HIV/AIDS infection in South Africa has reached epidemic proportions. Women, intravenous drug users, men who engage in sex with men, and commercial sex workers (CSWs) have all been repeatedly cited as vulnerable populations for contracting HIV. One reason that the spread of HIV continues to surge, especially among these vulnerable groups, is the violation of their human rights.

In South Africa, sex work is criminalized, and CSWs are subject to both HIV/AIDS and to human rights abuses. Criminalizing sex work in South Africa is a human rights violation and should be abolished to uphold the principles of non-discrimination and equality, and in addition, to thwart the spread of HIV/AIDS in South Africa.

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Additional Resources
Human Rights Documents

Universal Declaration on Human Rights (UDHR)
International Covenant on Civil and Political Rights (ICCPR)
International Covenant on Economic, Social and Cultural Rights (ICESCR)
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Analysis through Legal Framework

South African Constitution – turning from the racial segregation of apartheid in 1990, South Africa approved a new Constitution in 1996 which specifically protects ‘democratic values, social injustice and fundamental human rights,’ incorporates many tenants of the aforementioned international human rights treaties.

Sexual Offenses Act of 1957 (“the Act”) – prohibits the sale of sex, of a person keeping a brothel, living off the earnings from prostitutes, and continues to criminalize sex work. Carnal intercourse is defined as “intercourse otherwise than between husband and wife” and has been very broadly applied to acts of those engaged in CSW. Since its enactment, it has always been interpreted to criminalize the person who engages in sex for reward - the sex worker, but assigning no penalty to the patron.

Section 20. Persons living on earnings of prostitution or committing or assisting in commission of indecent acts. (1) Any person who (a) knowingly lives wholly or in part on the earnings of prostitution; or (aA) has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward; or ... shall be guilty of an offence.

Analysis of Jordan

The majority in Jordan presented several points in support of its decision: (1) Section 20(1)(aA) is gender-neutral and thus, not directly discriminatory; (2) differences exist between a sex worker and a patron and thus, the Section is not indirectly discriminatory; (3) resulting stigma is a product of society, not the law, but the purpose of the law is of such great importance that it overpowers any discrimination.

Counter Points to the Majority’s Argument

(1) Specific gender terms are not needed to impinge on a woman’s right of dignity, privacy and equality when there is a discriminatory effect from neutral language.
(2) The Court referred to a CSW as a repeat offender and hence, a better target for judicial intervention without any empirical evidence on the frequency of a CSW’s arrest and with no reference to frequency that a patron pays for sex (and remains untouched by the law). The law as written starts from the basis that the sex worker should be punished while the patron should not.
(3) The lack of protections and employment options for women, the law’s impact on creating or fueling stigma, and the isolation from CSW exacerbate the HIV problem, which becomes a societal problem.

Human Rights Violations of Jordan

Jordan violates women’s right to economic activity (under UDHR, CEDAW, ICESCR), to privacy and confidentiality (International Guidelines and UDHR), to health (ICESCR), to equality and freedom from discrimination (Constitution).

Alternatives to Criminalization of Sex Work

Decriminalization and Regulation