

IMPACT OF THE LEGAL ENVIRONMENT ON SEX WORK-RELATED VIOLENCE IN KENYA

POLICY BRIEF



INTRODUCTION

This Policy Brief is based on evidence generated through a community-led research process by the Kenya Sex Workers Alliance that 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.

Violence against sex workers is reported to pose a challenge to the efficiency of 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. This is despite the expansive human rights protections under the bill of rights in the Constitution of Kenya 2010. The Kenya AIDS Strategic Framework 2014/15 – 2018/19 identifies poor enforcement of anti-discrimination laws weak social and legal protection of vulnerable populations as factors driving new infections in Kenya.

Generally, the legal environment in Kenya is comprised of laws and policies that provide a robust supportive framework to address sexual and gender-based violence. However, the existence of archaic punitive provisions hinder the effectiveness of interventions for sex workers who experience violence. A proper mechanism to address violence against sex workers must be alive to the challenges posed by the legal environment.

This study was successfully carried out in five counties in Kenya; Nairobi, Mombasa, Kisumu, Nakuru, and Busia; counties which have a relatively higher population of sex workers. The study adopted a mixed method methodology; combining the strength of qualitative methods with the ability of quantitative methods. The research took a participatory approach where the community of sex workers was directly involved throughout the study. The study involved individual questionnaires, focus group discussions and in-depth interviews with adults and sexually exploited adolescents who sell sex. Additionally, key informant interviews were conducted with representatives from organizations providing services to sex workers, officials from law enforcement agencies, health service providers, legal professionals and county legislators. Ethics approval was sought from KEMRI. The study ensured strict compliance with regulatory requirements and ethical standards in research involving vulnerable populations.

This policy paper presents useful evidence to policy makers; providing an opportunity to influence positive law reform in Kenya, so that it is reflective of the local context, the experiences of local sex workers and input by experts.

KEY TERMS AND DEFINITIONS

Prostitution - the legal term used to define the practice or occupation of engaging in sexual activity with someone for payment. Prostitution is a term that

presents sex work as immoral and illegal.

Sex worker is a person who works in the sex industry - receiving money or goods in exchange for sexual services.

Criminalization is the action of turning an activity into a criminal offence by making it illegal.

Decriminalization refers to the removal of criminal laws relating to the operation of the sex industry. The decriminalization model aims to support occupational health and safety and workplace issues through existing health, legal and workplace mechanisms.

Punitive Laws refers to laws that inflict punishment or a penalty for a specified action.

Community-Led Research - An approach to research that takes place in community settings and involves community members in the design and implementation of the research project.

WHAT DID THE RESEARCH FIND

The study generated a better understanding of the current local situation and recommended the most effective approach to catalyze the positive review of laws impacting on sex work in Kenya.

Evidence provided through this research confirms that penal sanctions and repressive policing of sex workers in Kenya has deprioritized their safety, security and health. Although the conducive policy environment in Kenya has contributed to the scale up of HIV interventions and peer-led programmes for health service delivery to sex workers, initiatives to prevent and address violence against sex workers are faced with capacity and resource challenges in supporting sex workers who have experienced threats or actual violence. Availability of specialized facilities where sex workers are most likely to access holistic services have enabled very easy access for emergency care for those who experience violence. However, integration of other supportive services; like legal services to support reporting, evidence gathering, prosecution, case follow-up and witness protection, is inadequate.

Criminalization makes sex workers less safe and discourages reporting of incidences of violence, preventing them from securing police protection and enabling perpetrators to take advantage of their vulnerability and get away with acts of violence against them.

Violence perpetrated by law enforcement agents is a big concern for sex workers in Kenya. The study documented high incidences of sexual exploitation and violence involving police and county officers. Demands for bribes and sexual favors were largely targeted at the female sex workers. Incidences of forced unprotected sex, physical abuse and gang rape were frequent among sexually exploited adolescent girls who sell sex during night raids. Weaknesses in enforcement of laws when it comes to sex workers who are violated and the high levels

of corruption within law enforcement encourages impunity on the part of clients who can easily evade arrest and compromise the credibility of witnesses. The laxity to investigate, arrest and prosecute perpetrators of violence against sex workers creates an environment that sends the wrong message to the public that such violence against sex workers is "acceptable."

Evidence from this research also identified a unique category of vulnerable adolescents in Kenya; one that has not adequately been addressed by the legal environment. These are sexually exploited adolescents who have been compelled by personal circumstances to engage in the selling sex, independent of any control by an adult. Due to their age and inability to protect themselves, they are disproportionately at a much higher risk than adult sex workers. The criminalization of prostitution only exacerbated the vulnerability of sexually exploited adolescents who sell sex to violence. It results in the procedural penalization of sexually exploited adolescents within the justice system. Ultimately, this prevents them from fully benefiting from favorable child protection laws and policies aimed at facilitating access to health services by adolescents. Adolescents who participated in the study reported that adult sex workers interfere with their trade as they are able to easily identify them and send away their clients. The interest of the adults' sex workers in having children off the streets is a good motivation for sustainable programs by sex worker-led organizations to prevent commercial sexual exploitation of children and provide necessary services to enhance their protection and support access to health and legal services those who become victims of violence.

The research reveals that most lawmakers are yet to fully appreciate that criminalization affects the overall wellbeing of sex workers and puts the community at greater risk of violence. Several County Assemblies have undertaken processes to further legislate around sex work, citing various reasons including public order, morality, and safety. However, the approach and reasoning are not informed by evidence, and such efforts have not taken into account the opinions of sex workers and health experts on the consequences of such legislation. Lawmakers remain largely ignorant on the consequences that additional penal legislation around sex work presents. This poses an inadvertent negative impact of reversing the gains made in existing HIV programmes that prioritize interventions for sex workers.

WHAT DOES THIS EVIDENCE MEAN

Evidence from this study corroborates the global position that the legal environment criminalizing activities relating to sex work prevents populations most vulnerable to violence from accessing necessary prevention and response interventions.

Despite the comprehensive and robust Constitution of Kenya 2010, sex workers continue to suffer violence

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and general social contempt that is fueled by the criminal provisions relating to sex work. There is no legal protection against violence in an environment where sex work is criminalized. Punitive laws in Kenya encourage police harassment and violence targeted at sex workers. Criminalization has made sex workers less safe by discouraging reporting of incidences of violence, preventing them from securing police protection and enabling perpetrators to take advantage of their vulnerability and get away with acts of violence against them. Criminalization has resulted in the un-procedural penalization of sexually exploited adolescents who sell sex within the justice system. These children cannot fully benefit from favorable mechanisms for victims of sexual exploitation. Except where specialized programs exist, access to health and legal services for sex workers who experience violence is extremely challenging.

Since the adoption of laws criminalizing activities relating to adult sex work in Kenya, a lot of evidence has emerged 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. Sadly, the legal environment in Kenya is yet to be modernized to keep in pace with emerging evidence.

With the country making great strides at achieving universal health coverage; Kenya has positioned itself as a leader in the global strategy that was adopted internationally as one of the Sustainable Development Goals. All barriers affecting access to health services, particularly emergency services in responses to violence, must now be addressed.

The removal of criminal sanctions for sex work is needed to improve their safety at work, access to health services and justice. Removal of criminal sanctions for sex work will free up resources needed to strengthen institutional practices so as to mitigate vulnerability, effectively prevent and equitably respond to all Kenyans who experience violence including sex workers and sexually exploited adolescents who sell sex.

WHAT NEEDS TO BE DONE

Its time for bold action by stakeholders to catalyze positive law reform in Kenya by utilizing all available avenues including the readily available judicial mechanisms in order to make sex workers safer.

Effect Legal Reform

- Engage the Council of Governors and Members

of County assemblies on the risks presented by additional legislation and punitive approaches concerning sex work-related activities.

- Advocate for specific recognition of adolescents who sell sex as sexually exploited children and expressly exempting them from criminal prosecution for related offenses.
- Initiate a broad litigation strategy against punitive laws and unjust actions that perpetuate violence against sex workers, confront inactions in implementation of favorable laws and challenge and demand for recognition of Constitutional rights that advance the health and safety of sex workers in Kenya.

Expand access to justice

- Strengthen and scale up support to sex workers who seek emergency health services for violence by availing community paralegals to provide information on criminal procedure and offer support in reporting and follow up of cases.
- Facilitate dialogue between sex workers, investigators and prosecutors for institutional strengthening to improve investigation and prosecution of cases of violence against sex workers.

Enhance Safety and Security

- Media engagement to increase human interest reporting to address ignorance and expose inaction on violence against sex workers.
- Engage human rights institutions to improve accountability among law enforcement officers in investigating and prosecuting cases of violence against sex workers.
- Engage county structures to advocate for recognition of sex workers as a high-risk group, vulnerable to sexual violence, and inform their prioritization in County Policies on Sexual and Gender Based Violence.

Encourage community-led Research

- To determine challenges affecting investigation and prosecution of cases of violence against sex workers to inform effective victim-centered approaches.
- Support the piloting of rapid assessment tools across relevant sectors to evaluate and help improve service provision to sexually exploited adolescents who sell sex.

CONCLUSION

The incidences and gravity of violence against sex workers are escalating. The sex workers community has for a long time remained concerned about the passive nature of implementation of the numerous legal recommendations made by countless reports concerning sex work. This policy brief identifies actionable, complimentary near-term opportunities that will result in the incremental improvement of the legal environment to promote the effectiveness of interventions to prevent and respond to violence against sex workers in Kenya.

It's time to reform sex-work-related laws and institutional practices that aggravate violence against sex workers in Kenya. In order to sustain the positive national outcomes relating to the HIV policy environment, the legal environment penalizing sex work must now be addressed.

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