

# A REVIEW OF RECENT LITERATURE ON VIOLENCE AGAINST WOMEN IN SEX WORK IN KENYA



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# 1. OVERVIEW

Several studies have been done that capture the extent of violence suffered by sex workers globally, most of which have a focus on female sex workers. These range from research that focuses mostly on the relationship between violence and HIV/STI risk and transmission, and data from national and global HIV reports. According to the NASCOP **National Violence and Prevention Protocol 2017**, Kenya has a large number of key populations who include sex workers, MSM, and PWID. These populations have many connections to the general population, including sexual and drug injecting relationships, which acts as a bridge to HIV transmission between key populations and members of the general population. Interventions for KP groups have been initiated in many Counties in Kenya with support from PEPFAR, The Global Fund and other development partners since their prioritization in the Kenya National AIDS Strategic Plan III.

***The Global Network of Sex Work Projects, Documenting good Practice by Sex Worker-led organization's #01*** – Addressing Violence Against Sex Workers reported that in Kenya, organizations such as Health Options for Young Men (HOYMAS), Keeping Alive Societies Hope (KASH) and Kenya Sex Workers Alliance (KESWA) have established 24-hour emergency number/hotline for reporting violence and seeking support. They provide training for sex workers about violence and information about the assistance available; refer cases for legal aid, Post Exposure Prophylaxis (PEP) services, emergency

contraception, etc. They have also trained female sex workers as paralegals and conducted sensitization of key stakeholders (law enforcement agents, judicial officers and health care providers).

Whereas the health sector has been able to effectively utilize evidence to inform broad policy development to enhance health service provision to sex workers, the legal environment continues to lag behind. Beside the Constitution of Kenya, there are national laws, some of which provide a supportive framework by ensuring provision of services to sex workers and protection from violence and human rights violations, while others pose a hindrance. The Public Health Act governs the way services are rendered in health facilities and imposes an obligation on all health institutions to take reasonable measures to prevent and deal with preventable, infectious or communicable diseases.

Section 43 and 44 of the Act make it mandatory for any person suffering from any venereal disease to consult a medical practitioner and be treated until completely cured. These provisions of the Act have been used to compel forced medical examination including the enforcement of forced HIV testing of sex workers. Sections 27 and 28 touch on TB treatment, care and prevention, which is an issue that greatly affects people living with HIV (PLHIV). It gives the public health officer the authority to remove and request for the isolation of persons who have been exposed to infection or may be in the incubation

stage of an infectious disease. The two sections have in the past been used to unconstitutionally incarcerate tuberculosis (TB) patients for “failure to adhere” to TB treatment.

The HIV and AIDS Prevention and Control Act, 2006 (HAPCA) Section 24<sup>1</sup> criminalizes HIV transmission and non-disclosure. This directly violates the right to a fair hearing, equality, non-discrimination, and privacy and may discourage access to HIV testing due to fears of legal implications following a positive diagnosis. Criminalization compromises linkage and retention in health care through concerns of exposure of confidential medical information. A decision of the High Court however declared this section unconstitutional and ordered parliament to reconsider the provision. Some County laws (formerly Municipal bylaws under General Nuisance bylaw) outlaw loitering for immoral purposes, importuning for prostitution and indecent exposure and form the basis of arrest of sex workers by county officials. These are but a few examples of legal provisions that fuel violence against sex workers in Kenya.

In 2016, KESWA with support from Human Rights watch undertook **a study on violence against sex workers in Kenya**. The study reached 100 sex workers; 87 of whom were female sex workers in Nairobi County. The study identified a pattern in terms of incidences and gravity of violence. Sex workers experience physical, sexual, emotional and economic violence when at work, in custody and in their homes. These trends have been reported to be on the rise since 2016 when the study was conducted.

In 2017, the Bar Hostess Empowerment and Support Program together with the Kenya Sex Workers Alliance made history by presenting **the report on marginalization, violence, and discrimination of sex workers in Kenya to the United Nations Committee on Elimination and Discrimination against Women titled “Aren’t we also women”**. The report strongly voiced the frightening accounts and gross violations that sex workers undergo. The report identifies the CEDAW Articles that have been violated

by the state party in Kenya in relation to women sex workers in Kenya, highlights the gaps in the state party report that was submitted in 2016 pertaining to women who are sex workers in Kenya and brings to light the violations of women sex workers in Kenya. The report highlighted the 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 highlighted that 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. National AIDS STI Control Programme (NASCOP) has developed violence response manuals and facilitated 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 them but instead harass, threaten, illegally arrest, beat, rape and extort sex workers. Violence or fear of violence prevents sex workers from accessing harm reduction, HIV prevention, treatment and care, health and other social services including services aimed at preventing and responding to violence.

***Silenced by Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya.*** **2018**, is the first ever sex worker-led evidence-based research to be conducted by Kenyan sex workers through KESWA. KESWA through this study sought to investigate and document the impact of the legal environment on sex work related violence in Kenya with a focus on health, safety and protection of sex workers. The study was successfully implemented in Nairobi, Mombasa, Kisumu, Busia and Nakuru with 429 respondents reached. The female population of sex workers is higher - (52%) - than the male

1. a person aware of being HIV positive to “take all reasonable measures and precautions to prevent the transmission of HIV to others” and to “inform, in advance, any sexual contact or persons with whom needles are shared” of their HIV positive status

and transgender population. Most sex workers are typically of reproductive age, between 22 and 35 years old (67%) hence the need to prioritize security and sexual and reproductive health rights needs. In this study, majority of the respondents (86%) viewed sex work to be very insecure and were of the opinion that the laws play a significant role in the current state of insecurity they face while stating that the laws do not protect them from violence as sex workers. The research concluded that ending violence against sex workers can be better realized within a legal environment that encourages effective reporting, facilitates availability of holistic services and strengthens access to justice for sex workers who experience violence.

***Underage And Legally Under Protected: A study on the impact of criminalization of prostitution on violence prevention and response for sexually exploited adolescents who sell sex in Kenya. 2018,*** KESWA-Kenya is another publication from the sex worker-led research aimed at informing realistic solutions for sexually exploited adolescents who sell sex. The report revealed that the female population of adolescents selling sex is significantly higher (66%) than the male population. Health risks to adolescents are presented not only due to the risky nature of sex work but additionally due to the physical and sexual violence they are exposed to negotiating their way out of arrest. The report finds that these girls are less likely to physically defend themselves, more vulnerable to threats and intimidation. There were numerous reports that law enforcement officers specifically targeted adolescent girls demanding forced unprotected sex to secure their freedom. Besides health services, social services required to support victims of violence are largely inaccessible to sexually exploited adolescents who sell sex. The research concluded that given the limitations in comprehensive evidence-based research on what works for sexually exploited adolescents who sell sex, their opinions are critical to the acceptance and uptake of interventions. It is imperative that they are fully engaged in all aspects of strategy development, planning and implementation of violence prevention and response programs at national and county level.

## 2. INTRODUCTION

This paper was commissioned to collate and consolidate recent research and studies on violence against women in Kenya including women in sex work industry. Violence is defined by the World Health Organization (WHO) as the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that results or has a high likelihood of resulting in injury, death, sexual or psychological harm, mal-development or deprivation of liberty<sup>2</sup>. Its impact can be seen in various forms in all parts of the world and has formed part of human behavior over decades. Each year, more than a million people lose their lives, and many more suffer non-fatal injuries, as a result of self-inflicted, interpersonal or collective violence. Overall, violence is among the leading causes of death worldwide for people aged 15–44 years<sup>3</sup>. As with its impacts, some causes of violence are easy to see while others are deeply rooted in the social, cultural and economic fabric of societal beliefs. Recent research suggests that while biological and other individual factors explain some of the tendencies to aggression, more often these factors interact with family, community, cultural and other external factors to create a situation where violence is likely to occur. It is impossible to avoid instances of violence as communities continue to interact with one another. It is from this information that countries across the world have held their governments accountable to protect citizens from exposure to and instances of violence.

The Declaration on the Elimination of Violence Against Women defines “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.” Gender-based violence and violence against women are terms that are often used interchangeably as it has been widely acknowledged that most gender-based violence is inflicted on women and girls, by men. However, using the ‘gender-based’ aspect is

<sup>2</sup> *redux\_Final\_18 Oct 2013\_ Implementing Comprehensive HIV-STI Programmes.pdf*

<sup>3</sup> *World Report on Violence and Health, Chapter 1. Violence - A Global Public Health Problem*

important as it highlights the fact that many forms of violence against women are rooted in power inequalities between women and men<sup>4</sup>. Violence against women and girls is one of the most prevalent human rights violations in the world regardless of social, economic or national circumstances. Worldwide, an estimated one in three women will experience physical or sexual abuse in her lifetime<sup>5</sup>. Gender-based violence undermines the health, dignity, security and autonomy of its victims, yet it remains hidden in a culture of silence. Victims of violence can suffer sexual and reproductive health consequences, including forced and unwanted pregnancies, unsafe abortions, traumatic fistula, sexually transmitted infections including HIV, and even death.

Notably, sex workers face substantial stigmatization mostly due to cultural attitudes towards the occupation. Such beliefs have unfortunately defined sex work as morally wrong and a nuisance under local government laws<sup>6</sup>. Violence against Sex Workers is a silent social crisis that occurs, mostly with impunity across the world thus leading to various campaigns such as the one organized in 2015 by the Kenya Sex Workers Alliance.

The Kenya AIDS Strategic Framework 2014/15 – 2018/19 has identified sex workers as one of Kenya's key populations and identifies poor enforcement of laws promoting human rights and lack of social and legal protection as factors driving new HIV infections in Kenya. Violence against female sex workers is reported to impede HIV prevention efforts and contravenes their fundamental human rights. Kenyan sex workers continue to suffer human rights violations and the incidences and gravity of violence are increasing despite the expansive human rights protections under the bill of rights in the Constitution of Kenya 2010.

### 3. PROBLEM STATEMENT AND PURPOSE OF THE STUDY



**Five in every 10 Kenyan women of ages between 15 and 49 have experienced some form of violence**

Five in every 10 Kenyan women of ages between 15 and 49 have experienced some form of violence<sup>7</sup>. The numbers of morbidity and mortality rates in Kenya as a result of sexual violence against FSWs has significantly increased with female sex workers reporting more incidences of grave violence. Violence against Sex Workers is a silent social crisis that occurs and goes unaddressed across the world and presents a significant threat to their rights. Female Sex Workers are some of the most susceptible population to violence; sexual violence has been on the rise leading to depression and poor mental health. Research shows that eliminating violence against FSWs could result in a 20.0% drop in incidences of HIV infections<sup>8</sup>. Violence against sex workers is not specifically defined or perceived as a criminal act. Despite the enactment of laws such as the Marriage Act, Protection against Domestic Violence Act and the Sexual Offences Act, laws and policies criminalizing or penalizing sex work still fuel violence, discrimination and other human rights abuses against sex workers. Public order laws often give County authorities a wide range of discretion in how they are implemented, which often acts as a cover for unlawful law enforcement practices such as violence and extortion.

Insecurity is a significant issue among Sex Workers due to the nature and environment they are in.

<sup>4</sup> <https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>

<sup>5</sup> Gender Based Violence – United Nations Population Fund (UNFPA)

<sup>6</sup> Avert. (2019). Women and Girls, HIV and AIDS. Retrieved 2019, from Avert: <https://www.avert.org/professionals/hiv-social-issues/key-affected-populations/women>

unfortunately, law enforcement agents have formed a biased perception as to what violence against sex workers should look like; such attitudes in turn affect their ability to prevent and respond to violence against FSWs. Police have been known to refuse to register and follow up on reports of sexual violence made by a sex worker. Due to such instances, sex workers are reluctant to report violent incidents to the police for fear being prosecuted.

Notably, some approaches have been put in place to address the issues faced by FSWs. Awareness, education, and sensitization of members of law enforcement, health care providers, judicial officers have been done to de-stigmatize not only the trade but also promote health services and deter instances of violence. Despite various policy and legal interventions, studies conducted by Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN) (2016) show that there have been no declines noted in the levels of violence against Sex Workers; approximately, 75% reporting sexual violence and 17% physical abuse. A study by KESWA documented that 52% of sex workers experienced threats and violence from law enforcement officers. According to the Open society foundation, approximately 50% of outreach workers say that police had harassed them during their work.



## REPORTING

**75%** Sexual violence

**17%** Physical abuse

To this end, updated data is required to build on the existing body of evidence on the impact of violence on female sex workers (FSWs) in Kenya.

This information will complement and strengthen efforts towards creating a conducive environment for sex workers to access health services, legal services and holistic violence prevention and response interventions. The physical, sexual, and verbal violations of sex workers' rights are part of a pattern of abuse by law enforcement, clients and members of the general public that is documented throughout the region. The violence is dreadful and abusive in itself, and its impact extends beyond physical and psychological scars.

KESWA is the umbrella body of the sex worker led groups and organizations in Kenya comprised of 75 members across the 47 counties in Kenya. They exist to strengthen the voices of sex workers and to empower their health and human rights. It is against this background that KESWA saw it fit to undertake a desktop research to collate and consolidate current research and studies on violence against women in the sex work industry.

The purpose of this research paper is to identify the emerging trends of violence against women in sex work in Kenya. The upsurge in violence related to sex work is affecting the country as a whole leading to injuring and homicide of girls and women.

The research provides crucial information and recommendations to address gaps in intervention and strategies directed towards reducing violence against FSWs. In this documentation, we will focus on violence that affects women involved in sex work.

## 4. RESEARCH METHODOLOGY

### 4.1. Research Methodology

#### 4.1.1. Literature Search

This systematic review was guided by Preferred Reporting Items for Systematic Review and Meta-Analyses (PRISMA). The search terms included "Sex Workers," "violence" "sexual violence" "prostitution," "stigmatization," "prostitute" "prostitutes" "prostitution" and "discrimination." The study

included articles that examined the prevalence and correlates of violence against sex workers by using quantitative, multivariable methods and published in peer-reviewed journals and credible organizational websites. Additional quantitative studies were captured in the research process that examined the correlates of violence by using either content review or bivariate methods to test statistical association. To ensure reliability and relevance of findings, the articles meeting the following inclusion criteria formed part of the study; articles published within the last five years at the time of the research and articles written in English and including adult participants. Moreover, the article focuses on Women in sex work. Literature that was excluded includes non-peer reviewed articles, editorials and opinion pieces.

#### 4.1.2. Data Extraction and Analysis

Information about age, economic status, peer pressure, single parenting, nature of violence, places and context of violence, social and legal conditions, and nature of strategies to address violence against women in sex work was extracted from each study and then analyzed to inform comparison and the final recommendations.

#### 4.1.3. Summary of included Studies

Overall, surveys, systematic reviews, ethnographic studies were included in the analysis. The studies utilized qualitative and quantitative approaches and samples of sex-workers from multiple sex work environments such as homes, brothels and public places. The studies were diverse according to perpetrator such as police, client, public and other sex workers. Overall, all studies were of female sex workers.

### 4.2. Research Objectives

- To examine the dynamics of women engaging in

sex work in Kenya

- To explore the nature of violence that female Sex Workers experience
- To investigate the social conditions that make women in sex work in Kenya vulnerable to violence
- To investigate the legal conditions that make women in sex work in Kenya vulnerable to violence
- To examine the challenges of the strategies aimed at addressing violence against women in sex work in Kenya

## 5. REVIEW OF THE LEGAL ENVIRONMENT ON VIOLENCE AND SEX WORK IN KENYA

### 5.1. Overview

The laws in Kenya do not recognize sex work as work and the term sex work does not appear in any legislation. Sex work is legally referred to as 'Prostitution'. That said, sex work in Kenya has for a long time been considered morally wrong, but the law has neither made a concrete stand for or against sex workers. This in the end has brought about the debate on whether it should be legalized or not. It has always been a hurdle for lawmakers in Kenya to make a distinction between the law and morality hence the bridge between the government and sex workers on the legality of the trade. This distinction could be made through the argument that law can be addressed to external freedom while morality is to internal freedom.

It has been argued that the law deals with the relationship between individuals and the state and the duty owed to each other, while morality touches on the struggle within every individual as relates to their desires and actions (wrong and right). The term 'sex work' does not appear within the laws of Kenya, this term is a human rights term that was meant to destigmatize the trade and humanize sex workers. The term prostitution appears widely in the laws of

<sup>9</sup> Position paper on the legality of prostitution in Kenya, DOC

<sup>10</sup> Silenced By Law - The Impact of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya. 2018, KESWA-Kenya

<sup>11</sup> Underage And Legally Under Protected: A study on the impact of criminalization of prostitution on violence prevention and response for sexually exploited adolescents who sell sex in Kenya. 2018, KESWA Kenya

Kenya and this has been argued to be part of the reason why sex workers still face gross violations and instances of violence. The term prostitution creates a bias within the minds of the general public and law enforcers towards sex workers<sup>9</sup>.

Globally, there is growing body of evidence that suggests that decriminalization and elimination of violence against sex workers would have a great effect on the course of HIV epidemics by averting new HIV infections<sup>10</sup>. The criminal nature of sex work due to the legal environment creates an environment in which violence against sex workers by police, clients and others is justifiable and silently accepted making them more vulnerable to acts of violence.

Despite the comprehensive and robust Constitution of Kenya 2010, sex workers continue to suffer violence and general social contempt that is fueled by the criminal provisions relating to sex work. There have been numerous recommendations targeting lawmakers on reviewing laws and policies that weaken the protection and respect of human rights for sex workers. However, most lawmakers are yet to understand and fully support this, they remain largely uninformed or ignorant as to the consequences that existing punitive legislation and the impact of additional public order county will have on public health outcomes and the human rights and overall wellbeing of sex workers in Kenya.

Numerous studies have revealed serious problems with the criminal justice system's response to sexual violence, particularly where the survivor is a sex worker. Evidence provided also shows that the existence of laws criminalizing prostitution result in the unprocedural penalization of sexually exploited adolescents who sell sex; preventing them from fully benefiting from favorable child protection laws and policies aimed at facilitating access to services for victims of violence<sup>11</sup>.

All people deserve the unconditional right to safety from violence. The legal framework can be effectively utilized to challenge misconceptions around sex workers that fuel condemnation of the survivor and not the violations against them.

## 5.2. Legal Provisions that Address Violence in Kenya

### 5.2.1. The Constitution of Kenya 2010

The Constitution of Kenya (2010) contains an advanced Bill of Rights, which brought about widespread changes to Kenya's legal framework. Article 2(5) and 2(6) make any treaty or convention ratified by the Kenya enforceable as part of the laws of Kenya. The recognition of International human rights standards provides a framework on which national and county laws and policies are formulated and interpreted. Therefore, provisions cited in instruments such as Universal Declaration of Human Rights (UDHR) which recognizes fundamental human rights including sex workers rights regardless of domestic laws that criminalize sex work; International Covenant on Economic Social and Cultural Rights (ICESCR) which highlights rights to non-discrimination and equal treatment before the law and the International Covenant on Civil and Political Rights (ICCPR) which recognizes the right to the highest attainable standard of health including HIV prevention, treatment, care and support are applicable in Kenya. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) seeks to end all forms of discrimination against women in the political, economic, social, cultural, civil or other fields. The CEDAW Committee is one of the important international forums on which the debate of sex and trafficking takes place. Kenyan sex workers in 2017 headed the call by CEDAW and they published a shadow report on the violation of sex workers.

The reports addressed violating the human rights of sex workers, which they are entitled to under the CEDAW. They highlighted the issue of discrimination, trafficking and exploitation, political and public life, employment and labour practices, health care and equality. The right to security of person and respect for the inherent dignity of the human person are guaranteed under articles 9 and 10 of the International Covenant on Civil and Political Rights

<sup>11</sup> Underage And Legally Under Protected: A study on the impact of criminalization of prostitution on violence prevention and response for sexually exploited adolescents who sell sex in Kenya. 2018, KESWA Kenya

<sup>12</sup> Article 9 (1) of the ICCPR: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Article 10 (1) of the ICCPR states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

(ICCPR).<sup>12</sup> The International Labour Organisation (ILO) policy on decent work is a key labour rights framework that can be applied to sex work.<sup>13</sup>

Article 27 of the Constitution promotes equal treatment of all persons. It prohibits discrimination on numerous grounds; which include age, sex, dress, health and marital status among others. This ensures that everyone is able to access opportunities and services without discrimination. Article 31 on the right to privacy is key in encouraging uptake of health services and commodities by sex workers. Article 35 provides the right of access to information. Access to appropriate information regarding the legal environment is important to minimize the violations affecting sex workers. This can boost their overall wellbeing by availing accurate information required for informed decision making. Articles 33 and 36 respectively have enabled sex workers to establish and register organizations including Community Based Organizations (CBOs) that collectively advance and highlight their issues. Article 49 provides for the rights of an arrested person, which are essential to sex workers who undergo arrests every other day. In most instances, sex workers will face violence and violations at the point of arrest. The Constitution 2010 stipulates that an arrested person has the right to be informed of the reason for their arrest in a language they understand; to be brought before a court as soon as reasonably possible; to be released on bond or bail and not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for less than six months.

Article 43(1) explicitly guarantees every person the right to the highest attainable standard of health care services including emergency medical care. Article 43(2) facilitates provision of post rape care, which includes administration of Pre-Exposure Prophylaxis for HIV prevention. In this way, sex workers are also able to enjoy proportionate access to HIV prevention, treatment, and care services. This mitigates the risk of HIV infection among sex workers and other vulnerable populations who experience a high vulnerability to sexual violence. Article 47 provides for fair administrative practice. One

can challenge unfair and unlawful administrative actions such as violence by law enforcement agents, unlawful searches and forced testing by police officers during raids.

Article 22 recognizes that every person has a right to go to court seeking protection of human rights. The Constitution removes strict legal requirements before filing of human rights cases. This has opened the doors for sex workers to bring cases before the court should there be a violation of any human rights. This provision prevents information relating to one's HIV status and care from being released unlawfully. Article 48 ensures access to justice for all persons. This advances easier access to courts, access to affordable legal representation and reasonable professional court fees to enforce rights.

### **5.2.2. Protection Against Domestic Violence Act No.2 Of 2015**

Prior to the enactment of the abovementioned Act, domestic violence was under the Penal Code; such instances were reported as an act of assault at the police station and were often dismissed as domestic issues to be dealt with privately.

Sex work is not only limited to people who trade sex for money but may include survival needs such as food, shelter, lifestyle or even immigration status. This makes sex workers especially vulnerable to intimate partner violence and domestic violence by close relatives. The 2015 Act deals with protection and relief of victims of domestic violence. The Act recognizes domestic violence as violence against a person, or a threat of violence or imminent danger by someone whom that person is in or has been in a domestic relationship with. It goes further to elaborate what a domestic relationship is and gives various examples such as marriages, relationships between divorced couples, people who live together, and people who were in marriages that have been dissolved or declared null and void. Family members and people engaged to be married, someone you have a child with and any person you have a close personal relationship with.

<sup>13</sup> Recommendation 200; which concerns HIV and AIDS and the world of work, recognizes all workers including sex workers – recognizing that they are workers within the informal economy.

When the survivor of abuse is a sex worker, they may face even more challenges when planning to leave safely, access resources, or pursue legal action. The partner may threaten to report the sex worker to the police or expose the survivor as a sex worker to family and friends. Sex workers may also face sexual coercion and blackmail from partners. The Act acknowledges numerous types of violence including verbal abuse, harassment, sexual violence in marriage, intimidation, stalking, emotional and physical abuse. Exposing a child to any form of domestic violence is also now an offence under the Act.

An abusive partner may threaten to call law enforcement on their partner, or interfere with their ability to go to work, or withhold money that the survivor has earned. The law now recognizes economic violence; as an abuse that happens when one is deprived of money that she is entitled to or needs.

Under the Act, police officers are obligated to inform a victim of violence of all the options they have to protect themselves against an abusive person such as access to shelter, medical assistance, and how to lodge a criminal complaint against the perpetrator. The resident Magistrates court has authority to give protection orders for victims of violence.<sup>14</sup> Anyone who has been abused or feels likely to be abused can apply for a protection order, which will prevent the abuser from having any form of contact with the victim. A victim can also seek for compensation for any damage to property, treatment of injuries caused due to the abuse, loss of earnings as result of the injuries, costs incurred for moving the victim to a safe area and any other related expenses. Regardless of criminal history, anyone who is a survivor of abuse is legally entitled to protection under the law.

### **5.2.3. Sexual Offences Act No.3 Of 2006**

The Act was enacted in response to an increase in sexual violence in Kenya. This legislation was the first of its kind in Kenya's legal history, to recognize sexual

acts without consent as a crime and introduces harsh minimum sentences for convictions. It is meant to ensure complainants of sexual offences get justice that is substantive to the harm caused. It makes provisions for the sexual offences; their definition, prevention and protection of all persons from harm arising from unlawful sexual acts. The Act prohibits all manner of sexual offences including defilement, rape, gang rape, indecent acts, sexual exploitation and administering a substance with intent to commit a sexual offence. It has also prohibited child trafficking, forced prostitution, sex tourism and sexual offences against persons with mental disability. The act empowers the court to recognize and provide protection for vulnerable witnesses during the prosecution of sexual offences.

Section 38 of the Act seeks to penalize making false allegations against another person to the effect that the person has committed an offence. The Act provides that upon conviction such a person shall be liable to punishment equal to that for the offence complained of.

This section may be viewed as one that imposes fear even to a complainant with a genuine complaint. Particularly for most sex workers who do not believe that any action is taken to investigate and prosecute perpetrators of violence against them, those who do not understand legal procedures may be persuaded that a false allegation may include where an accused has not been arrested, or has been acquitted, erroneous as it may be.

The Kenya Police have established gender desks in all police stations that are supposed to be staffed with well-trained officers. Effective gender desks are expected to improve the police response to GBV survivors and to refer them to other organizations for professional services. There is opportunity to strengthen collaboration between medical and legal service providers to support reporting by sex workers who experience sex crimes.

### 5.2.4. The Penal Code Cap 63

The Penal Code in Kenya outlines various criminal offences and prescribing penalties for them. The Penal Code prohibits all acts of violence and outlines acts and omissions that amount to an abuse or illegality.

It incorporates provisions relating to physical abuse such as common assault, assault occasioning actual bodily harm and grievous bodily harm, fear of the same and threats to cause harm. Physical harm and threats against sex workers can be reported to the police.

### 5.2.5. The Health Act No.21 of 2017

This Act is for purposes of ensuring that the rights of citizens as under Article 43 of the Constitution 2010 with regards to the access to the highest attainable standard of health care services. The law ensures and safeguards access to health care services for vulnerable groups. It obliges Kenya to address the health needs of vulnerable groups, and mandates the provision of emergency and specialized care. Section 7 of the Act states that every person has the right to emergency treatment including pre-hospital care, stabilizing the health status of an individual and arranging for referral in cases where the health provider of first call does not have facilities or capability to stabilize the health status of the victim.

*International HIV/AIDS alliance versus MM civil appeal no. 365 of 2017*

*The respondent's photograph was posted on the appellant's website which contained some explanatory statements which the respondent stated implied that she was an HIV positive sex worker waiting to be attended. The respondent filed a civil action before the Tribunal seeking damages for emotional and psychological distress.*

*The Tribunal heard the case and determined the same in favour of the respondent. The respondent was consequently awarded a sum of ksh.1, 500,000/= as damages for emotional and psychological distress. The appellant being aggrieved appealed against the decision of the tribunal. The Judge ruled against the appellant and agreed that the respondent had presented a clear case showing her rights were infringed which case was supported by evidence from other sex workers.*

It mandates the national government to establish an emergency medical treatment fund for emergencies to provide for unforeseen situations and provide policy and training, maintenance of standards and co-ordination mechanisms for the provision of emergency healthcare.<sup>15</sup> The Act is beneficial to sex workers because it provides better protection of the right to privacy. The law demands maintenance of confidentiality of one's health status and requires informed consent for the provision of a specified health service. Finally, the law guarantees reproductive health rights for all persons including right to safe, effective, affordable and acceptable family planning services.

### 5.2.6. HIV and AIDS Prevention and Control Act, 2006 (HAPCA)

The Act provides the legal framework to address HIV in Kenya. The law provides for protection and promotion of public health, the appropriate treatment, counseling, support and care of persons infected or at risk of HIV infection. This Law seeks to protect the rights of persons living with and those affected by HIV. Part IV of the Act addresses screening and access to health care services. It prohibits compulsory HIV testing for purpose of enjoyment of basic rights including health services. The law makes it mandatory to obtain informed consent from a person before subjecting them to an HIV test. Part V upholds confidentiality of patients' HIV status and information. The establishment of

<sup>15</sup> Section 15 of the Health Act No. 21 2017

the HIV and AIDS (Equity) Tribunal under the Act has ensured the protection of human rights in the context of HIV. This is the first and only HIV-specific judicial body in the world. The procedure at the Tribunal has been simplified allowing individuals to submit their own cases, even without legal representation. This has made access to justice more accessible and affordable to PLHIV.

This act is critical in ensuring equal access to HIV related information, prevention and treatment services and legal recourse against HIV related discrimination by sex workers in Kenya.

### 5.2.7. Legal Aid Act No.6 of 2016

The Act promotes access to justice in Kenya as envisioned under Articles 48 and 159 of the Constitution. It provides for an effective legal structure that ensures the financially constrained Kenyans are not deprived of essential legal services on the basis of lack of funds. The government launched the National Legal Aid and Awareness Program and a National Action Plan that provides a mechanism to coordinate implementation of legal aid interventions conducted by the government and other actors. The objective is to improve access to and quality of legal services to members of the public and especially the poor and vulnerable. For majority of sex workers who may have little or no understanding of the justice system, this exposes them to the likelihood of wrongful convictions.

The Act encourages legal practitioners to engage in legal aid by offering appropriate structured support and incentives. The Sexual and Gender Based Violence 2017 was prepared to provide guidance to the County Governments on critical elements and considerations for Policy on SGBV. The counties are however encouraged to domesticate the policy according to specific county needs.

The National Gender and Development Policy (2000) recommended that amendments should be made on some penal laws to include issues specific to GBV such as the penal code to include gender related

crimes, hearings of SGBV to be conducted in camera, trainings tailored for judicial officers on SGBV and setting up shelters for survivors of violence.

The National Guidelines on the Management of Sexual Violence (2014) is a guiding policy framework on procedures and services for management of survivors of sexual violence as a human rights and health issue which calls for action by all parties concerned.

## 5.3. Policy Environment

The government of Kenya has shown great initiative to address the issues of violence by developing a strong policy and regulatory environment for response, prevention and management of Sexual and Gender Based Violence.<sup>16</sup>

The County Government Policy on Sexual and Gender Based Violence 2017 was prepared to provide guidance to the County Governments on critical elements and considerations for Policy on SGBV. The counties are however encouraged to domesticate the policy according to specific county needs.

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The National Guidelines on the Management of Sexual Violence (2014) is a guiding policy framework on procedures and services for management of survivors of sexual violence as a human rights and health issue which calls for action by all parties concerned.

<sup>16</sup> *Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya*. 2018, KESWA-Kenya

<sup>17</sup> Kotiswaran, P. (2011). *Born Unto Brothels - Towards a Legal Ethnography of Sonagachi's Sex Industry*. SSRN Electronic Journal

<sup>18</sup> *Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya*. 2018, KESWA-Kenya.

## 6. FINDINGS

### 6.1. Dynamics of Women Engaging in Sex Work in Kenya

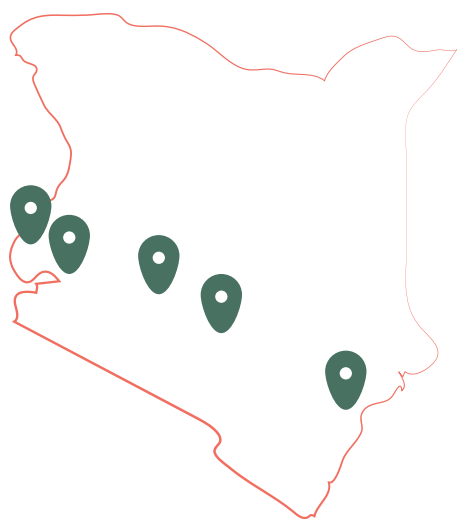
The dynamics of women engaging in sex work in Kenya are highly influenced by age, stigmatization, discrimination, societal perception, service relations, tenancy relations, illiteracy, unemployment, economic social, cultural, political and women powerless and low status in our societies.<sup>17</sup> The female population of sex workers is slightly higher (52%) than the male (46%) and transgender (2%) population.<sup>18</sup> In as much as Kenya has many organizations that fight for women's rights, the repressive patriarchal structures of society and interpretations of culture, law and morality combined with the stigma and discrimination against sex workers limits the possibility of sex workers to access support from most civil societies, women's advocacy groups, or human rights organizations.<sup>19</sup>

#### 6.1.1. Age

Age is a very vital dynamic among Sex Workers since most of them group themselves according to their age categories.<sup>20</sup> Most of the young Sex Workers tend to establish their network of peers that is different from that of the old. A study conducted by Kenyan sex workers in counties mapped out as having the highest number of sex workers; Nairobi,

Mombasa, Kisumu, Busia and Nakuru indicated that majority of the female sex workers are young adults, typically of reproductive age, between 22 and 35 years old (67%).<sup>21</sup> As they grow older, their involvement in sex work decreases with those aged between 46 and 49 years old constituting 1% of the population.

According to a report by the Ministry of Health in 2014, although not always the case, the young Sex Workers do not freely self-identify compared to the older since society tends to accept older Sex Workers. A 2018 report by UN shows that approximately 15,000 girls living in the coast, aged between 12 and 18 years are actively engaged in prostitution. The figures represent approximately 30% of girls between ages 12 and 18 years living in Kilifi, Malindi, Mombasa, and Diani.<sup>22</sup> However, according to the study conducted Sex workers in the township, tend to be relatively younger than those from rural towns (average age 21 vs. 25), had more clients (average nine vs. four per week), and made more money from sex work (of up to €63-90). Another study by Odek, W., Githuka, G., Avery, L. et al. (2014). Estimating the Size of the Female Sex Worker Population in Kenya to Inform HIV Prevention Programming. PLoS One, vol. 9, no. 3, e89180; found out that approximately 5% of urban female populations of reproductive age could be Sex Workers. The finding



Nairobi, Mombasa, Kisumu, Busia and Nakuru indicated that majority of the female sex workers are young adults

<sup>19</sup> Ministry of Health. (2014). Assessment of Female Sex Workers' Operational Characteristics and Programme Exposure in Nairobi, Kenya. Nairobi: Ministry of Health

<sup>20</sup> Becker ML, Bhattacharjee P, Blanchard JF, Cheuk E, Musyoki HK, Gichangi P, Aral S, Pickles M, Sandstrom J, Ma H, Mishra S. (2018). Vulnerabilities at First Sex and Their Association With Lifetime Gender-Based Violence and HIV Prevalence Among Adolescent Girls and Young Women Engaged in Sex Work, Transactional Sex, and Casual Sex in Kenya. J Acquir Immune Defic Syndr, 79(3), pp. 296-304

<sup>21</sup> Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya. 2018, KESWA-Kenya

<sup>22</sup> Mwawasi, M. (2018). 30 per cent of teenage girls in Coast are prostitutes, UN reports claims. Retrieved 2019, from Standard Media: <https://www.standardmedia.co.ke/article/2001290244/over-15-000-girls-in-coast-engage-in-sex-trade>

<sup>23</sup> Ndolo, M. (2014). Public perception on commercial sex work in Kenya. Spectrum Network International

is consistent with estimates from other sub-Saharan African countries.<sup>23</sup>

Using the Kenya population census of 2009, the study by Odek et al. established that 3 percent of all adult women in the towns mapped engaged in sex work. Per capita FSWs approximations varied across towns with some of them having more than 20% of women of reproductive age engaging in sex work; Bondo (20%), Kisii (21%), Webuye (20%), Maua (36%), and Emali (70%) (Odek et al., 2014). Another study conducted by Ministry of Health in collaboration with Center for Global Public Health-University of Manitoba found out that the average age at sexual debut, in Kenya, was 17 years with nearly 99.2% of the respondent reported having received cash for sex (Ministry of Health, 2014).

### 6.1.2. Economic Status

Economic status and more specifically financial background is also another factor that has been found to substantially influence the propensity and degree to which women indulge in sex work. It is noticed that Kenya's dire economic conditions have forced women into sex work. Due to limited job opportunities and inadequacies of capital to indulge in other income-generating projects, most of the women resort to Sex Work.<sup>24</sup> Most sex workers are single parents and to this end, they will enter the industry without coercion as an economic necessity in order to fulfil their parental obligations. There are women who engage in sex work involuntarily, majority of them forced into it due to abandonment, violence by husbands, socio-economic hardship and poverty. Qualitative studies by Supporting Single Mothers, Mushtaq, N. 2019, suggest that sex work is often initiated to offer economic security particularly due to abandonment by husbands leaving women financially insecure.<sup>25</sup>

However, other studies find out that sex work is not only for the poor, but it is gaining wide acceptance among the well-off women in society. A large majority (92%) of sex workers have been conducting the trade for years and contrary to public opinion,

majority of them engage in sex work voluntarily and they would not stop the work they do for any other form of work.<sup>27</sup>

### 6.1.3. Peer Pressure

Women are substantially influenced by their peers to engage in sex work. During the preliminary days of the newcomers, it is noted that the friends offer all necessary paraphernalia like medication, clothing, and accommodation.<sup>28</sup>

Thus, peer pressure is one of the major contributing factors to sex work since women will more likely conform to activities done by their peers and friends. The dynamics of peer pressure have become compelling as more Sex Workers go digital and on online sites.<sup>29</sup>

Selling, advertising, and purchasing of sex are becoming easier than ever due to social media sites that focus in the sex business. The Internet has become a vibrant peer-learning site where sex work learns from each other on how to advertise and meet the ever-growing client. Ramified with the need to make a living, peer pressure is a salient factor that has made some girls engage in sex work to be able to get finances to purchase some items that their well to do peers own. Due to the nature of the trade, the Sex Workers often find themselves in high social class areas such as Kileleshwa, Lavington and some parts of Westlands in Nairobi so that they can be accepted in society.<sup>30</sup>

### 6.1.4. Single Parenting

Single parenting is one of the other factors that drive women into sex work.<sup>31</sup> Studies show that a substantial number of women in sex work are mothers seeking to bolster their earnings. Some of the factors that drive such women into sex work include lack of employment and social support.<sup>32</sup> Early pregnancies have exacerbated and compounded their involvement in sex work since they have to provide food and other basic needs to their children. The same trend is experienced among

24 Mwawasi, M. (2018). 30 per cent of teenage girls in Coast are prostitutes, UN reports claims. Retrieved 2019, from Standard Media: <https://www.standardmedia.co.ke/article/2001290244/over-15-000-girls-in-coast-engage-in-sex-trade>

25 Platt, L. G. (2018). Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies. *PLoS Med*, 15(12), e1002680.

26 Parcesepe, A. E. (2016). Early Sex Work Initiation and Violence against Female Sex Workers in Mombasa, Kenya. *Journal of Urban Health*, 93(6), pp. 1010–1026.

27 Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya. 2018, KESWA-Kenya.

28 Becker ML, Bhattacharjee P, Blanchard, JF, Cheuk, E, Musyoki, HK, Gichangi, P, Aral, S, Pickles, M, Sandstrom, J, Ma, H, Mishra, S. (2018). Vulnerabilities at First Sex and Their Association With Lifetime Gender-Based Violence and HIV Prevalence Among Adolescent Girls and Young Women Engaged in Sex Work, Transactional Sex, and Casual Sex in Kenya. *J Acquir Immune Defic Syndr*, 79(3), pp. 296–304

29 Ministry of Health. (2014). Assessment of Female Sex Workers' Operational Characteristics and Programme Exposure in Nairobi, Kenya. Nairobi: Ministry of Health

30 Gerassi, L. (2016). A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work. *J Sociol Soc Welf*, vol. 42, no. 4, pp. 79–100

31 WHO. (2018). Addressing violence against sex workers. Retrieved 2019, from Sex worker implementation: [https://www.who.int/hiv/pub/sti/sex\\_worker\\_implementation/swit\\_chpt2.pdf](https://www.who.int/hiv/pub/sti/sex_worker_implementation/swit_chpt2.pdf)

the divorced and widowed who find sex work as an easy alternative for income generation.<sup>33</sup>

***Unfortunately, most “Kenyan parents do not accept daughters back in their home once they are married. My mother told me to go back to my husband and persevere as she had done with my father. But I wanted to take control of my life, even if that meant raising the children myself in hardship” sex work (Odek et al. 2014).***

## 6.2. Nature of violence in sex work in Kenya

### 6.2.1. Physical Violence

Physical violence is one of the major forms of violence faced by Female Sex Workers (FSWs). FSWs are vulnerable to physical force that can lead to injury, harm or even death. Physical violence includes but not limited to being slapped, shoved, pushed hit, kicked, choked, dragged, burnt or threatened with weapons such as knives, guns or blunt object. Other acts include biting, poking, restraining or hair pulling. Since 2017, studies show that the country has not experienced any declines in the incidences of violence among SWs.<sup>34</sup> According to KESWA,

approximately 40 Sex Workers are killed each month in Kenya.<sup>35</sup> Despite the complications, FSW report trying to overcome the concerns as soon as possible to return to their work. Cognizant with the fact that most FSWs are vulnerable to violence, KESWA researched to document facts around violence that results from criminalization and infringement of the Sex Workers rights.

Violence is a manifestation of stigma and discrimination experienced by sex workers. Many sex workers consider violence as normal and part of the job and do not have any information on their rights as result they are often reluctant to report incidences of violence.<sup>36</sup> Female sex workers working environment exposes them to recurrent violence: most sex workers have been murdered in the course of work. An example of such incidences is the famous serial killer Philip Onyancha, who was arrested and charged with the murders of sex workers in Thika County.

Majority of FSWs (86%) view sex work to be very insecure. A similar percentage of sex workers are of the opinion that the laws play a significant role in the current state of insecurity they face while at work with a majority (85.1%) of them stating that the laws do not protect them from violence as sex workers.<sup>37</sup> Almost two thirds of sex workers have ever received threats and incidences of violence from law enforcement officers and clients. More than half of these (52%) feel more threatened by police and city council askaris (now county council askaris) and a sizeable proportion 26% by clients.<sup>38</sup>

*My daughter was a sex worker here in Nakuru County and she was killed in cold blood by a client. I remember it was on January 7th when three women came to our home and told us that they needed us to go to Nakuru, on inquiring why they said that something had happened to our daughter. On further inquiry they said that our baby had been killed and we needed to go and confirm that the body in the mortuary was hers. I could not go; her father is the one who went together with two of our family friends. On getting to the mortuary and finding out that it was our daughter he called and confirmed it to me. He was told he has to pay for a post mortem to find out the cause of death and we did not even have enough money for it. The state she was found in was very bad and the police said they need to catch the person who did it but they need a post mortem. A lady who worked in a sex worker-led organization that our daughter was part of helped us with throughout the process*

32 Ministry of Health. (2014). Assessment of Female Sex Workers' Operational Characteristics and Programme Exposure in Nairobi, Kenya. Nairobi: Ministry of Health.

33 Becker ML, Bhattacharjee P, Blanchard JF, Cheuk E, Musyoki HK, Gichangi P, Aral S, Pickles M, Sandstrom J, Ma H, Mishra S. (2018). Vulnerabilities at First Sex and Their Association With Lifetime Gender-Based Violence and HIV Prevalence Among Adolescent Girls and Young Women Engaged in Sex Work, Transactional Sex, and Casual Sex in Kenya. *J Acquir Immune Defic Syndr*, 79(3), pp. 296-304

34 KESWA. (2019). Decriminalization of sex work. Retrieved 2019, from Kenya Sex Workers Association: [https://includeplatform.net/wp-content/uploads/2016/05/VU\\_outline\\_reviewed\\_press.pdf](https://includeplatform.net/wp-content/uploads/2016/05/VU_outline_reviewed_press.pdf)

35 Kenya must legalize sex work for the sake of human rights and public health. Retrieved 2019, from The Guardian: <https://www.theguardian.com/global-development/2015/dec/17/kenya-sex-workers-legalise-human-rights-public-health>

36 Violence against Sex Workers And HIV Prevention, WHO

37 Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya. 2018, KESWA-Kenya.

38 Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya. 2018, KESWA-Kenya.

and they even raised funds for the post-mortem; through the organization they fundraised from some known politicians in the area. After the post-mortem it was found that my daughter had been strangled to death at the hotel room where she was found along with other very bad injuries because there was a lot of blood in the room.

The organization really took charge of keeping tabs on the case, a few weeks later, the suspect was arrested and we were called to court when charges were brought up against him and that is when we saw the accused. We have been coming to court but not always due to money restraints. The organization always updates us on what happens. They have even befriended the prosecutor in the matter. We were there when the doctor who performed the post-mortem gave his statement and evidence in court. My husband was also asked to testify together with the two he had come to Nakuru with. The other witnesses were two people who work at the hotel where my daughter was killed; the receptionist is the one who gave them a room and it was caught on CCTV, the other was a man who works in the hotel and was there and interacted with my daughter the accused at the hotel. The police investigating the matter have told us that the two do not want to give evidence because they are afraid and now they are not even answering their phones. One has even been rumored to have left town when they realized they have to come to court and give evidence. We do not have a lawyer sitting in we only talk to the investigating officer and sometimes the prosecutor to find out the dates and the progress. The case has been in court for months now and not much has been done.

The girls who are also supposed to come and testify the ones who worked with my daughter do not want to because they are afraid so the case is at a standstill. The accused is still in custody he is not out on bail or bond. We did not know that our daughter was a sex worker, we came to find out when she died. She was only 21 years old when she was killed and she left one child who I stay with. The police have been trying to help us with the witnesses who do not want to testify. I have interacted with sex workers since my daughter died and they are very nice people they took care of her while she was here and her baby as well. People misjudge and misunderstand them. When it comes to violence, they face a lot of it and the law is not swift in responding to their cases just like my daughters case. They are mothers and daughters, they have rights too.

**Parent to a sex worker, Nakuru County**

## 6.2.2. Sexual Violence

negate far administrative action

Sexual harassment, gang rape, rape, psychological and physical intimidation, subject to sex against one's will, vaginal or anal penetration with an object or penis is not only degrading but also humiliating forms of sexual violence.<sup>39</sup> In 2015, for instance, more than 300 Sex Workers were arrested and forcefully tested for HIV, in Kisii, a rural town in Kenya.<sup>40</sup> KESWA noted that FSWs are subject to gang rape by police officers and their client's leading to bodily harm and even HIV infection. In some cases, police officers threaten women with arrest or charge if they demand payment after sex.<sup>41</sup> Such actions not only disregard freedom and security of person but also



39 Becker ML, Bhattacharjee P, Blanchard, JF, Cheuk, E, Musyoki, HK, Gichangi, P, Aral, S, Pickles, M, Sandstrom, J, Ma, H, Mishra, S. (2018). Vulnerabilities at First Sex and Their Association With Lifetime Gender-Based Violence and HIV Prevalence Among Adolescent Girls and Young Women Engaged in Sex Work, Transactional Sex, and Casual Sex in Kenya. *J Acquir Immune Defic Syndr*, 79(3), pp. 296-304

40 <https://www.tuko.co.ke/67949-county-arrests-300-prostitutes-subjects-forced-hiv-testing.html#67949>

*I am currently 45 years old. I started sex work in Mombasa when I was around 21 and I worked from a club with a few friends of mine. One day when I was on my way home after work at around 1:00 am while still in Mombasa, I met a gang of men who raped me and left me on the side of the road. In those days I do not think PEP existed so, I did not go and get the required treatment in the hospital. I did not even go for post rape care or to report the matter to the police. I was afraid that they would not believe me because they rarely took up matters concerning sex workers, that is where I contracted HIV. Sex work is not a safe profession. If it was not for the rape I would not be positive and if I was not a sex workers I would not be afraid to ask for help.*

**Female sex worker Nairobi County**

Sex workers have been denied the opportunity to hold a peaceful demonstration in Kenya against violence against their peers on several occasions (Fig. 4).

### 6.2.3. Emotional and Psychological Violence

Several studies have been conducted to examine psychosocial factors such as loneliness, suicide ideation, drug use and depression arising from experiencing violence by the client.<sup>42</sup> The FSWs are particularly subject to insults such as being called derogatory names or being belittled or humiliated in public.

Others are threatened with the loss of guardianship

of their children or restricted and secluded from friends and families. Other causes of emotional harm include the destruction of possessions, intimidating gestures, repeated shouting and controlling behavior.<sup>43</sup>

### 6.2.4. Economic Violence

Most sex workers sell sex as a source of livelihood to support their dependants whom in some cases include intimate partners. The NASCOP Training Manual<sup>44</sup> identifies economic abuse as a form of violence. An abusive partner may interfere with their ability to work or withhold money that the sex worker has earned.

## 6.3. The Places and Context in which Violence Occurs

Studies show that the degree of sexual, emotional and physical violence against SWs is exceedingly great not only globally and regionally but also in Kenya.<sup>45</sup> The level of violence varies across all sectors of the industry; the urban centers are known to be the riskiest in terms of violence. Comparatively indoor markets such as parlors, saunas, independent Sex Workers are less risky. A study conducted across selected Kenyan cities shows that more than 80% of street Sex Workers had experienced



**more than 80% of street Sex Workers had experienced violence**

43 Ministry of Health. (2014). Assessment of Female Sex Workers' Operational Characteristics and Programme Exposure in Nairobi, Kenya. Nairobi: Ministry of Health

44 Responding to violence against key population to promote access to HIV services, March 2016

45 Ndolo, M. (2014). Public perception on commercial sex work in Kenya. Spectrum Network International

46 Wanjiku, R. (2018). Kenya Sex Workers End 2017 With Key Success. Retrieved 2019, from Aswaalliance: <https://aswaalliance.org/kenya-sex-workers-end-2017-with-key-success/>

47 Ndolo, M. (2014). Public perception on commercial sex work in Kenya. Spectrum Network International

48 Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya. 2018, KESWA-Kenya

49 Parcesepe, A. E. (2016). Early Sex Work Initiation and Violence against Female Sex Workers in Mombasa, Kenya. Journal of Urban Health, 93(6), pp. 1010–1026

violence.<sup>46</sup> Workplace violence occurs when managers, co-workers, support staff or clients attack or harm a sex worker i.e. bars, hotels, and brothels. Stigmatization of sex work can also lead to family members to perceive that the use of violence to punish an FSW is acceptable.<sup>47</sup>

In most situations, the incompatible association with law enforcement agencies such as the police can establish an environment of impunity for crime against FSWs that make them targets of violence or other crimes such as theft.<sup>48</sup> In most places in Kenya, some criminals target FSWs to “punish” them with the notion of safeguarding “social morals” or as a way of scapegoating them for societal issues such as HIV.<sup>49</sup> Sex Workers also face violence from persons of power such as health-care providers, landlords, and some non-governmental organizations that forcefully make them leave sex work.

On numerous occasions, reports have shown that FSWs face violence from extortion groups, religious extremists and militias such as Mungiki. Additionally, state violence is also a significant factor to consider when examining the contexts of sexual violence. Sex Workers face violence from border guards particularly in Busia and Malaba border, military personnel particularly in the Kenya Somali border, correctional officers and most commonly by the police patrolling cities and towns around the country.<sup>50</sup> Generally, the abuse by state agents compromises FSWs ability to access to police protection and justice and creates a notion that such ferocity is socially desirable and tolerable.

## 6.4. The Social and legal Conditions That Make Women in Sex Worker in Kenya Vulnerable To Violence

Socially, Sex Workers are often discriminated, shunned, and stigmatized. Politically, sex work in Kenya is seen as damaging the image of the country by promoting international trafficking of women.<sup>51</sup> Studies have uncovered discrimination against FSWs in accessing housing, employment,

accommodation, and justice. Stigma is compounded for FSWs who use illicit drugs, are migrants. These groups face disproportionate levels of harassment, criminalization and policing.

PLHIV who are FSWs has been incarcerated despite no evidence of engaging in unsafe practices. A growing number of Kenyans are in support of decriminalization. However, for some factions, Sex Workers spark moral panic. Such divisions in society are apparent within the government. In Kenya, discrimination is not an isolated experience mainly because it manifests in regulatory and policy frameworks that criminalize sex work.

**Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya.** 2018, KESWA-Kenya revealed that about 60.1% of sex workers are of the opinion that sex work is illegal in Kenya. They associate the fact that they are constantly arrested for acts such as loitering and being drunk & disorderly as some of the provisions in law used to specifically target them as sex workers. The Kenyan penal code does not outlaw sex work; however, it forbids third parties earning from prostitution. Key informant interviews within the study highlighted the fact that the laws prohibiting brothel keeping is one of the factors that pushes sex workers to work either alone or in deserted streets in order to avoid detection. This exposes them to a heightened risk of violence from criminal elements.

In instances of raids, by both police and county officers, FSWs are arrested by both male and female officers. When arrested, they are often treated worse than other inmates with law enforcement officers especially the women calling them names and shaming them with allegations being made against them and male officers of coming into their cells at night and sexually assaulting them. Charges are rarely explained to them.<sup>52</sup>

The biased nature of the judicial system results in justice for sex workers being frequently denied. Most sex workers choose not to contest their arrest since they find it easier to plead guilty after being

<sup>50</sup> Gerassi, L. (2016). *A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work*. *J Sociol Soc Welf*, vol. 42, no. 4, pp. 79–100

<sup>51</sup> Ministry of Health. (2014). *Assessment of Female Sex Workers' Operational Characteristics and Programme Exposure in Nairobi, Kenya*. Nairobi: Ministry of Health

<sup>52</sup> *Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya*. 2018, KESWA-Kenya

<sup>53</sup> *Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya*. 2018, KESWA-Kenya

produced before court and pay fines for their release. There is however a noticeable difference in sex workers who have undergone holistic training and those who have limited knowledge of legal provisions. Counties such as Nakuru and Nairobi have strong sex-worker led organizations and have trained sex workers on basic human rights and legal provisions affecting them<sup>53</sup> This in turn has enabled them to engage more with entities such as police stations to enhance a slightly more productive and less antagonistic relationship between themselves and the police.

There is however a great need to make FSWs aware of how to exercise their rights under the law especially in light of the protections under legislation that is specific to sexual and gender based violence and where to get legal redress when they undergo violations. According to a 2018 Standard Media report by Mwawasi. M, decriminalizing sex work will go a long way in safeguarding the rights of FSWs against perpetrators of violence.

## 6.5. Nature of Strategies to Address Violence against Women in Sex Work

### 6.5.1. Enhancing Safety and Security of FSWs

Strategies to enhance safety of FSWs include, maintaining reports of aggressors, promoting workplace security, disseminating information on safety enhancement, establishing safe spaces and integrating violence prevention, HIV counseling with the safety of FSWs.<sup>54</sup> For instance, the KASH project partners with staff and bar managers to provide hotline numbers that Sex Workers can send messages about violence.<sup>55</sup> The safe work process includes information on the law, health and violence management. Similar to Women's Health Coop project in South Africa, KESWA has advocated for the development of safety plans, provision of counseling sessions and training on negotiation skills, communication skills and ways to minimize entry into unsafe situations.

### 6.5.2. Advocating for Positive Reforms

Violence against Sex Workers, discrimination, and criminalization remain the most significant challenge that Organizations such as Kenya Sex Workers Alliance (KESWA) continue to deal with. Such organizations are getting recognition from government agencies as partners in the fight against HIV infection. For instance, KESWA is engaged in sensitization of different government stakeholders on the importance of aligning various penal provisions with the Constitution's Bill of Rights. They are also encouraging sex worker-led CBOs at county level to engage service providers, judicial officers and law enforcement officials by having dialogue forums and sensitization forums on the sex worker community and their specific needs.

### 6.5.3. Promoting Accountability of Law Enforcement agencies

Working with police is indispensable in the fight against violence directed towards Sex Workers since they play a more prominent role in offering protection.<sup>56</sup> Although there have been numerous sensitization workshops to raise awareness of laws related to sex work, much more needs to be done to minimize the rates to which the police become the perpetrators of violence.<sup>57</sup> Human rights organizations have collaboratively had high-level meetings and sensitization forums with government officials to help reduce police harassment and build institutional accountability. Sex worker-led organizations have been instrumental in evaluating the ongoing efforts to reduce violence against Sex Workers.

### 6.5.4. Building Capacity and Promoting the health of Sex Workers

Several activities aim at building the knowledge of FSWs on their rights concerning sex work, violence, and justice. For instance, training and sensitization of Sex Workers helps generate awareness.

<sup>54</sup> Becker ML, Bhattacharjee P, Blanchard JF, Cheuk E, Musyoki HK, Gichangi P, Aral S, Pickles M, Sandstrom J, Ma H, Mishra S. (2018). Vulnerabilities at First Sex and Their Association With Lifetime Gender-Based Violence and HIV Prevalence Among Adolescent Girls and Young Women Engaged in Sex Work, Transactional Sex, and Casual Sex in Kenya. *J Acquir Immune Defic Syndr*, 79(3), pp. 296-304

<sup>55</sup> KASH. (2014). Security concerns of sex workers. Retrieved 2019, from Keeping Alive Societies Hope: <http://www.kash.or.ke/?p=1628>

<sup>56</sup> Nyblade, L. D. (2015). Impact of Stigma on utilization of health services among sex workers in Kenya. Washington, DC: Futures Group, Health Policy Project.

<sup>57</sup> KASH. (2014). Security concerns of sex workers. Retrieved 2019, from Keeping Alive Societies Hope: <http://www.kash.or.ke/?p=1628>

<sup>58</sup> CREAW. (2019). Protecting and Promoting the Rights of Commercial Sex Workers. Retrieved 2019, from <http://creawkenya.org/ke/access-justice/protecting-promoting-rights-commercial-sex-workers/>

KESWA in collaboration with, Coast Sex Workers Alliance (COSWA), Sisters of Majengo, Bar Hostess Empowerment and Support Programme (BHESP) among others have been instrumental in holding advocacy workshops, training, and dissemination of material about human rights of FSWs. The Center for Rights Educational and Awareness is educating the Sex Workers on human rights laws as well as Kenyan laws to help in promoting a more productive and less antagonistic relationship between FSWs and both the city council officials and the police.<sup>58</sup>

Another concept of capacity building includes the empowerment of sex workers on documentation of violence faced by FSW and trainings on how to address such instances. Currently, various organizations and academic institutions have been involved in facilitating access to justice and documenting incidences of abuse and violence faced by Sex Workers such as NASCOP. Prompt and accurate recording of incidences of violence against Sex Workers is vital in policy-making and policy implementation. The FSW community has also had members trained as community paralegals by NASCOP certified trainers who are advocates of the High Court of Kenya. The paralegals are meant to provide legal support to the community and assist in responding to and educating peers on how to prevent incidences of violence.

#### 6.5.5. Other Strategies Used by FSWs

A study conducted in Mombasa shows that FSW regularly supplements their earnings by working as bar waiters or other informal sectors. The more experienced they are at sex work, the abler they are to minimize hazards and counter dangerous occurrences. Experience makes FSW able to decide on accepting or declining proposals and also assessing safety. Some FSWs resist accompanying clients to new places others limit alcohol intake to reduce vulnerabilities. Despite the risk, some do whatever it takes such as using female condoms or refuse sexual encounters with clients who refuse condom use.

## 7. ANALYSIS AND DISCUSSION OF FINDINGS

### 7.1. General Discussions

In the past, most of the theoretical frameworks relating to violence against women originate from feminist theories that outlined values, roles and experiences based on gender. There are several opposing theoretical camps; the sex positives content that a woman has a right to choose sex work as a form of employment or even career hence explaining the various dynamics of the industry.<sup>59</sup> However, over the years due to the empowerment of the sex-worker community, sex workers themselves have been able to come up with data and research that is relevant to their circumstances. Sex workers in Kenya are a good example of how far the empowerment of the community has gone in so far as ensuring independent works and research papers.

The dynamics of women engaging in sex work in Kenya are highly influenced by age, stigmatization, discrimination, societal perception, illiteracy, unemployment, economic social, cultural, political and women powerless and low status in our societies. Age is a vital factor in understanding the dynamics of sex work. Although initially, sex work was for older women most of who were single mothers, Most of the studies agree that the majority of Sex Workers currently are of reproductive age. Those who are underage enter into sex work mainly due to peer pressure and information flow through social platforms. The peer pressure and exposure to sex work are stronger in towns and townships thus explaining the high numbers of FSWs in such places. *Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya*. 2018, KESWA-Kenya, found that most sex workers make an informed choice to engage in sex work as a source of income. Efforts towards “rescuing” them should be diverted to the underage ones who are being exploited. It is important that each sex worker has the independence to determine their own affairs

<sup>59</sup> Gerassi, L. (2016). *A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work*. *J Sociol Soc Welf*, vol. 42, no. 4, pp. 79–100

<sup>60</sup> Mushtaq, N. (2019). *Supporting Single Mothers*. Retrieved 2019, from Inter Press Service: <http://www.ipsnews.net/2008/08/kenya-supporting-single-mothers/>

depending on their circumstances. Due to the age bracket, sex workers need to have access to accurate information on reproductive rights and available services to enable them make informed decisions including the right to access emergency health care services for victims of violence.

A critical examination of how economic factors such as employment and income potential influence sex work dynamics paint an unpredictable picture. Generally, most studies agree that persons indulge in sex work to earn a living and fend for their daily needs. Increase in population and rates of unemployment over the years have subjected many women from the poor economic background into sex work not only in Mombasa and Nairobi but also across many other areas in Kenya.<sup>60</sup> The paradox behind the relationship of financial capacity and sex work is ratified by the fact that women from higher economic backgrounds also engage in sex work. Women get into sex work due to diverse reasons such as peer pressure, social recognition, and personal choices.

## 7.2. Nature of Violence in Sex Work In Kenya

The nature and environment of sex work exposes sex workers to verbal abuse, physical assaults, sexual violence, and murder. Violence against FSWs has been reported worldwide both on a psychological and physical level. Female sex workers are not always able to negotiate for safe sex. Due to the fact that most are of reproductive age, they are biologically more vulnerable to health risks as well as instances of violence.<sup>61</sup> This is presented not only due to the nature of risk associated with sex work, but also due to the physical and sexual violence they are exposed to negotiating their way out of arrests and clients who are unwilling to take precautions.<sup>62</sup> FSWs are less likely to physically defend themselves, more vulnerable to coercion and more likely to be intimidated into not using condoms.

Violence perpetrated by law enforcement agents is a big concern for sex workers. The hostile relationship

between law enforcement agents and sex workers creates an environment that facilitates violations against sex workers. Police arrests and raids have been associated with a rise in physical and sexual violence. Violence or fear of violence prevents sex workers from accessing harm reduction, HIV prevention, treatment and care, health and other social services as well as services aimed at preventing and responding to violence (e.g. legal, health services).<sup>63</sup> The criminal nature of sex work offers a pretext for bribes, arrests, extortion i.e. sex for release and police harassment. Such behavior by people who are considered representatives of the state sends the wrong message to the public that such violence is “acceptable”.<sup>64</sup> This compromises sex workers’ protection and access to justice.

## 7.3. The Social and Legal Conditions That Make Women in Sex Worker in Kenya Vulnerable to Violence

Generally, most studies and articles reviewed agree that FSWs prefer to conduct sex work in privacy and confinements of bars, saunas, and parlors hence such contexts have different risks of violence. Violence against FSWs dictates to women their choice to indulge in Sex Work. Such an approach, according to sex positivism theories is considered dangerous and patriarchal.<sup>65</sup> Violence against female sex workers is largely perpetrated by individuals who become aware of their involvement in sex work.

Once the community around them or members of the family become aware of their involvement in sex work, they discriminate against them, financially exploit them and at times become violent.<sup>66</sup> Perpetrators such as law enforcement agents, clients and religious leaders become aware of their engagement in sex work from interacting with them.<sup>67</sup> This not only affects sex workers but it puts their families most especially their children at risk of violence. This is highlighted as one of the reasons why FSWs are reluctant to disclose their occupation. Indoor markets such as parlors and saunas are less risky because of physical safety and controlled

60 *Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya*. 2018, KESWA-Kenya

61 *Underage And Legally Under Protected: A study on the impact of criminalization of prostitution on violence prevention and response for sexually exploited adolescents who sell sex in Kenya*. 2018, KESWA Kenya

63 *‘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*

64 *Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya*. 2018, KESWA-Kenya

65 Gerassi, L. (2016). A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work. *J Social Soc Welf*, vol. 42, no. 4, pp. 79–100

66 *Silenced By Law - The Impact Of the Legal Environment On Health, Safety And Protection In Relation To Sex Work Related Violence In Kenya*. 2018, KESWA-Kenya

67 *‘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*

68 Deering, K., Amin, A. & Shoveller, J. et al. (2014). A Systematic Review of the Correlates of Violence Against Sex Workers. 104(5), pp. e42–e54.

69 Nyblade, L. D. (2015). *Impact of Stigma on utilization of health services among sex workers in kenya*. Washington, DC: Futures Group, Health Policy Project.

environment. In most places in Kenya, some criminals target Sex Workers to “punish” them with the notion of upholding “social morals” or as a way of scapegoating them for societal issues such as HIV hence explaining the high rates of sex work violence.

The legal status of sex work is also an important factor in defining the rates of violence against FSWs. In most settings, quasi-criminalized or criminalized nature of sex work affects monitoring of violence and hampers legal protection for Sex Workers.<sup>68</sup> Different frameworks drive the debate about legalization, decriminalization, and prohibition of sex work. Police coercion and violence are rampant in a setting in which aspects of sex work are criminalized. There is adequate evidence to show that the criminalization of sex work promotes violence against FSWs. Studies by Becker et al. (2018) concur that the legitimacy of criminalizing sex work by the county bylaws is widely a question particularly in light of the Kenyan Constitution. It offers a pretext for bribes, arrests and police harassment.<sup>69</sup> Police coercion and violence are rampant in a settings in which aspects of sex work are criminalized. Police action also means that street-based workers become more mobile and may then conduct hasty negotiations with their clients and center their agreements mostly on a financial basis and less on protection and safety. Such findings offer some explanation on why strategies to prevent violence against sex work have failed or not meet the expected standards.

## 7.4. Nature of Strategies to Address Violence against Women in Sex Work

In 2017, the Bar Hostess Empowerment and Support Program together with the Kenya Sex Workers Alliance made history by presenting the report on marginalization, violence, and discrimination of sex workers in Kenya to the United Nations Committee on Elimination and Discrimination against Women Titled “Aren’t we also women”. The report strongly voiced the frightening accounts and gross violation that sex workers undergo. Another of the critical strategies for addressing violence against women

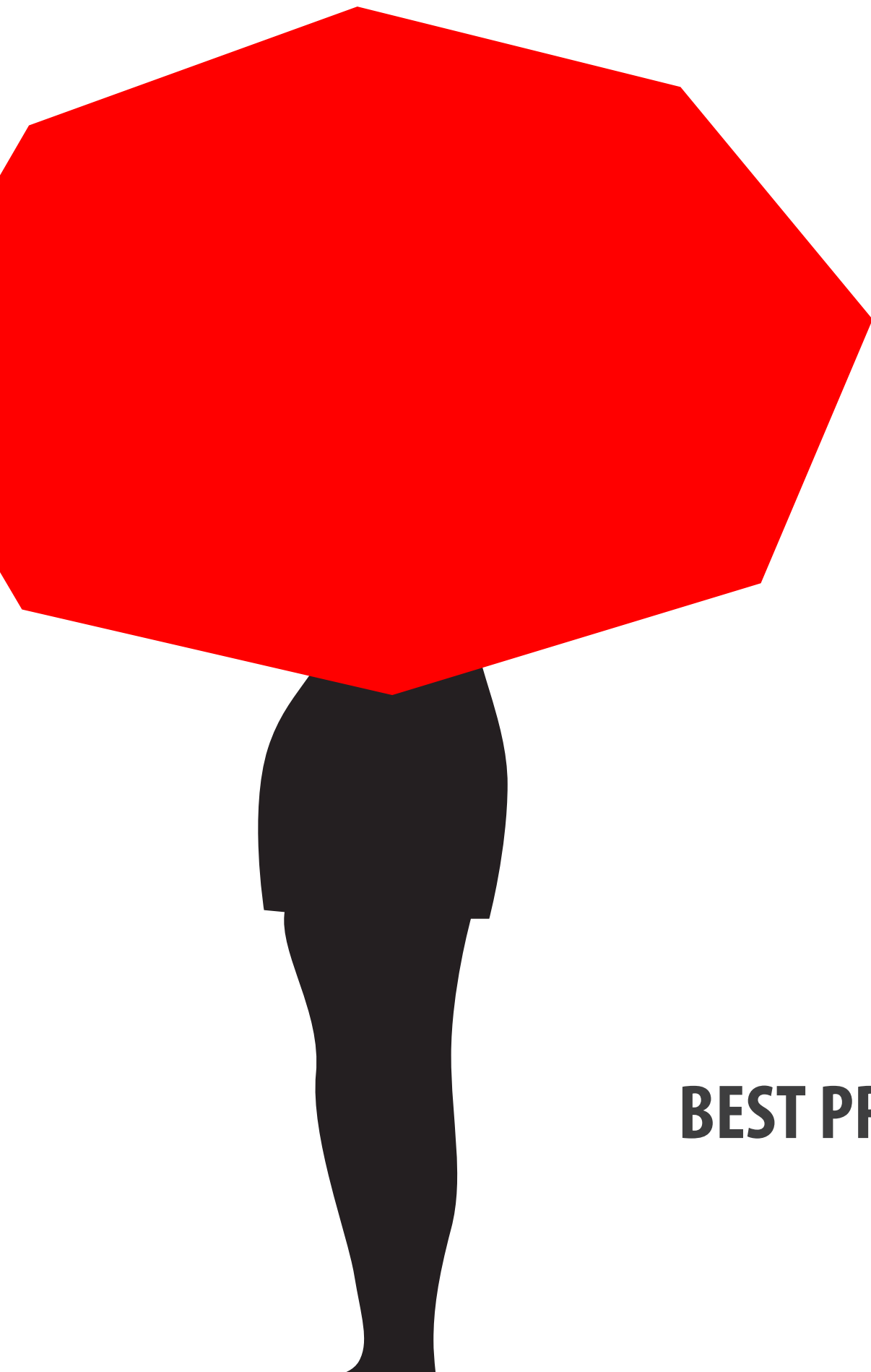
in sex work is the enhancement of safety and security of Sex Workers. Even though there has been recognition of the importance of such a strategy, there are still many incidences in which FSWs are attacked not only by their clients but also by the law enforcement agencies that are required to offer safety and security. Some interventions can lead to a backlash against FSWs from their families, community members, and even partners. Some FSW “negotiate” their way out of detention through the payment of bribes or extending sexual favors. Pragmatic evidence and stakeholder’s involvement should inform interventions such as safety plans, provision of counseling sessions and training on negotiation skills, communication skills and ways to minimize entry into unsafe situations.

Although the constitution promotes safety and security of everyone including the FSWs, it is evident that Advocacy towards proper policies is one avenue that KESWA and other rights bodies have to follow to guarantee that Sex Workers are handled with dignity in the society. The legal reforms must be in tandem with the training of law enforcers to treat FSWs with dignity and justice. Although the advocates of both decriminalization and legalization argue that the methods reduce stigmatization of Sex Workers; the critics argue that decriminalization or legalization of sex work leads to normalization of commercial sex thus legitimizing sexual demands of an employer towards the employee. However, there exists inadequate research evidence to qualify such assertions.<sup>70</sup>

More needs to be done to promote accountability of law enforcement agencies in the ongoing efforts to reduce violence against Sex Workers. However, the challenge is resource availability and public support. Another problem relates to the confidentiality of information collection for purposes of decision making. Careful consideration should be taken to promote ethics when collecting such information. Training more paralegals and lawyers on how

to engage and negotiate with legal and judicial authorities on issues relating to FSWs will be of vital importance in violence prevention.

<sup>70</sup> Gerassi, L. (2016). *A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work*. *J Sociol Soc Welf*, vol. 42, no. 4, pp. 79–100



**BEST PRACTICES**

## 8. BEST PRACTICES

### 8.1. Establishing local sex worker-led organizations

KESWA in appreciation of the skills and resources available within the communities has been able to support and establish community-based organizations that are sex worker-led and has partnered with them. These partnerships have established trust among this hard-to-reach population reinforcing the importance of community input; not only lending credibility to any projects implemented at county level, but also strengthening the impact of service delivery programs by empowering them to incorporate human rights aspect into their work. This ultimately ensures sustainability of short-term projects which are thereafter are championed by the community organizations at local level.

The establishment of sex worker-led organizations and their geographical distribution throughout the country also facilitates easier access for sex workers to health services when they experience violence.

The supportive health policy environment has contributed to the scale up of feasible and effective peer-led programmes for health service delivery for sex workers over the years. Government support has significantly increased coverage of HIV prevention interventions.

### 8.2. Strengthening the Capacity of Sex Workers

Meaningful engagement and involvement of sex workers in implementation of programs relating to them has been necessitated by the principle of “nothing about us without us.” To this end KESWA and its member organizations at county level have mobilized and empowered members of the sex worker community by providing them with knowledge, skills and opportunities, empowering

them to advocate for their own rights. This has been done by providing safe spaces for direct engagements with the community.

The government through NASCOP has also facilitated trainings for the community of sex workers on what they need to know as community paralegals in order to better support their peers on issues relating to the law and assist in addressing and responding to violence.

### 8.3. Working alongside National and County Government Institutions

Establishing good working relations with key government institutions is critical to improving the legal environment for sex workers. Various arms of Government are responsible for the formulation, interpretation, application and implementation of laws. Sex worker-led organizations have been working with various government agents such as Judicial Officers, law enforcement agents, county government officials and various legislators in different counties. By sensitizing these agents on the role of the law and its impact on the sex worker community, sex workers have been able to secure their buy-in and cooperation in reaching their officers with relevant information and influencing their actions with regard to the community.

Law enforcement officers who have been engaged in such sessions have a greater appreciation of their role in protecting the rights of sex workers. Senior officers of key government institutions have demonstrated progressive commitment towards advancing rights based and evidence informed interventions and protecting the rights of sex workers. An outcome of such engagements is the Nairobi County government that was set to legislate around sex work to further criminalize their activities but due to the engagement with the community, they were able to see the risks involved and stopped the legislation from proceeding until further consultations were held.

## 8.4. Addressing Cultural And Social Attitudes Concerning Sex Workers

Facilitating openness and providing safe spaces for community dialogue on issues concerning sex workers who lead a lifestyle that is regarded as a taboo has helped in addressing social and cultural attitudes in some counties. Community sex worker-led organizations have been encouraged to organize several dialogue forums within the community with the aim of demystifying misconceptions about who sex workers are and what they do. By having members of the sex worker community speaking to other community members and local leaders, the general public is able to appreciate their respective roles in addressing stigma and human rights violations.

## 8.5. Legal Awareness And Dissemination of legal And Information

The sex worker community has enhanced the knowledge of members of the community on human rights and legal awareness through paralegal trainings conducted by NASCOP certified facilitators by the use of accessible, easy-to-understand content. Both formal and informal approaches have been used to teach the community on issues of the law and human rights. Legal education and human rights awareness has enabled FSWs to make informed decisions in relation to their day to day conduct. Peer education has proven to be an effective strategy in dissemination of legal information.

Through peer education, training on the legal environment, use of condoms, transmission, care and treatment of HIV/AIDS have been facilitated. Awareness has also been created through the development of tools such as posters, brochures, banners and drawings with specific messaging. These tools are put up in areas that are frequented by sex workers such as community organisations and NGOs that deal directly with the community.

## 8.6. Consistent monitoring and identification of trends in cases of violence and violations.

The sex worker organizations at county level have been trained on violence response and prevention mechanisms. They have also been taught on the importance of documentation of incidences of violence and how to address them. Reports cover data on human rights violations and incidences of violence however minor. Specific tools have been provided by the national government and some organizations have formulated an internal reporting tool as well. Continuous monitoring, evaluation and supervision contributes to the improvement of ways in which incidences can be better addressed and even prevented. They also enable organizations to design interventions prioritized for different counties and regions.

## 8.6 Utilizing shadow reporting mechanisms for advocacy:

In 2017, a shadow report was 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 titled "Aren't we also women" was 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 light the violations of women sex workers in Kenya. Consistently utilizing similar opportunities for shadow reporting future provides sex workers with an international platform to share evidence of violence and other human rights violations particularly by state agencies.

Whereas there have been positive changes relating to the HIV policy environment that has facilitated critical access to health services in relation to violence, the legal environment around sex work limits a holistic approach to violence prevention and response for sex workers in Kenya. Initiatives to take forward recommendations with regards to the environment around sex work are often not implemented. In order to address the issue of violence faced by sex workers, there is need to bring on board key stakeholders to shape law reform and enhance quality service delivery to remedy injustices facing sex workers.

*“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 Abdalla KESWA**

In order to prevent incidences of violence against sex workers, bold action by all stakeholders will be required. The recommendations of this report are developed on several crosscutting issues as described below:



# END VIOLENCE AGAINST SEX WORKERS



## 9. CONCLUSION AND RECOMMENDATIONS

### 9.1. Mitigating vulnerability to violence

- Training of female sex workers on risk assessment and personal safety skills to advance their awareness on and response to threats
- Engage with police and county officers through station/work-based sensitization forums on the rights of sex workers and their role in addressing violence against them
- Maintaining and sharing the reports or lists of aggressors or violent incidences against SWs.
- Establishing and maintaining safe spaces or shelters to allow FSWs to gather and discuss common issues affecting them
- Establishing, maintaining and publicizing 24 hour toll free hotlines for reporting, referral and general information to sex workers who experience violence
- Creating linkages between sex workers and health institutions for emergency medical services in instances of violence.
- Establish safe and anonymous systems for reporting violence and seeking help

### 9.2. Legal awareness for sex workers

- Comprehensive legal education on criminal procedures and legal protections for victims of violence
- Training on the law making process and avenues to engage national and county assemblies
- Develop a handbook of legal, social and medical services for FSWs that experience violence
- Scale up supportive programmes with trained community paralegals to ensure legal support; for reporting and follow up of cases, availed to sex workers who seek services for violence

### 9.3. Promoting Accountability among Industry Players

- Establish mechanisms to improve accountability among law enforcement officers in investigating and prosecuting cases of violence against sex workers
- Engage with police and county officers through station/work based sensitization forums on the rights of sex workers and their role in addressing violence against them
- Sensitization of judicial officers and law enforcement agents on the profiling of sex workers by law enforcement officers to mitigate abuse of arrest and prosecutorial powers
- Media engagement to increase human interest reporting to address ignorance and expose inaction on violence against sex workers
- Facilitate dialogue between sex workers, investigators and prosecutors to identify challenges and develop complementary strategies to improve prosecution of cases of violence against sex workers.

### 9.4. Advocacy Initiatives

- Advocacy and sensitization efforts such as public campaigns, sensitization workshops, disseminating information education material and highlighting issues of violence against FSWs.
- Support for effective operationalization of existing human rights laws to protect the Sex Workers better

### 9.5. Positive Legal Reform

- Public Interest Litigation to improve policy and legal protections relating to violence by reviewing and repealing criminal provisions contributing to the heightened vulnerability of sex workers to violence
- Engage the Council of Governors and Members of County assemblies on the risks presented by additional legislation and punitive approaches

with regard to sex work related activities.

- Advocate for prioritizing of legal aid for sex workers within government and human-rights organizations.

## **9.6. Research to generate credible evidence**

- Document challenges affecting investigation and prosecution of cases of violence against sex workers to inform effective victim-centered prosecution
- Mapping out existing social services supporting sex worker-led organization and programmes to that address SGBV

A close-up, slightly out-of-focus photograph of the back of a person wearing a bright red t-shirt. The t-shirt has white text printed on it. In the background, another person in a red shirt is partially visible, and the setting appears to be outdoors with some structures and a yellow and black striped pole.

**Eradicating Violence  
Against Sex Workers**

