 1995 and ratified by South Africa on October 3, 1994.
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87. Interview with RHRU staff, Johannesburg, May 19, 2008.
88. A re-appropriated derogatory term referring to gay men or trans people.
89. 300 rand is equivalent to approximately 30 USD. Average monthly salaries for farm workers and domestic workers in South Africa are approximately 1000 rand. *South Africa: Country Reports on Human Rights Practices*, U.S. Department of State, March 11, 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100505.htm> (accessed February 21, 2009).
90. Approximately 37 to 125 USD. The average daily wage for a worker in Botswana is 350 pula.
91. Approximately 30 USD.
92. "Police Fight Prostitution," *Botswana Press Agency*, October 20, 2003.
93. The majority of migrant sex workers interviewed by researchers were Zimbabwean. Researchers interviewed one worker from Botswana who had migrated to work in Rustenburg, South Africa, and several sex workers from Lesotho and Swaziland who had also migrated.
94. Surihe Gamoas, "B1 Butcher Changes Tactics?" *New Era* (Windhoek). September 20, 2007.
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96. J. Wojcicki and J. Malala, "Condom Use, Power and HIV/AIDS Risk: Sex-Workers Bargain for Survival in Hillbrow/Joubert," *Social Science and Medicine*, July 2001, 105.

97. Ibid.
98. Approximately 30 percent of clients at antenatal clinics in Hillbrow, South Africa, were found to be HIV-positive; the HIV prevalence rate among sex workers is 60 percent (see *Summary Report: National HIV and Syphilis Sero-prevalence Survey of Women Attending Public Antenatal Clinics in South Africa*, South Africa Department of Health, 2001; S. Delany, *Summary of Behavioural and Epidemiological Data from Hillbrow Sex Worker Intervention*, Johannesburg Reproductive Health Research Unit, 2001). In one study in Windhoek, Namibia, 73 percent of sex workers interviewed were HIV-positive (see C. Hjorth, *Prostitution, HIV/AIDS and Human Rights: A Case Study of Sex Workers in the Township of Katutura, Namibia*, Göteborg University, Centre for the Study of Human Rights, 2005).
99. These views are often perpetuated by ill-advised studies of sex workers, HIV, and STIs. See Wojcicki and Malala, 101.
100. "Neighbours from Hell," *Sunday Standard*.
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103. "Crime and Punishment: Criminalization and HIV," *Irin News*, December 2008, <http://www.irinnews.org/pdf/in-depth/PlusNews-Crime-and-punishment-Criminalisation-and-HIV-December-2008.pdf> (accessed August 28, 2008).
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105. South Africa began offering ARV treatments in November 2003, but distribution of ARVs has been slow. In 2007 only 28 percent of people living with HIV were receiving treatment. See *Towards Universal Access: Scaling Up Priority HIV/AIDS Interventions in the Health Sector* (Geneva: WHO/UNAIDS/UNICEF, 2008).
106. Hjorth, *Prostitution, HIV/AIDS and Human Rights*.
107. Interviewed on May 27, 2008.
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109. "Background on Sisonke Movement," SWEAT, http://www.sweat.org.za/index.php?option=com_content&task=blogcategory&id=10&Itemid=26 (accessed March 12, 2009)
110. In 2002, for example, SWEAT alerted sex workers about the first Issue Paper released by the South African Law Reform Commission on reform of sex work legislation.
111. *SWEATSCENE*, SWEAT, May-June.2007.
112. This was reported to occur on the street in all locations researchers visited except for Cape Town.
113. Sex workers often share rooms in brothels in Johannesburg.
114. See T. Leggett, "Poverty and sex work in Durban, South Africa," *Society in Transition*, 1999;30(2), 157-167; and D. Hubbard and E. Zimba, "Sex work and the law in Namibia: a culture-sensitive approach," *Research for Sex Work*, 2003 (6), 10-11.

115. G. Mathew, *Review of the Evidence Base for an "Evidence-Based" Policy on HIV Programming with Sex Workers*, 2007, <http://www.nswp.org/pdf/20070801-GreenallThreePillarsReview.pdf>, (accessed March 12, 2009).
116. The pledge was originally included in the President's Emergency Plan For Aids Relief (PEPFAR) enacted in 2003. PEPFAR was re-authorized in 2008 for a five-year period, retaining the anti-prostitution pledge. See Statement of Center for Health and Gender Equity Executive Director Serra Sippel in response to President Bush signing bill to reauthorize PEPFAR, CHANGE, July 30, 2008, <http://www.pepfarwatch.org/images/PEPFAR/pr2008.bush-pepfar.pdf> (accessed February 26, 2009).
117. One Namibian group, The Rainbow Project, offers a supportive space for trans people and it may be possible that trans sex workers convene in this environment.
118. Campbell and Mzaidume; N. Dube and D. Wilson, D, "Peer Education Programmes among HIV-vulnerable Communities in Southern Africa," B. Williams, and C. Campbell, eds., *HIV/AIDS Management in South Africa: Priorities for the Mining Industry* (Johannesburg: Epidemiology Research Unit, 1996); E. Nguni, D. Wilson, J. Sebstad, F. Plummer, and S. Moses, "Focused Peer-mediated Educational Programmes among Female Sex Workers to Reduce Sexually Transmitted Disease and Human Immunodeficiency Virus Transmission in Kenya and Zimbabwe," *Journal of Infectious Diseases*, 1996, 174 Suppl. 2, S240-S247.
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121. J. Stadler and S. Delany, "The 'Healthy Brothel': The Context of Clinical Services for Sex Workers in Hillbrow, South Africa," *Culture, Health and Sexuality*, September 2006, 451-463.
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Laws and policies against sex work have resulted in widespread human rights abuses. In Botswana, Namibia, and South Africa, sex workers are subjected to routine extortion, rape, and beatings by police. These abuses and a lack of safe working conditions render sex workers particularly vulnerable to HIV. Programs aimed at sex workers usually attempt to “rescue” them, without addressing their human rights. Despite enormous challenges, sex workers are organizing to protect their rights. They are calling for law reform and programs to end violence and discrimination. They advocate for safer working conditions and access to health care. They want

rights not rescue.



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