

“AREN'T WE ALSO WOMEN?”

KENYA SEX WORKERS' SHADOW REPORT SUBMISSION TO THE
UNITED NATIONS COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN 68th SESSION

GENEVA 2017



Kenya Sex Worker Alliance (KESWA)

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Aren't We Also Women?"

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Back cover image: Jerry Riley

“Aren’t We Also Women?”

EXECUTIVE SUMMARY

- This report is submitted by the Kenyan sex worker umbrella organizations Kenya Sex Worker Alliance, (KESWA) and the Bar Hostess Empowerment and Support Program (BHESP) on behalf of over seventy member and affiliate sex worker organizations.
- The purpose of the report is to; firstly, to identify the CEDAW Articles that have been violated by the state party in relation to women sex workers in Kenya; secondly, to highlight the gaps in the state party report that was submitted in 2016 pertaining to women who are sex workers in Kenya and thirdly, to bring to lights the violations of women sex workers in Kenya. This report brings to the attention of the CEDAWthe five priority issues for Kenyan women sex workers:
 1. Violence against sex workers
 2. Stigma against sex workers
 3. Criminalization of sex work
 4. Conflation of trafficking and sex work
 5. Criminalizing transmission of HIV
- The report focuses on Articles 1,2,4,6,7,10,11,15 & 16 of the CEDAW Convention and notes that these violations of CEDAW Articles are also violations of the Constitution of Kenya, 2010 that domesticates international law as well and contains a Bill of Rights, as well as of other international legal conventions such as the Maputo Protocol. The report concludes with concrete recommendations of specific actions that the Kenyan government can take to be in compliance with the International Human Rights standards and obligations as inscribed in the CEDAW and the Constitution of Kenya, 2010.

Phelister Abdallah
National Co-ordinator, Kenya Sex Workers Alliance

Peninah Mwangi
Executive Director, Bar Hostess Empowerment and Support Program

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The laws in Kenya makes every aspect sex work a crime and a punishable offence, criminalization of sex work reduces freedom of sex workers to even negotiate for condom use with client .

Peninah Mwangi, BHESP

Decriminalization of sex work in Kenya is our only solution to end violence and deaths of mothers who are only working to feed their children.

Phelister Abdallah, KESWA

Introduction

Although 93% of sex workers in Kenya self-identify as women or trans-women,¹the Kenya State Party Report to the 68th Session of the CEDAW Committee fails to articulate and or address our concerns as women workers in the sex industry.² Violations against sex workers are not only a transgression of CEDAW articles but also of the Constitution of the Republic of Kenya and of the MAPUTO protocol.³ In as much as Kenya has many organizations that fight for women’s rights, the repressive patriarchal structures of society and misogynist interpretations of culture, law and morality combined with the stigma and discrimination against sex workers constrain sex workers from seeking or finding support from most civil society, women’s advocacy, or human rights organizations.

“I thought they [women’s advocacy organization in Kenya] would help me since they deal with women issues, I was shocked when they told me that they are based on family morals and they could not assist me as I was a sex worker”.

Catherine 29 yrs kiambu

The Kenyan Sex Workers movement comes from a long history⁴ of Kenyan sex workers’ struggles for our survival, dignity, humanity and rights⁵. This report has been written and submitted by Kenya Sex Workers Alliance (KESWA) and the Bar Hostess Empowerment and Support Programme (BHESP); endorsed by an

¹ Omondi Odek , George N. Githuka, Lisa Avery, Peter K. et al. “Estimating the Size of the Female Sex Worker Population in Kenya to Inform HIV Prevention Programming.” Published: March 3, 2014: <https://doi.org/10.1371/journal.pone.0089180>

² Committee on the Elimination of Discrimination against women. "Consideration of reports submitted by States parties under Article 18 of the Convention .Eighth periodic report of States parties." *CEDAW/C/KEN/8*. KENYA , March 3, 2016

³ Protocol to the African charter on human and people' rights on the rights of women in Africawww.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf

⁴ Bujra, Janet M. *Women "Entrepreneurs" of Early Nairobi*. Canadian Journal of African Studies/ Revue Canadienne des Études Africaines, Vol. 9, No. 2 (1975: 213-234.

⁵ Mgbako, Chi. A. "To Live Freely in This World: Sex Worker Activism in Africa". New York: NYU Press, 2016. *Project MUSE*. See Also, Muchomba, Felix M. "Colonial Policies and the Rise of Transactional Sex." *Journal of International Women's Studies* .Volume 15 / Issue 2, July 2014.

affiliate of 66 sex worker organizations' all over Kenya speaking in one voice. We are not only a Movement of sex workers in Kenya, but also part of larger regional and global sex worker networks⁶.

The following submission focuses on 5 priority issues that were shortlisted after a participatory process with sex work organizations and two consultative meetings with the member organizations of KESWA in November and December of 2016. The Kenya Network of Sex Workers (KNSW) was formed as a dedicated working group composed of the staff, members and legal counsels of KESWA and BHESP for the specific purposes of writing this CEDAW Shadow Report in March of 2016. The Network embarked on comprehensive research and analysis in compiling this report for the Committee's 68th Session and in articulating sex workers' concerns with respect to the ongoing violations of Kenyan women sex workers' human rights and freedom as established by the CEDAW:

- Violence against sex workers.
- Stigma against sex workers.
- Criminalization of sex work.
- Conflation of trafficking and sex work.
- Criminalizing transmission of HIV/STI's

KENYA LEGAL FRAMEWORK

Sex work in Kenya is criminalized both under our national⁷ and county law. Under the penal code (section 156) operation of brothel apartment is outlawed. County laws⁸ have also been enacted to bar women from soliciting or importuning for purposes of prostitution. Section 26 of the Sexual Offences Act criminalizes deliberate transmission of HIV/STI'S. Due to this provision, sex workers are routinely arrested forcefully tested for HIV/STI'S and prosecuted.⁹

VIOLATIONS OF SEX WORKERS' HUMAN RIGHTS UNDER CEDAW

Article 1 & Article 2: Discrimination against Women

"The magistrate fined me three thousand shilling despite the fact that the police did not have any evidence of my involvement in sex work."-Shiro, Sex Worker, Nairobi County

Article 1& 2 of the CEDAW Convention relating to discrimination are mirrored in Article 27 of the Kenyan Constitution. We, Kenyan women sex workers face a lot of discrimination from our community, health care providers, judicial officers and the government at large. We are unable to access comprehensive health care services, particularly sexual and reproductive health services for fear of discrimination against us from health care providers.

Kenya has failed to establish a tribunal to hear and determine matters relating to discrimination against women as mandated by the CEDAW convention under Article 2(c). This Failure has left us without any course of action against those who discriminate against us. Criminalization of sex work further vitalizes

⁶ Africa Sex Worker Alliance. www.nswp.org/members/africa/african-sexworkers-alliance-aswa

⁷ Section 154 of The penal Code Cap 63 laws okenya. www.kenyalaw.org/lex/actview.xql?actid=CAP.%2063

⁸ Section 19(m) of the Nairobi General Nuisance By-laws (2007), Sections 258 (m) and (n) of the Mombasa Municipal Council By-laws (2003), Part VIII of the Kisumu Municipal Council By-laws

⁹ Section 43 as read together with section 44 of the Public Health Act

discrimination against us. For instance, police officers treat sex workers as criminals even when at that given incidence they are the actual victim.¹⁰

In as much as our government claims to have taken measures to combat discrimination among women and facilitate their access to justice by repealing Section 38 of the Sexual Offences Act, which had criminalized alleged false reports of rape. Sex workers still cannot report incidences of rape or violence against them for fear of arrest by the law enforcers. When we report violence to the authorities, we are faced with prejudice and further violated by the same law enforcers who should protect us.¹¹

"After being stabbed by a woman alleging that I had taken her husband, I immediately went to report the incident to the chief. Despite listening to the story he did not provide any assistance other than making rude remarks about me being a prostitute and nuisance within the community.

"BSA 002 – Bar hostess in Busia county who has only been arrested once."¹²

The Judiciary is biased,¹³ and justice for sex workers is frequently denied. Sex workers report being arrested under public nuisance law or under provisions of the penal code. Most sex workers choose not to contest their arrest since they find it easier to plead guilty after being produced before court and pay fines for their release.

Article 6: Suppression of all forms of traffic in women and exploitation of prostitution of women.

"I am a sex worker activist and I have been arrested twice on allegations of recruiting young girls into sex work and contribution to the moral decay and the community. These allegations were unfounded as my task is to sensitize sex workers on their human right."

Cecilia, Sex Worker Activist, Thika county

Article 30 of our constitution, denotes that every person (including women who are sex workers) should not be held in servitude or in any form of forced labor which is equivalent to exploitation, addressed under Article 6 of the CEDAW Convention. Even though the state asserts that they have enacted a counter – trafficking legislation¹⁴, they have failed to distinguish between consensual transactional adult sex and human trafficking.¹⁵

The conflation of trafficking and voluntary adult sex work has led to further violations of the rights of sex workers which severely undermines the rights of sex workers by failing to distinguish sex workers who are trafficked: by confusing voluntary sex work with exploitation and by misdirecting resources into policing and punishing consensual sex work rather than identifying people who are trafficked into sex work and providing them appropriate and necessary support.¹⁶ Over- policing of consensual sex work as part of the so called anti- trafficking initiatives exacerbates sex workers' lack of access to legal remedies or redress when crimes and violence are committed against sex workers, and erodes the efforts of sex workers

¹⁰Africa Sex worker Alliance. *I expect to be abused and I have fear*. Sex workers' experiences of human rights violations and barriers to accessing healthcare in four African countries. April,2011.

¹¹Data (2014) shows that 44% of female sex workers, 24% of men who have sex with men and 57% of persons who inject drugs were arrested or beaten up by police or city "askaris" in the last six months. KENYA AIDS STRATEGIC FRAMEWORK(2014/2015 – 2018/2019)

¹²Standard media(2014) sex for freedom. The quickie way for women out of Nairobi's cold jail cells.

Available at <http://www.jambonewspot.com/set-for-freedom-thequickie-way-for-women-out-of-nairobi-cold-jail-cell>.

¹³ *Teresia Kwamboka & 27 others v Officer Commanding Police Station, (OCS) Kisii Police Station & 5 others [2016] eKLR.*

¹⁴Counter Trafficking in persons Act NO. 8 of 2010. kenyalaw.org/kl/fileadmin/pdfdownloads/.../BasicEducationNo14of2013.doc

¹⁵Chuang, Janie A. *Rescuing Trafficking from ideological capture*. Prostitution Reform an anti -Trafficking law ." *University of Pennsylvania Law Review [Vol. 158: 1655, 1656-1725.*

¹⁶ Global Alliance Against Traffic in Women (GAATW). Collateral damage, The impact of anti trafficking measures on human rights around the world. Bangkok, 2007.

fighting for legal and social recognition of their rights to dignity and livelihood.¹⁷ Sex workers in certain counties example Nairobi have vowed never to report violence incidences against them to the police as they hardly get any help from them.

BHESP and KESWA recognize that human trafficking is illegal and no one should be forced into any kind of work, including sex work.¹⁸ They have endorsed and supported the Global Network of Sex Workers Project (NSWP) Anti Trafficking policy and further taken advantage of various spaces to ensure that awareness of and information about trafficking reaches as many of our members as possible, to ensure that we all collaborate and collectively oppose all forms of trafficking and strongly condemn the circumstances or persons that force women and minors into sex work.

However, the forceful 'rescue and rehabilitation' of adult women engaged in voluntary and consensual sex worker is a violation of their fundamental rights as provided by the Kenyan Constitution. The rights and entitlements of consenting adults who enter into sex work should be recognized and not confused with the rights and needs of people who are forced into sex work and/ or are underage.

An example of the disastrous consequences of conflating voluntary adult sex work and trafficking is the 'Rudisha Mama Nyumbani' Programme in Kiambu County,¹⁹ the problem with these initiatives is that they lack / fail to understand that some of the sex workers have greater financial burden that cannot be filled by gifting them with sewing machines or alternative bead work. Some of these programs shame sex workers who do not want to get out of sex work and out them publicly, this increases stigma and discrimination against them and their family.

Article 7: Political and Public Life

Article 7 of CEDAW requires the involvement of women in political and public life. The same article allows women to participate in the formulation of policies and their implementation. Despite the numerous researches conducted in Kenya which shows that we as sex workers are more prevalent to HIV infection;²⁰ the state does not engage us in the formulation and the implementations of policies and programs especially those touching on health. Even though our constitution encourages public participation under Article 118(b) and 196(b) which states that parliament and county assemblies shall allow for public participation in legislative ad policy matters, we as sex workers are not consulted and even when we are, our input is ignored, our invites are only for show and not of substantial value when it comes to the final reports or recommendations that need to be implemented. A good example is the Integrated Biological and Behavioral Surveillance Survey (IBBS) which the Kenyan government wanted to use to get a size estimate of Kenya sex workers. Sex workers vehemently opposed the IBBS for failure of the state to involve them in the preliminary stage and also for the fact that the information sought would have linked them to sex work which is criminalized.

Sex workers vying for positions as representatives have also been told that their sex work history disqualifies them from positions

¹⁷Mbonye M, Nalukenge W, Nakamanya S, Nalusiba B, King R, Vandepitte J, Seeley J. Gender inequity in the lives of women involved in sex work in Kampala, Uganda. *J Int AIDS Soc* 2012;15 Suppl 1:1-9.

¹⁸Urban Justice Center. "working group on sex work and human rights." Human trafficking and sex work, 1,2.<https://www.opensocietyfoundations.org/.../Sex%2520Work%2520and%2520Human>.

¹⁹Ahmed ,Aziza and Meena ,Seshu. *We have the right not to be 'rescued'...* When Anti-Trafficking Programmes Undermine the Health and Well-Being of Sex Workers." *The Anti-Trafficking Review, Issue 1*, 2012: 149-165.

²⁰Global Commission on Hiv & the law. "How an Epidemic of Bad Laws is Obstructing the Global HIV Response." Fact Sheet on HIV and the Law: Risks, Rights & Health 1-2.

“... and I could not understand why my previous history of sex work would disqualify me for the post of woman representative in my county while i was qualified for that position.”
Fatima, Sex Worker, Mombasa

Article 11: Employment and Labor Practices

“I went to a certain bank and sought for a small loan to boost my small business, they told me to produce a pay slip among other requirement that I couldn’t fulfill. How I wish sex work was legal, I could have gotten that loan.”
Triza 35 yrs kondele, kisumu

“My client took me to a hotel room in Nakuru, he had promised me good money. When I arrived, I saw five men in the room. I was scared, I begged to leave but he held a gun and threatened to use it if I screamed. They beat me up until I was helpless. They took turn to rape me and left me lying down and bleeding. They took my phone, money and other belongings.”
Faith, 37yrs, Nakuru

Article 11 of CEDAW mirrors Article 41(2) of the Constitution of Kenya, which provides for the right to fair labor practices including fair remuneration and reasonable working conditions. Article 11(c) of the CEDAW further provides that women have a right to choose their profession and employment. Article 11 (e) provides for the right to social security particularly in cases of retirement, unemployment and sickness.

In Kenya, no such rights exist for sex work. The sex industry is criminalized under various municipal and administrative laws that drive us from legal redress and deprive us of safe working conditions. We are denied the protection advanced under the employment legislation²¹that covers other sectors and other industries, and thus cannot access health benefits, parental and family leave, retirement plans or vacation pay, nor do we have recourse when discriminated against or unfairly dismissed from our employment.

We, as sex worker, believe that sex work is work. We have a right to choose our occupation/ profession and we have chosen sex work. We should be allowed to engage in our work as it does not harm anyone. This work supports us in tending to and caring for our family’s needs.

“I am a single mother of two boys. I studied up to class seven when I dropped out. I cannot get any formal employment but sex work helps me to feed my kids and take them to school.”
-Monica 29 yrs Nairobi

We are also not covered under the Occupation Health and Safety Act ²², and hence denied basic employment security, workplace safety and social safety nets such as compensation if injured at work. We cannot organize ourselves into labor unions through which we would address labor site exploitation, bargain for better working conditions or collectively negotiate wages. Sex workers are barred from forming such labour unions which is contrary to the spirit of our Constitution that advances us the right to association²³.

Our working environment exposes us to recurrent violence: most sex workers have been murdered in their course of work. Philip Onyancha, a serial killer who was arrested and charged with the murders of sex workers in Thika County; admitted to murdering 17 people mostly sex workers. He later claimed that he intended to kill 100 sex workers due to the fact they were approachable, had little or no security while

²¹ Employment & Labor relations Act, Occupational Health and safety Act 2007

²²Occupation Health and Safety Act 2007

²³ Article 36 of the Kenyan Constitution 2010.

working, no recourse if victimized, and society did not care whether they went missing or just turned up dead.

It is also important to note that KESWA and BHESP has recorded 20-25 murders of sex workers. Though complaints were registered in numerous police stations, no arrests were made and no investigations into the murders have been conducted. The government does little or nothing at all to make us feel safe, hence we do not enjoy fundamental rights as provided by CEDAW provisions as well as our constitution.

Article 11(g) as read together with Article 16 on family and marriage assures women the right to choose their profession. This is further anchored under Article 45 of our constitution which provides that women have the same rights as the husbands with regards to choosing the family name, occupation and profession. Despite the fact that the government states that it has put up measures to ensure that women are able to work and choose any work that they wish, sex workers are locked out of formal jobs since they don't have the educational qualification required. All they can afford to do is sell second hand clothes and sell things from kiosks. This too is made difficult by county police officers (city Askaris) who harass and constantly ask for bribes which further affect the children of sex workers.

"All I wanted was to get my kids some food during Christmas day. Unfortunately, I was arrested on Christmas Eve and my kids went without food or clean clothes for two days. I felt really bad but there is nothing I could have done I am all they have."

Nancy 32 yrs Kisii

Article 12: Health Care

"Sex workers are treated poorly by Healthcare providers in public hospitals. I have ever gone to a district hospital and the doctor who attended to me asked if I have a husband, she told me that I am the type of women who go around spreading diseases. She treated me badly and I was not given good medication because the infection did not go away"

.-Amina 18yrs kisumu Nairobi

"The hospital that I was taken to has a policy that you have to be tested for HIV before they give you any kind of treatment."

NBI 005 – 30 year old transgender sex worker

"I was received with abusive words. "This is a sex worker who has been out there snatching other women's husbands. Now she has been stabbed. Just stitch her, if it heals let it heal well and good, if not so be it."

BSA 002 – Bar hostess in Busia county who works alone with clients contacting her directly.

An estimated 1.6 million people are living with HIV in Kenya. Notably, 29.3% of sex workers are living with HIV, compared to the general population which has a prevalence rate of 5.6 %.²⁴ Despite these findings, a majority of sex workers who are living with HIV are unable to access comprehensive care and treatment due to stigma and discrimination, Article 12 compels States Parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. This is mirrored under Article 43 of our constitution.

²⁴ The Kenya Aids Strategic Framework 2014/2015 – 2018/201

Despite these provisions, sex workers routinely face discrimination and stigma by health care providers in both public and private hospitals. Research carried out by KESWA and BHESP²⁵ show that sex workers living with HIV face high levels of human rights violations that impact on their ability to access quality healthcare, and seek effective protection in law and access justice. ²⁶Their access to comprehensive health services, including sexual and reproductive health services, are often obstructed and denied. When we carry condoms and lubricants, the police use them as evidence against us in court. It is for these reasons that we opt not to carry condoms for fear of prosecution.²⁷ This in turn puts us at greatly increased risk of contracting HIV and other life threatening STI's.²⁸

Further, we are denied the right to emergency medical attention. Our medical facilities which are stigma/discrimination free lack adequate medication for sexually transmitted infections, notwithstanding the fact that the government contends that it has invested an estimate of US\$ 400 million towards initiatives to reduce HIV transmission.

Often, sex workers who are living with HIV are normally denied medication while in detention consequently affecting their health.

"In the 2 years I was working as a sex worker, like 4 times I was taken to a police cell like for periods of up to a week. I was positive and I knew it. I can say the number of time I was in prison I did not access my ARVs, which resulted in the deterioration of my health, which really affected my life."

Purity Nairobi county

Another sex worker from Nairobi living with HIV described the impact of denial of ARVs on her health, while detained for four weeks.

"It was a bad experience because I stayed without medication leading to deterioration of my health. My CD4 went down and I also lost weight. When I went back for treatment, the doctors were harsh to me for defaulting and told me in such cases I should speak out and ask for help. They had also tried looking for me but they did not know I was arrested. This situation is not likely to change because the police officers are always harsh and not ready to listen."

Article 15: Equality

"I was once beaten up by a client and I reported the incident to the police. I kept going to the court, and the prosecutor kept postponing the case for a whole year. Finally, they told me that the court file got lost and I don't understand how that can happen."

"Achieng 27yrs Nakuru

"When I reported the incident, instead of the police helping me, he told me that I deserved to be beaten because I was a prostitute. He asked me for two thousand Kenya shillings so that he could help me with my case."

-Kerubo, Sex Worker, Kisii County

²⁵NEPHAK, BHESP, KESWA, GNP+. *Speaking out*: personal testimonies of right violations experienced by sex workers in Kenya. Nairobi, 2015.

²⁶ National HIV and AIDS Discrimination and Stigma Index Summary Report.

²⁷Lucy Nyambura & another v Town Clerk, Municipal council of Mombasa & 2 others [2011] eKLR. In the High Court Of Kenya In Mombasa. (A number of sex workers were tested and charged with intentional transmission of HIV) also Open Society Foundations Criminalizing Condoms. *How Policing Practices Put Sex Workers and HIV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe* (2011)

²⁸ The Global Commission on Hiv & the law. "How an Epidemic of Bad Laws is Obstructing the Global HIV Response." Fact Sheet on HIV and the Law: Risks, Rights & Health 1-2.

Article 15 of CEDAW provides for equality before law and ensures that women are treated equally in courts and tribunals. This Article is a reflection of Article 27(1) of the Constitution. However, we Kenyan sex workers are not treated equally in courts and tribunals. Officers and personnel of the judiciary as well as the police and the legal profession are as discriminatory against sex workers as the majority of Kenyan society. Magistrates and judges are biased in their rulings because of their preconceived notion of sex work. (Teresia kwamboka and 27 others)

At times courts use our status, profession or sexual history to degrade our character and humiliate us in court since court sessions are public, you may find the judicial officers shaming you in front of everyone in court since you have been arrested twice in a week for sex work. We are always treated in demeaning and dehumanizing ways both inside and outside the legal system and our human rights are regularly violated and injured with impunity by both clients and agents of the state. The testimonies above are a common representation of sex workers experiences accessing justice.

In as much as the government avers that women's experiences in access to legal services has been largely documented in Kenya, you will not find any success story in the context of sex workers, for reasons that sex work is illegal and is seen as a taboo. Most sex workers cannot afford the services of a lawyer when charged in court and more so lawyers do not take sex workers cases even if it's on a pro-bono basis.

General Recommendation No. 19 Violence against women

*"Women know that by going into sex work you're taking a risk because there is a lot of violence But at every turn our efforts to keep safe are sabotaged by the law."
Nerima Achieng –Kisumu*

CEDAW observes that Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men and women. Violence against women in Kenya is both a cause and a consequence of discrimination against women and sustained gender inequality.

*"I have heard of several situations where sex workers come forward to report violence and instead of the perpetrators being pursued and prosecuted by the police, sex workers get arrested instead.
That is discouraging because when that happens it's a big deterrent for women to come forward and report violence.
KESWA Programmes officer .*

The Kenyan Government has developed a National Policy on Prevention and Response to Gender Based Violence a demonstration of its commitment to lead from the front to end all forms of violence. We acknowledge National Aids STI control programme(NASCOP) for coming up with violence response manual and facilitating trainings for police and health care providers all over the country. However, no substantial changes have been made. It is de facto that the biggest perpetrators of violence against sex workers are the law enforcers who are mandated to protect us but instead harass, threaten, illegally arrest, beat, rape and exhort sex worker. Violence or fear of violence may prevent us from accessing harm reduction, HIV prevention, treatment and care, health and other social services as well as services aimed at preventing and responding to violence²⁹(e.g. legal, health services)

*"Every time I come forward to report violence I end up threatened to be arrested and prosecuted for prostitution," she says "Next time I suffer violence; I sure as hell won't report."
Lavina victim of violence 2017.*

²⁹Open Society Foundations. 10 reasons to decriminalize sex work". Edited by OSI Sexual Health and Rights Project. New York. Accessed December 20 2012.

Recommendation

- ❖ We recommend Kenya decriminalize sex work and all related activities as necessary measure to guarantee sex workers' right to work in our chosen occupation, to safe labor practices, and a safer working environment with less or no violence.
- ❖ We recommend that the government establish policies for state organs and state officials to deal with discrimination against sex workers by state-actors, in particular law enforcement officers.
- ❖ The government must come up with measures to ensure that sex workers have equal access to government services, including police protection.
- ❖ We further recommend that our state develop affirmative action programmes to address the disadvantage that we face due to past or current engagement due to past or current engagement sex work.
- ❖ We recommend the state implement measures to ensure that sex workers participate fully in the formulation of legislation, policies and programmes that are directly linked to sex work.
- ❖ We recommend the state to prohibit the use of condoms and other protective items as evidence in court against sex workers.
- ❖ We recommend sex worker sensitization training for the police and health care providers.
- ❖ We recommended the state to develop training programme for media professional to enable positive reporting on sex workers and to reduce harmful stereotyping towards sex workers.
- ❖ We recommend sensitization to sex worker issues for the judiciary and the establishment of a tribunal to deal with discrimination. The members of the tribunal should also be sensitized to handle matters of sex workers fairly and without any discrimination or bias.
- ❖ We recommend the Prohibition of mandatory HIV and STI testing of sex workers following arrest.
- ❖ We recommend decriminalization of transmission of HIV.
- ❖ We recommend Strengthening of the Kenya National Human Rights commission (KNHRC), the National Gender & Equality Commission (NGEC) and Commission on Administrative Justice (CAJ) to investigate and respond to complaints on sex workers human rights violations by State and non-state actors .

Conclusion

Women in sex work face a lot of violence and stigma in all spheres and this makes it extremely difficult for them to access their human and fundamental rights. This structural violence further aggravates discrimination which in turn creates a prolific ground for social exclusion and denial of rights as a result of their inaccessibility of justice and social practice. Sex workers face difficulties accessing health services, housing, and complementary employment opportunities. They face verbal, physical, and sexual abuse; arbitrary arrests and harassment. CEDAW Convention and our Constitution are embedded in the spirit of human rights, which are alienable entitlements to be enjoyed by all including women and in this case those who are in the sex industry.

*"I understand I am a sex worker for a living, but I deserve the same human rights and treatment as everybody else,"
Zillah Malia 27 yrs Mombasa*

This report is a submission of all sex workers in Kenya, with faith that the esteemed CEDAW Committee will exercise its mandate in finding that indeed the government has failed in acknowledging the right and the needs of sex workers; to ensure that our government protects the interests of sex workers in Kenya and our voice is heard.

BIBLIOGRAPHY

Africa Sex worker Alliance. I expect to be abused and I have fear. Sex workers' experiences of human rights violations and barriers to accessing healthcare in four African countries. April,2011.

Agustín, Laura María. Challenging 'Place'. Leaving home for Sex." *Development*, 45.1, Spring , 2002: 110-117.

Agustín, Laura María . Sex as Work & Sex work. 262-277.www.padovanet.it/archivio-di-lotta-femminista-il-salario-al-lavoro-domestico-donazione

Ahmed, Aziza. Feminism, power, and sex work in the context of HIV/AIDS. Consequences for women's Health." *Harvard Journal of Law & Gender* [Vol. 34.

Ahmed ,Aziza and Meena ,Seshu. We have the right not to be 'rescued'... When Anti-Trafficking Programmes Undermine the Health and Well-Being of Sex Workers." *The Anti-Trafficking Review*, Issue 1, 2012: 149-165.

Amnesty International. A policy on state obligations to respect, protect and fulfil the human rights of sex workers." POL 30/4062/2016. 26 May 2016.

Amnesty International, sex workers At Risk."A Research summary of human rights Abuses Against sex workers." 9-16 (2016), available at https://www.amnesty.be/IMG/pdf/sex_work_briefing_final3.pdfHYPERLINK" <https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/>"

Amnesty International. A policy and research on protection of sex workers' rights . Amnesty International. Retrieved 28 September 2016.

Bujra, Janet M. Women "Entrepreneurs" of Early Nairobi. *Canadian Journal of African Studies/ Revue Canadienne des Études Africaines*, Vol. 9,, No. 2 (1975: 213-234.

Chuang, Janie A. Rescuing Trafficking from ideological capture. Prostitution Reform an anti -Trafficking law ." *University of Pennsylvania Law Review* [Vol. 158: 1655, 1656-1725.

Committee on the Elimination of discrimination against women. Consideration of report submitted by state parties under Article 18 of CEDAW. CEDAW/C/KEN/3-4. February 14, 2000.

Committee on the Elimination of Discrimination against Women. Concluding observations of the Committee on the Elimination of Discrimination against Women. CEDAW/C/KEN/CO/7. Forty-eighth session 17 January – 4 February 2011.

Committee on the Elimination of Discrimination against women. Consideration of reports submitted by States parties under Article 18 of the Convention.Eighth periodic report of States parties. CEDAW/C/KEN/8. KENYA , March 3, 2016.

Counter Trafficking in persons Act NO. 8 of 2010.kenyalaw.org/kl/fileadmin/pdfdownloads/.../BasicEducationNo14of2013.doc

Scorgie Fiona, Daisy Nakato, Eric Harper, Marlise Richter, Sian Maseko, Prince Nare, Jenni Smit, Matthew Chersich. We are despised in the hospitals. Sex workers' experiences of accessing health care in four African countries.<https://biblio.ugent.be/publication/3236960>

WHO, UNFPA, UNAIDS, Global Network of sex Work Projects, The World Bank. Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions. Geneva, World Health Organisation, 2013.

Grant, melissa gira. Playing the whore. The work of sex work . london: verso , 2014.

hooks bell. Ain't I a woman. london,winchester: pluto press, 1989.

Robinson Jonathan, Ethan yeh. Transactional Sex as a Response to Risk in Western Kenya.Policy Research Working Paper 4857. March 2009.

Kenya Legal and Ethical Issues Network on HIV and AIDS KELIN. Punitive laws against sex workers.Nairobi,2016.kelinkenya.org/wp.../punitive-laws-practices-affecting-HIV-responses-in-Kenya.pdf

Kimani, J., Kaul, R., Nico, J.D.N., Luo, M., MacDonal, K.S., Ngugi, E., Plummer, F.A. (2008). Reduced rates of HIV acquisition during unprotected sex by Kenyan female sex workers predating population declines in HIV prevalence. *AIDS*,22, 13-137.

Keswa(2015) sex workers write to president over Nakuru Killings Available at:<http://www.nswporg.news-sex-workers-write-to-president-over-nakuru-killings> 102953.

Smith Laura A., Chi Mgbako. Sex Work and Human Rights in Africa.Fordham International Law Journal.Volume 33, Issue 4, 2011: 1178-1219.

Lucy Nyambura & another v Town Clerk, Municipal council of Mombasa & 2 others [2011] eKLR. In the High Court Of Kenya In Mombasa

Muchomba, Felix M. Colonial Policies and the Rise of Transactional Sex. Journal of International Women's Studies .Volume 15 | Issue 2, July 2014.

Mgbako, Chi. Adanna. To Live Freely in This World: Sex Worker Activism in Africa. New York: NYU Press, 2016. Project MUSE,

Mgbako,Chi Adanna, Katherine Glenn Bass, Erin Bundra,Mehak Jamil, Jere Keys, And Lauren Melkus. The Case For Decriminalization Of Sex Work In South Africa.www.law.georgetown.edu/academics/law-journals/gjil/recent/.../zsx00413001423.pdf

Manoek, S. (2012). Stop Harassing Us! Tackle Real Crime!'A Report On Human Rights Violations By Police Against Sex Workers In South Africa, Women's Legal Centre. Available: http://www.wlce.co.za/images/sex_workers/210812%20FINAL%20WEB%20version.pdf

Muraguri N, Patel S, Musyoki H, et al, eds." National guidelines for HIV/STI programs for sex workers. Nairobi." Ministry of Public Health and Sanitation, 2010.

NSWP. Good Practice in Sex Worker-Led HIV Programming .Regional Report Africa.<https://www.slideshare.net/claccab/regional-report-africa>

NEPHAK, BHESP, KESWA, GNP+. Speaking out.personal testimonies of right violations experienced by sex workers in kenya. Nairobi, 2015.

Ngugi E, Benoit C, Hallgrimsdottir H, Jansson M, Roth EA. Partners and clients of female sex workers in an informal urban settlement in Nairobi, Kenya. Culture Health Sex 2012; 14: 17–30.

Omondi Willis odek, Rose Kisia. Gender and the political Economy of sex tourism in kenya's coastal resort. A paper first presented at the International Symposium/Doctoral Course on Feminist Perspective on Global Economic and Political Systems and Women's struggle for Global Justice at Sommoroya Hotel, Tromso, Norway, September 24 –26, 2003.

Okal J, Geibel S, Muraguri N, Musyoki H, Tun W, et al. (2013) Estimates of the size of key populations at risk for HIV infection: men who have sex with men, female sex workers and injecting drug users in Nairobi, Kenya. Sex Transm Infect 89: 366–371.

Open Society Foundations. 10 reasons to decriminalize sex work". Edited by OSI Sexual Health and Rights Project. New York. Accessed December 20 2012. <http://www.opensocietyfoundations.org/sites/default/files/decriminalize-sex-work-20120713.pdf>

Open Society Foundations.Criminalizing Condoms ".How policing practices put sex workers and HIV services at risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe. Open Society Foundation, 2011.

Papo JK, Bauni EK, Sanders EJ, Brocklehurst P, Jaff e HW. Exploring the condom gap: is supply or demand the limiting factor— condom access and use in an urban and a rural setting in Kilifi district, Kenya. AIDS 2011; 25: 247–55.

Pauw, I. & , Brener, L. (2003). You Are Just Whores: You Can't Be Raped': Barriers to safer sex practices among women street sex workers in Cape Town. Culture, Health & Sexuality, Nov–Dec 2003: 465–481.

Public Health Act Cap 242 Laws of Kenya ,Revised Edition 2012.

Protocol to the African charter on human and people' rights on the rights of women in Africawww.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf

Richter, Marlise. Sex Work as a test case for African feminism. BUWA! A Journal on African Women's Experiences 62-96.

Smart, Carol. Feminism and the power of law . 11 New Fetter Lane, London EC4P 4EE: Routledge, 1989.

SWEAT. Work wise: Sex worker handbook on human rights, health and violence. Cape Town , South Africa, 2004

Shah, Svati. Sex work & women's movement. New Delhi
:CREA. www.nswp.org/sites/nswp.../Sex%20work%20and%20Women%27s%20Movements.p

Smith, Chi Mgbako Laura A. Sex Work and Human Rights in Africa. *Fordham International Law Journal* Volume 33,;1178, 2011: 1178-1219.

Open Society Foundations Criminalizing Condoms. How Policing Practices Put Sex Workers and HIV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe (2011).

Shannon, K., Strathdee, S.A., Goldenberg, S.M., Duff, P., Mwangi, P., Rusakova, M., Reza-Paul, S., Lau, J., Deering, K., Pickles, M., Bioly, M. (2015). 'Global epidemiology of HIV among female sex workers: influence of structural determinants'. *The Lancet*; 385: 55-71

Sexual and physical violence against female sex workers in Kenya: A qualitative enquiry (PDF Download Available): HYPERLINK "https://www.researchgate.net/publication/50352863_Sexual_and_physical_violence_against_female_sex_workers_in_Kenya_A_qualitative_enquiry"

Standard media (2014) sex for freedom. The quickie way for women out of Nairobi's cold jail cells. Available at <http://www.jambonewspot.com/set-for-freedom-thequickie-way-for-women-out-of-nairobi-cold-jail-cell>.

Teresia Kwamboka & 27 others v Officer Commanding Police Station, (OCS) Kisii Police Station & 5 others [2016] eKLR.

"The Constitution of Kenya 2010." www.kenyalaw.org/lex/actview.xql?actid=Const2010

The Four Freedoms Forum. "Shadow Report to the 61st Session. CEDAW) for the Combined 7th & 8th Periodic Reports of Viet Nam."

The Global Commission on Hiv & the law. "How an Epidemic of Bad Laws is Obstructing the Global HIV Response." Fact Sheet on HIV and the Law: Risks, Rights & Health 1-2.

The penal Code Cap 63 laws of Kenya. www.kenyalaw.org/lex/actview.xql?actid=CAP.%2063

"The Sexual Offences Act NO.3 OF 2006." <https://www.coursehero.com> > University of Nairobi > LAW > LAW G34

Urban Justice Center. "Working group on sex work and human rights." Human trafficking and sex work, 1,2. <https://www.opensocietyfoundations.org/.../Sex%2520Work%2520and%2520Human>.

White, Luise. *The Comforts of Home: Prostitution in Colonial Nairobi*. Chicago: The University of Chicago Press, 1990.

WHO, UNAIDS, THE Global initiative on women HIV/AIDS. "Sexual violence in conflict settings and the risk of HIV." *Violence against women and HIV/AIDS: Critical intersection. Information Bulletin Series, Number 2* 1-2.

WHO, UNAIDS, GCWA. "Violence against women & HIV/AIDS: Critical intersection." *Violence against sex workers and HIV prevention. Information Bulletin Series, Number 3*.

Willis Omondi Odek, George N. Githuka, Lisa Avery, Peter K. et al. Estimating the Size of the Female Sex Worker Population in Kenya to Inform HIV Prevention Programming. Published: March 3, 2014: HYPERLINK "<https://doi.org/10.1371/journal.pone.0089180>" <https://doi.org/10.1371/journal.pone.0089180>

Wojcicki, Janet Maia (2002b), *She Drank His Money: Survival Sex and the Problem of Violence in Taverns in Gauteng Province, South Africa*. *Medical Anthropology Quarterly* 16 (3): 267-293.

