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## **CEDAW SHADOW REPORT 2019**

### **SUBMITTED TO THE CEDAW COMMITTEE**

## **Sisonke Botswana Organization & Botswana Network on Ethics, Law and HIV and AIDS**

#### **Contact Details**

**Sisonke Botswana Organization**

**Tel: +267 3167423**

**Cell: +267 72553200/ 72923214**

**Email: [sisonke@bonela.org](mailto:sisonke@bonela.org) / [toshl@bonela.org](mailto:toshl@bonela.org)**

**Botswana Network on Ethics, Law and HIV and AIDS**

**+267 3932516**

**+267 73586886**

**[bonela@bonela.org](mailto:bonela@bonela.org) / [cindyk@bonela.org](mailto:cindyk@bonela.org)**

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## **Executive Summary**

This submission explains the situation of sex workers in Botswana (citizens and migrants), highlighting priority issues that are not covered by the Botswana Government report.

Specifically this report seeks to show how the laws of Botswana, continue to perpetuate negative community norms that lead to discrimination and violence against sex workers in Botswana-

It is based on focus groups conducted by Sisonke Botswana in January 2019 as well as in addition to evidence and knowledge gained by Sisonke Botswana Organization as the only sex worker led organization operating in Botswana, in part through their participation in the Hands Off! Study<sup>1</sup>. The shadow report was developed by Sisonke, with support from the Botswana Network on Ethics, Law and HIV and AIDS (BONELA), which works towards fulfillment of human rights for key populations in Botswana, including sex workers and transgender people.

Sex workers in Botswana continue to face many forms of human rights violations, that are perpetuated by being discriminated against. These violations include, but not limited to, sexual violence, physical violence, emotional abuse, coercion and unsupportive legal and public health policies.

Therefore this submission recommends the following to be addressed by the Government of Botswana to prevent stigma, discrimination and violence that sex workers continue to experience:

1. Start national stakeholder consultations on Constitutional review.
2. Define discrimination explicitly in the constitution of Botswana to include elimination and prevention of discrimination against sex workers, transgender and other key populations.
3. Start national consultations and stakeholder engagement on decriminalizing sex work.
4. Develop guidelines for law enforcement officers to prevent violence against sex workers.
5. Support and empower sex workers to advocate for their rights.
6. Review policy to allow migrant sex workers to access free health services.

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<sup>1</sup> Hands Off! is a pan-African program of Aidsfonds, in partnership with national sex worker organizations, to address violence against sex workers through data collection, advocacy, police sensitization, sex worker protection systems, and other strategies. As part of the Hands Off! program, Aidsfonds worked with SISONKE and other sex worker organizations to produce a needs assessment documenting the experiences and impact of violence and discrimination against sex workers in Botswana, which was published in June 2017. (Aidsfonds, Sisonke Botswana, BONELA et. al. 2017, "[Hands Off! Sex work & violence in Botswana. Needs Assessment report](#)")

## **Organizational Backgrounds**

This section will give a brief organizational background of Sisonke Botswana Organization and its partner Botswana Network on Ethics, Law and HIV and AIDS.

### **Sisonke Botswana Organization:**

Sisonke Botswana Organization is a sex worker-led organization that advocates for the rights of sex workers in Botswana through media and advocacy, peer education, access to justice and psycho-social support services just to name a few.

### **BONELA**

The Botswana Network on Ethics Law and HIV/AIDS (BONELA) was established and registered as a national network in 2002. BONELA focuses on advocacy for reform of policy, law and procedures to eliminate stigma and discrimination, and enhance universal access to prevention, treatment, care and support services.

### **Methodology**

Sisonke and BONELA conducted focus group discussions with 52 sex workers from four (4) sites: Gaborone, Francistown, Palapye and Selibe Phikwe. This report presents their concerns and issues they face. Furthermore, this report seeks to show the real situation of the extent sex workers experience discrimination and violence in Botswana.

Sisonke Botswana Organization and BONELA are interested in Articles 1, 2, 3, 12 and general recommendation 35; updating general recommendation 19 on Gender Based Violence Against Women (GBVAW) respectively, as these directly affect how sex workers' rights in Botswana should be advanced and fulfilled by the state. This report addresses the above-mentioned articles through the lens of the general recommendations and reflections from sex workers during FDG's and the conference calls.

## **Country Context**

### **1. Sex Work In Botswana:**

Estimating the character and magnitude of sex work in Botswana is challenging, as there is limited data. However, the Mapping and Size Estimation of Select Key Populations in Botswana of 2017, conducted by ACHAP has shown that across the twelve (12) Districts where that the survey was conducted, it is estimated that there are 6718 sex workers in Botswana and 47 transgendered people respectively<sup>2</sup>. Legislation in Botswana does not criminalize selling or buying of sexual services per se. However, legal

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<sup>2</sup> This may be an underestimation, due to the fact that most of sex workers and transgender people are afraid of coming out because of stigma, discrimination and rights violations.

provisions prohibit a wide range of activities associated with sex work such as soliciting clients, public indecency or living on the earnings of sex work. The following laws in Botswana maintain and the criminalized nature of sex work:

**1.1 The Botswana Penal Code, section 149,154,155, 156 and 157;** These sections criminalize procuring any person to have unlawful carnal connection or become a prostitute; living on the earnings of prostitution; persistently soliciting for prostitution; aiding prostitution for gain and brothel keeping. Provisions about nuisance and loitering criminalize soliciting to sell sex in public areas.

**1.2 The Botswana Penal Code, section 184;** this section makes it an offence for an HIV positive sex worker to do anything which is 'likely' to spread the infection.

**1.3 The Botswana Penal Code, section 176;** Sex workers have been arrested and detained under this section which broadly prohibits 'common nuisance'.

Other laws include the Immigration Act, Section 50 (2) and (3) which prohibits sex workers or people who live or who have lived on the earning of prostitution from entering the country. The Minister of Nationality, Immigration and Gender Affairs can issue a deportation order against 'undesirable' immigrants and if they do not comply with a deportation order, 'undesirable' immigrants are subject to involuntary removal.

These laws mentioned above have had adverse impact on the lives of sex workers and transgender people. E.g. The Police have sexually abused and robbed sex workers because of their "misinterpretation" of the Botswana Penal Code section 149, 154,155, 156 and 157. In an environment in which sex work is criminalized and violence widespread, sex workers have various strategies to promote safety and mitigate the risk of violence. Clients and working locations are carefully chosen. On the streets, sex workers work in pairs or groups to increase their security. To avoid economic violence, sex workers hide their money or give it to their friends for safe keeping.

## **2. Lesbian, Gay, Bisexual, Transgender and Intersex Rights**

Botswana continues to criminalize sexual activities between women and women as well as men and men through the Penal Code-section 164 and 165, where it is referred to as an 'unnatural act'. Transgender and Intersex are also not recognized in terms of gender identity; therefore, transgender and intersex individuals find themselves marginalized and vulnerable to all kinds of violence. In November 2018, a Transgender woman was physically and emotionally abused by a number of men at a popular night club in Gaborone. She was beaten and a video was taken of this horrible act and posted it on Facebook.

### **Response to Articles**

#### **1. Article 1; Definition of Discrimination**

The significant sections, which deal with discrimination under the Constitution of Botswana, are Sections 3 and 15 respectively, and they are as follows;

**Section 3:** “every person in Botswana is entitled to fundamental rights and freedoms of the individual that is to say the right whatever his race, place of origin, political opinions, color, creed or sex but subject to respect for the rights and freedoms of others and for public interest...”

**Section 15(3);** “affording different treatment to different people attributable wholly or mainly to their respective description by race, tribe, place of origin, political opinions, color or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.

Explicitly defining discrimination in the Constitution of Botswana will benefit sex workers profoundly. The definition will allow for legislators and policy makers to develop laws and policies that will seek to protect the rights of sex workers as guided by the definition of discrimination in the constitution. The lack of definition if discrimination has failed to protect sex workers. This is proven by the unsupportive laws that discriminate against sex workers.

Sisonke Botswana Organization and BONELA would like to point out to the committee that despite its recommendations the Botswana Government still has not engaged in a process of constitutional review in an effort to address recommendations 10 and 12 raised by the committee in the last periodic submission by the state. The CEDAW Committee had noted with concern the exclusion of discrimination against women as part of the definition of discrimination in the Botswana Constitution in accordance with Article 1 of the Convention. This report therefore calls on the Government to at least kickstart the process of national stakeholder consultation on constitutional review. Sisonke Botswana Organization and BONELA are adamant that the inclusion and definition of Discrimination in the Constitution will assist in preventing any discrimination and violence sex workers and transgender people continue to experience in Botswana.

## **2. Article 2; Policy Measures to Eliminate Discrimination**

It should be noted that Botswana Government and other development partners have in the past year-2018, engaged in exercises to develop the “Botswana Guidelines for HIV/STI’s Programs for Key Population”. This is a commendable effort.

However Botswana still has laws and policies that keep perpetuating discrimination and violence against sex workers, transgender and other key populations. The Hands Off study revealed most sex workers(73%) experienced discrimination in the past 12 months. Over half (55%) experienced being called names. All of this shows that sex workers are confronted with emotional violence from the community on a regular basis. These laws have been mentioned above and their implications will be discussed and revealed later in this document. Sisonke Botswana Organization and BONELA wishes to employ the government to consider repealing these laws that put sex workers and transgender people at risk of discrimination and violence.

Sex workers across all the sites that were interviewed can define discrimination and how it affects them. One sex worker in Gaborone during the discussions shared how they have been discriminated by health care workers; **“Last week you were here with itching private parts...and this week you are here...what do you want us to do with you...”** This occurred when the sex worker wanted to access STI screening

and treatment, she explained. The former President of Botswana has urged the government to have a supportive legal and policy environment for sex workers<sup>3</sup>.

### **3. Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms**

As stated in the Government report, while the Government has created national frameworks and mechanisms to ensure the “Guarantee of basic human rights and fundamental freedoms,” the efficacy of these structures are impacted by the levels of authority of the Gender Focal Persons in Line Ministries and the lack of ownership and support from Ministry Leadership.

The state report does not at any point mention how any framework or machinery is in support of the elimination of discrimination and violence against sex workers and transgender people. This clearly shows that the state still needs to work with sex worker activists and organizations to develop and set up mechanisms that will ultimately influence the review of the Constitution to define discrimination, influence the repealing of laws that perpetuate discrimination and violence against sex workers, etc.

Sex workers, especially migrant sex workers, continue to be subjected to discrimination because of the Immigration Act mentioned above; migrant sex workers continue to experience violence from community members, police and clients, because there is no mechanism or framework that guarantees their basic human rights and fundamental freedoms, despite the fact that Botswana’s Constitution guarantees and promotes protection to every person residing within the Country, irrespective of their race, tribe, place of origin, political opinions, color, creed or sex. Recent research<sup>4</sup> has shown that even though the key sexual and reproductive health needs of migrants and refugees in Botswana (e.g. prenatal, obstetrics, postnatal care, HIV/STI testing, counseling and treatment, and family planning) are the same as those of citizens, migrants and refugees lack access. The study found that antiretroviral treatment and prevention of mother transmission “were never accessible to non-citizens,” and that “a fee was charged to non-citizens” for treatments and health services provided for free to Botswana. Furthermore:

*Although 86% of the 21 studied reproductive health services were available in the healthcare system more than 50% of the time, only 62% of them were accessible to the immigrants and refugees 50% of the time. The major reasons for inability to access these services were: (i) The immigrants and refugees have to pay higher fees to access the reproductive health services; (ii) Once an immigrant or refugee is identified as HIV positive, there are no further follow-ups on the patient such as detecting the immune status using a CD4 count or testing the viral load.*

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<sup>3</sup> During the 2010 National AIDS Council Meeting, which was chaired by Former President of Botswana, His Excellency Festus G. Mogae argued that “decriminalizing sex work does not mean encouraging it, but would pave way for policies that protect those who have been forced into the trade. He said that these women are often vulnerable and by legalizing their trade, they will be able to report men who forcibly put them at risk of contracting the virus, and in turn men who seek their services will no longer abuse them as might be the situation now. Legalizing the sex trade would also free up police to focus on other crimes, rather than chasing adults having consensual sex,” he said. [Sunday Standard News Paper-05 August 2018].

<sup>4</sup> Ocho, John O., and Njoku O. Ama. "Immigrants' and refugees' unmet reproductive health demands in Botswana: Perceptions of public healthcare providers." *South African Family Practice* 51, no. 3 (2009): 237-243.

## **Article 12: Right to Health**

The 2012 HIV/STI BBSS estimated an HIV prevalence of 54 percent amongst sex workers in Francistown, 65 percent in Gaborone and 69 percent in Kasane.

Botswana has a relatively supportive public health policy for its citizens. For the past few years we have seen Government allowing sex worker organizations and their partners to implement projects aimed at linking sex workers to access health care services. For examples, the FHI 360 project, which Sisonke Botswana Organization and BONELA were implementing for the past three (3) years. The projects main goal was to educate and empower sex workers (citizens and migrants) to gain skills to prevent new HIV infections. These are commendable efforts.

Despite these advances and the high HIV prevalence amongst sex workers, Hands Off! Found that only about 56 percent of female sex workers in capital cities have been reached by HIV prevention services; and the majority of sex workers (88%) in the Hands Off! study had never been tested for HIV. Over half (51%) of participants reported being judged or verbally abused by health workers in the past 12 months. The study describes the situation:

*Punitive policies and criminalisation of sex work, policing, stigma, substance abuse, and the threat of violence all limit sex workers' access to HIV prevention services, undermine their ability to negotiate condom use, and limit rigorous assessments of HIV interventions targeting sex workers.*

*Although Botswana's National Strategic Framework 2010-2016 emphasises the need to increase HIV prevention for most at risk populations as one of its key prevention measures, to date the government has not sufficiently prioritised the prevention of HIV and other STIs in sex work settings.*

Thus, the Government has additional work to ensure sex workers' access to health services.

Most importantly, the Government needs to change its public health policy towards migrant sex work who continue to be excluded by the HIV/AIDS Treatment guidelines. Whenever migrant sex workers want to access health services, especially sexual reproductive health services that include, access to STI treatment, condoms etc., they face stigma and discrimination which in most cases is verbal abuse. The Immigration Act mentioned above, should be reviewed to at least recognize that migrant sex workers have the right to health, in order to comply in practice with Botswana's Constitutional statement that guarantees and promotes protection to every person residing within the Country, irrespective of their race, tribe, place of origin, political opinions, color, creed or sex.

The organizations making this submission would also like to bring to the committee's attention that, there is no National Health plan that addresses the needs of sex workers. Furthermore, the sex workers believe integrating systems of addressing key populations' (sex workers and transgender) needs and training health care workers on how to support them will go a long way in ensuring that they have access to health services without having to be discriminated against.

#### 4. General Recommendation 35; Updating General Recommendation 19 on Gender Based Violence Against Women(GBVAW)

Violence is a key factor in the vulnerability of sex workers to HIV/AIDS. Violence prevents sex workers from accessing valuable information, support and services that help to protect them from HIV/AIDS. Sex workers in Botswana experience high levels of violence, ranging from societal stigma and discrimination to beatings, theft and rape.

The Hands Off! Study indicated that sixty-six percent (66%) of sex workers experienced violence in the year preceding the study. The table below shows the types of violence against sex workers by perpetrator experienced in the past twelve months (12) of the Hands Off! Study.

Type of Violence	Client	Police	Health worker	Community	Other sex workers
Physical	40%	39%	-	26%	39%
Sexual	35%	25%	9%	13%	13%
Economic	49%	39%	-	-	46%
Emotional	-	40%	45%	55%	-

The results above show that 9% of sex workers have been sexually violated by health care workers, the very same people who are supposed to give them health care services. Furthermore, the Police are also one of the perpetrators who violate sex workers, with 25% of sex workers reporting to have been sexually violated by the Police; the very same people who are supposed to be the law enforcers are breaking it.

Relationships of sex workers with law enforcement workers are problematic and characterized by mistrust. The Hands Off study noted:

*Although more than half of sex workers (52%) received positive police assistance in the past year, another significant proportion (40%) experienced discrimination in doing so. For example, respondents who did approach the police for help, were laughed at and were refused assistance. In the past 12 months, 34 percent of sex workers filed an incident with the police. The majority of them (68%) were unhappy with the process. This can be explained by the fact that the police investigated only 19 percent of these cases. The remaining incidents were filed but received no follow up (29%), were refused (23%) or considered too complicated (12%). Seventeen percent of respondents do not know what happened to their cases.*



Many law enforcement workers abuse their power and demand bribes in exchange for freedom. Although some sex workers do report positive police assistance, many are reluctant to seek help.

### **5. Sex Workers Reflections (FDG's and Conference Calls)**

Following the group discussions held with sex workers especially regarding Articles 2 and 3, the sex workers believe that they are interconnected and they shared the following sentiments:

- Decriminalizing sex work will allow for policies and legislature that will guarantee the promotion and protection of basic human rights and fundamental freedoms.
- The Government should provide legal recognition to sex work so that their profession is also protected by Botswana's labour laws.
- Sex workers want to contribute to the GDP as well, pay tax and other levies as required by the law that recognizes a profession.
- The government needs to review policies to allow migrant sex workers to access free health care services, as this will lead to healthy lifestyles.

Sisonke Botswana Organization and BONELA are convinced that the issues raised in this report are caused by the laws mentioned above and negative community norms. It is in observation of the above that Sisonke and Botswana Network on Ethics, Law and HIV and AIDS recommends the following;

1. Start national stakeholder consultations on constitutional review.
2. Define explicitly discrimination in the Constitution of Botswana to include elimination and prevention of discrimination against sex workers, transgender and other key populations.
3. Start national consultations and stakeholder engagement on decriminalizing sex work.
4. Develop guidelines for law enforcement officers to prevent violence against sex workers.
5. Support and empower sex workers to advocate for their rights.
6. Review policy to allow migrant sex workers to access free health services.