

Documenting HUMAN RIGHTS VIOLATION of SEX WORKERS in Kenya

A report based on findings of a study conducted in Nairobi, Kisumu, Busia, Nanyuki, Mombasa and Malindi towns in Kenya

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*A study conducted in Nairobi, Kisumu, Busia, Nanyuki,
Mombasa and Malindi*

*Supported by a Grant from **the Open Society Institute***

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Patricia Nyaundi
Executive Director - FIDA Kenya

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List of Abbreviation and Acronyms

ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
CBO	Community Based Organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CID	Criminal Investigation Department
COVAW	Coalition on Violence Against Women
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
FHOK	Family Health Options Kenya
FIDA	Federation of Women Lawyers
HIV	Human Immuno-deficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRH	International Center for Reproductive Health
KASH	Kisumu AIDS Self Help Group
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
NGO	Non-Governmental Organisation
SOLGIDI	Solidarity with Girls in Distress
SOLWODI	Solidarity with Women in Distress
SPSS	Statistical Package for Social Science
STI	Sexually Transmitted Infection
UDHR	Universal Declaration of Human Rights
UN	United Nations
WIFIP	Women in Fishing Industry Program
YMCA	Young Men Christian Association

Executive Summary

This study investigates the human rights violations experienced by women sex workers in Kenya. This research found that these women have no way to claim their individual human rights under the current operating laws and policy framework. They are unable to keep themselves safe as they seek to support themselves and their families because they are relentlessly subject to police harassment, arrest and abuse. Furthermore, because sex work is viewed as an “immoral activity” rather than as a form of labour, many in society believe that sex workers deserve to be punished for what they do. The information and recommendations contained in this report provide ways for the Kenya Government and state institutions to address the human rights concerns of sex workers. Similarly human and women’s rights organisations in Kenya will find many strategies in this report that can be used to advocate for the protection of sex workers’ rights.

Currently, Kenyan national law criminalises the involvement of third parties in sex work. Municipal by-laws outlaw “loitering for the purpose of prostitution,” “importuning” for the purpose of prostitution and “indecent exposure,” criminalizing sex work itself for all intents and purposes. Researchers interviewed 70 women sex workers, held six focus groups with sex workers across Kenya, interviewed public officials and convened a focus group with police in order to find out how this framework affects sex workers. This study found that Kenya breaches, in its law and practices relating to the treatment of sex workers, its own constitutional provisions and standards contained in international human rights instruments. Specifically:

- the current legal framework allows police to arrest women on the basis of how they dress, for being out on the street “too late” and for walking in certain areas. Women are arrested not for anything they may have done but on the basis of their appearance and where they chose to walk. This constitutes a form of gender-based discrimination and violates women’s right to equal protection under the law;

- police falsely arrest sex workers in many areas across Kenya purely for the purpose of extorting money from them. This constitutes arbitrary arrest and detention, a human rights violation defined in the International Covenant on Civil and Political Rights (ICCPR), the African Charter and the Kenyan Constitution. In some areas, the system of bribery is so entrenched that sex workers are forced to pay police and other public officials bribes on a weekly schedule;
- police officers beat and humiliate sex workers in their custody. Sex workers held in booking cells were given insufficient food, slept on the bare floor, were forced to perform demeaning “cleaning chores” and were subjected to violating examinations of their bodies by guards. This constitutes cruel, inhuman and degrading treatment, violating Article 7 of the ICCPR, Article 5 of the African Charter and Article 74 of the Kenyan Constitution;
- police officers rape and sexually assault sex workers in their custody. Police also extort sex from women with the promise that they will be released from custody. Some police illegally detain sex workers for days and weeks at a time in order to force them to provide sexual and domestic services in police officers’ residences. These activities are considered torture and arbitrary detention under international law and the Kenyan Constitution. Furthermore, Kenyan law explicitly forbids sexual contact between police officers and those in their custody under Section 24 of the Sexual Offences Act of 2006 ;
- the Kenyan Government has failed to ensure that sex workers have access to health services and support. Sex workers are not provided with even the most basic forms of peer education and HIV prevention that would begin to address the serious problem of client demand for unsafe sex. This violates sex workers’ right described by General Comment 14 of the International Covenant on Economic, Social and Cultural Rights to a system of health protection that would allow them to enjoy the highest attainable level of health.

These significant violations of sex workers' rights mean that they have no faith that the state will provide them with protection from violence or any other issue. More than half of the sex workers interviewed had been raped or sexually assaulted by members of the general public and the police. These women very rarely report such violations because they fear that they will not get assistance from the police and the court system. They also fear that if they turn to the police for protection they themselves will be arrested.

One of the best ways to end the abuse and human rights violations outlined in this report is to empower sex workers to organise. This study showed that sex workers do not have the information needed about their rights to defend themselves either as individuals or to organise as a group. Sex workers do not understand the laws under which they are arrested and were unaware of their right, occupation notwithstanding, to claim protection from the government against abuse of their human rights. The sex workers who participated in this study form support associations covertly because they believe—incorrectly—that they are not permitted to organise as sex workers under Kenyan law. Consequently, these groups cannot openly advocate for their collective interests and concerns as sex workers.

Civil society organisations in Kenya, especially those working on women's issues and human rights concerns, are well placed to take actions to support the human rights of women sex workers. This report revealed indications that some police officers are open to change. For example, during a focus group with officers in Nairobi some participants said that it was important to acknowledge the violations perpetrated by some on the police force and to take steps to address the problem. This report highlighted numerous actions that can be taken to hold the Kenyan Government accountable to respect, protect and fulfill the human rights of women sex workers.

Key Recommendations

To ensure the protection of the human rights of sex workers, this report recommends the following:

To the Government and Parliament of Kenya

- Review and change the existing laws to adequately address issues of protection and respect for human rights of Kenyans, especially marginalised groups such as sex workers.
- Ensure availability of legal aid to all persons, especially marginalised groups such as sex workers.
- Support appropriate and quality health programmes, including HIV prevention, for sex workers using evidence-based and human rights-based approaches.

To the office of the Attorney General and the Judiciary

- Facilitate the interpretation and implementation of the Sexual Offences Act to ensure the protection of the survivors of sexual violence, including sex workers.

To the Commissioner of Police

- Implement rigorous training of law enforcement officials on legal and human rights standards with regards to sex work.
- Institute mechanisms that allow sex workers to find redress for human rights violations and hold police officers accountable for their actions.
- Initiate partnerships between the police and civil society organisations, such as FIDA Kenya, to address violence perpetrated against sex workers and violations of sex workers' human rights.

To local governments

- Repeal the existing by-laws that undermine protection and respect for human rights of sex workers and other marginalised groups.

To civil society organizations

- Encourage mainstream human rights organisations such as the Kenya National Commission on Human Rights (KNCHR), Kenya Human Rights Commission (KHRC) and FIDA Kenya to take on the agenda of marginalised populations including sex workers and advocate for awareness about and protection of their rights.
- Support sex worker-led projects to empower them and enable them to both prevent and protect themselves from violence and other human rights abuses.
- Invest more time and resources in educating about and advocating for the protection of the rights of the marginalised women engaged in sex work.

CHAPTER ONE

1

Background and Methodology

1.1 Overview of the research

This study documents a wide range of human rights violations experienced by women sex workers in Kenya. The ways in which state agents and institutions address, or fail to address, the human rights concerns of sex workers are also described. In addition, the study explores sex workers' perceptions of the legal restrictions regarding their work and their understanding of legal protection that they are able to claim for themselves from the state.

This study focuses on women sex workers because the mandate of FIDA Kenya, the organisation that commissioned the research, is to advocate for the rights of women. Women who engage in providing sexual services to male clientele on a full time basis, in exchange for money and other material benefits, were selected for participation in focus groups and individual interviews. Participants selected engage in sex work as their own independent choice—not as employees of any other entity.

FIDA Kenya hopes that the findings of the study will: inform the public discourse on the human rights of sex workers; equip FIDA Kenya with data for work in promoting and protecting the rights of women sex workers; and enhance FIDA Kenya's capacity to engage with policy makers and law enforcement to safeguard the rights of sex workers.

1.2 The social context of sex work in Kenya

In this report the term “sex work” refers to the practice of providing sexual services in exchange for money and other material compensation. Sex work in Kenya has, for the most part, been practiced primarily in major cities and towns such as Nairobi and Mombasa. More recently, sex work has begun to occur in other localities in Kenya including smaller towns and rural shopping centers.

The sex trade in Kenya is driven by factors that vary from place to place, and region to region. In Kenya’s coastal towns, tourists are a significant part of the market for sex work. Long distance truck drivers and transporters as well as cross border traders make up much of the clientele of sex workers in border towns like Busia, Malaba and Namanga. In the rural market centres, sex work is shaped by the type of business that predominates in the town and patterns of seasonal payment for cash crops such as coffee, tea and wheat.

Sex work is a highly stigmatised occupation within the Kenyan cultural milieu. Cultural attitudes towards sex work and sex workers are predominantly negative and conservative. Sex work is categorised as an offence against morals, a threat to the moral fabric of society and a nuisance under Kenyan law.¹ The frequent arrest of women who law enforcement officers consider to be dressed “immorally” bolsters the negative social perception of sex workers. In some countries police officers may only arrest a woman when she accepts cash in exchange for sex. In Kenya any woman found out late at night, or walking along certain streets or wearing short and/or revealing clothes will be arrested and charged with “prostitution.”²

Societal attitudes are also reflected in the approaches adopted by many civil society organisations working with sex worker communities in Kenya. Some organisations attempt to “rehabilitate” sex workers without considering whether or not these women want to discontinue sex work. Other groups adopt a “disease control” approach in misguided attempts to achieve public health outcomes. Their work aims to identify

1 The Penal Code (Chapter 63 of the Laws of Kenya), the Sexual Offences Act and local municipal by-Laws.

2 See Chapter 3 for the arguments advanced by police officers for such arrests.

interventions and preventive activities to control of the spread of sexually transmitted infections (STIs) and HIV/AIDS. Uncritical emphasis on STIs can propagate the notion that sex workers are vectors of disease and a threat to the health of the general public. Although STI prevention activities are required and should be provided to sex workers, this should be done with a human rights approach as part of a comprehensive health and social services plan. Mainstream human rights and women's rights organisations in Kenya have, to a degree, ignored the needs of sex workers. None are on record as having carried out studies that investigate the status of the human rights of sex workers.

1.3 Methodology

Women sex workers' first hand expressions of personal experiences give the most accurate account about the realities of their daily lives and provide the basis for developing strategies for the protection of their human rights. In this study, FIDA Kenya set out to get testimonies from female sex workers about their experience in the course of their trade. The perspectives of public officials, specifically police officers and members of the criminal justice system, are also essential to understanding how law and policy affects sex workers. Strategies were designed to obtain information from these officials. Similarly, information from other civil society actors such as organisations working with sex workers was obtained to describe the services, support and other resources available to sex workers.

Data was collected in the period between June and October 2007. Material about legal and policy frameworks affecting sex workers was obtained by reviewing international human rights documents, Kenyan laws, municipal by-laws and official policies concerning sex work and workers. The team also collected reports regarding sex work-related issues from the print media.

The FIDA Kenya team selected six distinct research sites to assess the environments in which sex workers operate in Kenya. These urban centers were purposely chosen for their geophysical uniqueness, diversity of commercial activities and population profile. The sites are: Nairobi, the cosmopolitan capital city of Kenya; Kisumu, the regional headquarters

of Nyanza province and a center for the fishing industry; the town of Busia on the Kenya-Uganda border; the coastal cities of Mombasa and Malindi that are also significant tourism centers; and finally, Nanyuki, an army base both for Kenyan and foreign armies who visit the country for training purposes.

Data was gathered in the sites by interviews with individual respondents and by focus group discussions. Researchers used the snowballing method to recruit participants from sex worker communities. This method allows researchers to identify a community member willing to participate in the research, who then introduces the researchers to other individuals known to engage in the target activity. The research team for this study worked closely with local civil society organisations (CSOs), such as Bar Hostess Empowerment Programme for the Nairobi site and similar organisations found in other research sites, to locate key community representatives. Initial contacts could be made through these local CSOs that work among sex worker communities because these CSOs have earned the trust of the sex workers. The contacts for the focus group discussion with the police were facilitated by FIDA Kenya.

A total of six focus group discussions with sex workers occurred during the research period. Four focus groups were carried out in Nairobi, Kisumu, Nanyuki, and Mombasa.³ Two focus groups were held with sex workers at the Nanyuki research site: one group consisted of individuals who provide sexual services to foreign troops and the other included sex workers whose clients were members of the Kenyan army. No focus group was held in Malindi. Each focus group contained approximately 15 to 20 people. All group discussions were guided by a set of pre-determined open-ended questions, which formed part of the questionnaire.

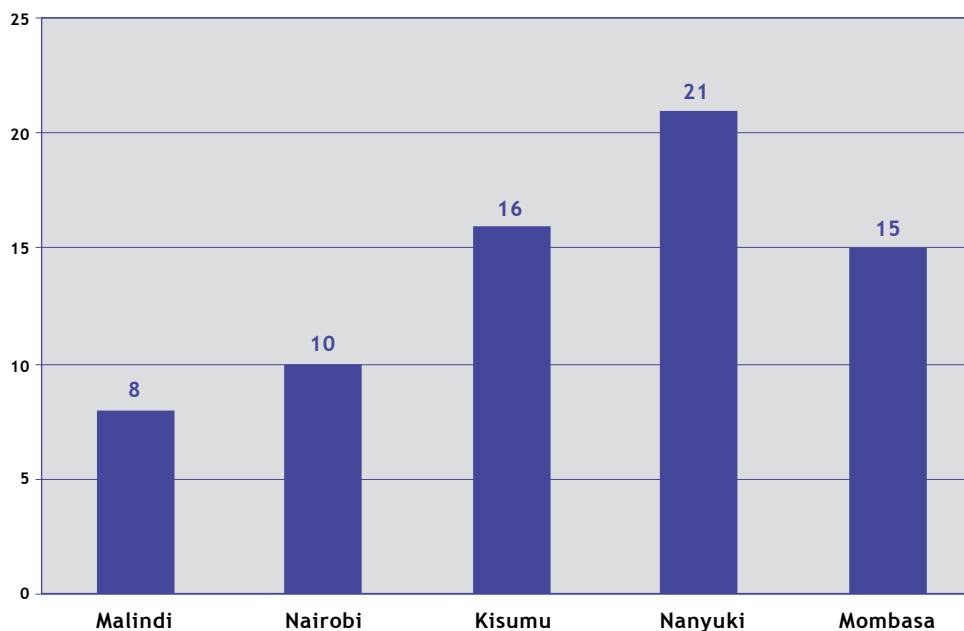
The intended total sample for individual interviews was 90 sex workers (approximately 15 sex workers from each of the six sites). In one site, the city of Busia on the Kenyan border, no willing individual respondents for interviews were located. Eventually 70 sex workers availed themselves

³ In Busia, the focus group formation was facilitated through the district hospital, and the discussions took place in the Blue York Hotel. In Kisumu, the Kisumu AIDS Self Help group facilitated the group formation and the discussions at the YMCA premises. In Nairobi, the discussions were held at The Blue Hut hotel in Ngara. In Nanyuki, the two focus groups were facilitated by the Likii HIV/AIDS Home-Based Care Group at the Likii Primary School. The Mombasa group meetings were facilitated by the organization Solidarity with Women in Distress (SOLWODI) and held in the organization's offices in Mtwapa.

for in-depth interviews at five of the six sites (see Figure 1). All interviews were carried out by the researcher and one trained assistant.

One focus group was carried out with police officers. Ideally, police officers would have been interviewed at all the six research sites. This did not occur because of difficulties obtaining the required permissions for field visits. Furthermore, it was not possible at some sites to converse with the officers in a free atmosphere. The researcher was able to convene one focus group discussion with 30 policemen at the Central Police Station in Nairobi. The officers were drawn from Kamukunji and Central Police Stations and the CID Headquarters.

Figure 1: Distribution of interview respondents by site



1.4 Limitations

Many sex workers interviewed did not respond to all questions on the survey. This may be due to many factors including the sensitive nature of the questions and the heavy burden of stigmatization that sex workers bear in Kenya.

The study was initially intended to include interviews with the police, officials from the ministries of health and tourism, local government, the Judiciary, and other stakeholders among the primary sources of data. Due to time and financial constraints, however, and, more importantly, the reluctance of the public service sectors mentioned above, it was not possible to get the input to the degree originally planned. However, the study did manage to collect views from the Attorney General's office, Kenya Law Reform Commission, a magistrate, some health workers in Kisumu and Busia and civil society organisations. The study acknowledges the police department in Nairobi for facilitating focus group discussion with officers based in Nairobi.

CHAPTER TWO

2

The legal framework on sex work in Kenya

The Kenyan Penal Code and the Sexual Offences Act do not criminalise sex work per se. These codes criminalise the actions of third parties associated with sex work, rather than focusing on sex workers themselves. Municipal by-laws across the country do directly criminalise sex work through articles outlawing “loitering for the purpose of prostitution,” “importuning” for the purpose of prostitution and “indecent exposure.”

2.1 National law

The legal framework governing sex work in Kenya is a combination of the criminal law that was inherited from the British colonial government,⁴ recent legislation (such as the Sexual Offences Act) passed to address emergent crimes such as trafficking and local urban and municipal councils’ by-laws. The manner in which these laws are implemented is also relevant in understanding the whole framework.

The Penal Code, the only substantive law dealing with sex work before the passage of the Sexual Offences Act in 2006, defines two types of offences with respect to sex work namely “*living on the earnings of prostitution*” and “*soliciting or importuning for immoral purposes.*”

⁴ The Penal Code Chapter 63 of the Laws of Kenya.

Section 153 provides that:

- (1) *Every male person who-*
 - (a) knowingly lives wholly or in part on the earnings of prostitution;
or
 - (b) in any public place persistently solicits or importunes for immoral purposes, is guilty of a felony

- (2) *Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he satisfies the court to the contrary be deemed to be knowingly living on the earnings of prostitution.*

Section 154 provides that:

Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a felony.

The Penal Code does not provide a legal definition of “prostitution” nor does it directly prohibit “prostitution.” Rather, Penal Code provisions criminalise the actions of third parties who benefit from sex work and prohibit promoting the act of prostitution, for example by willingly and knowingly offering the use of premises for sex work. These provisions imply that a sex worker can only be a female. Male and female third parties can be charged with “*knowingly living*” off the earnings of sex work and/or aiding, abetting or compelling a woman to engage in sex work. Only men can be charged with solicitation and for “living with and being habitually in the company of a prostitute.”

Even though the Sexual Offences Act was enacted recently in 2006, its provisions concerning sex work retain the general spirit of the criminal law contained in the Penal Code. “Prostitution” is not defined nor is it

criminalised per se. Section 17⁵ of the Sexual Offences Act defines the offence “*exploitation of prostitution.*” This section indicates that anyone encouraging sex work with the expectation of gain for himself or herself is guilty of an offence. Section 15 of the Act refers to the offence of “*child prostitution*” and criminalises the procuring of, or permitting, children under the age of 18 “*to be sexually abused or to participate in any form of sexual activity or in any obscene or indecent exhibition or show.*” Section 19 criminalises all aspects of engaging of persons with mental disabilities in sex work. Overall, the Sexual Offences Act criminalises any action compelling anyone, including a child or person with mental disabilities, into sexual intercourse for purposes of gaining from it, or supporting sex work in any way such as by offering premises for sexual acts to take place.

In summary, the provisions of both the Penal Code and the Sexual Offences Act do not criminalise the practice of sex work in and of itself. Third parties obtaining financial gain from sex work are the focus of legislation. It bears emphasizing that it is only third parties, and not sex workers, who can commit the offences relating to sex work under these statutes.

2.2 Subsidiary legislation

Across Kenya many local authorities have elected to address sex work under their subsidiary legislation or by-laws.⁶ The following by-laws of selected local authorities illustrate how this occurs.

Section 19(m) of the Nairobi General Nuisance By-laws (2007) provides that “[a]ny person who in any street – loiters or importunes for purposes of prostitution is guilty of an offence.” This by-law goes beyond the provisions of the Penal Code and Sexual Offences Act to include sex workers among the contemplated offenders.

⁵ Any person who-

- (a) intentionally causes or incites another person to become a prostitute; and
- (b) intentionally controls any of the activities of another person relating to that person’s prostitution; and does so for or in expectation of gain for him or herself or a third person, is guilty of an offence and is liable on conviction to imprisonment for a term of not less than five years or to a fine of five hundred thousand shillings (USD 7575) or both.

⁶ The Penal Code and the Sexual Offences Act are Acts of Parliament and By-laws are administrative rules and regulations for the running of local councils. Examples include the Nairobi General Nuisance By-laws of 2007, formerly the By-laws of the city of Nairobi of 1960, the By- laws of the Municipal Councils of Mombasa, Kisumu and Kakamega.

Sections 258 (m) and (n) of the Mombasa Municipal Council By-laws (2003) state that:

Any person who shall in any street or public place-

(m) Loiter or importune for the purpose of prostitution

(n) Procure or attempt to procure a female or male for the purpose of prostitution or homosexuality ... shall be guilty of an offence.

The by-laws in Mombasa, therefore, criminalise loitering. A unique feature of By-law 258 (n) of the Mombasa Municipal Council is that it also criminalises homosexuality and thereby covers consensual sex among men.

Part VIII of the Kisumu Municipal Council By-laws deals with public health concerns, and describes “nuisances” as offences in the following two categories:

A person shall not-

(m) molest, solicit or importune any person for the purposes of prostitution or loiter on any street or public place for such purposes; or

(n) willfully and indecently expose his person in view of any street or public place;

The Kisumu by-laws introduce the offence of “*molesting for purposes of prostitution*” in the same section that covers “*soliciting for prostitution.*” Sections of the code, specifically By-law (n) concerning “*indecent exposure,*” are vague and are used to arrest sex workers for the way they dress.

In summary, offences relating to sex work in municipal by-laws provide police officers with broad justification to arrest sex workers for “loitering for the purposes of prostitution.” Some by-laws are so vague that it is left to the imagination and discretion of the arresting officers for interpretation. That by-laws are unique to the local authorities under which they operate means that sex workers are subjected to different (and often discriminatory) operating regulations in the different locations of Kenya.

CHAPTER THREE

3

The Findings

The findings of the study are organised into three sections. The first section provides demographic information about the sex workers interviewed. The second section presents data from individual interviews with sex workers. Focus group information is included in both of these sections to illustrate key themes. The third section summarises findings from the focus group with police officers.

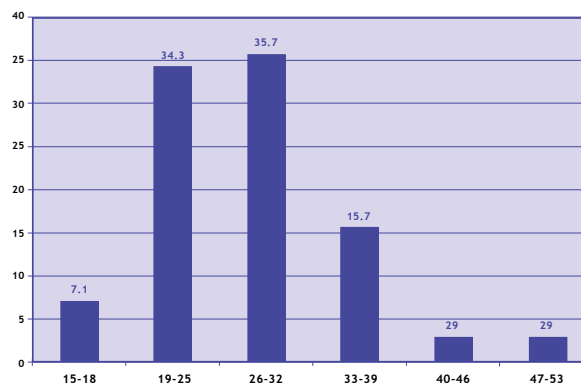
3.1 Profile of the respondents

70 sex workers were interviewed at five of the six sites.⁷

Age of respondents

The age of respondents ranged between 15 and 53 years, with five in the 15 to 18 years age range, and three in the range of 40 to 53 years (see Figure 2).

Figure 2: Age distribution by categories in percentages



⁷ As noted in the methodology section, no sex workers in Busia consented to individual in-depth interviews.

Education level of sex workers

The majority (54%) of sex workers interviewed had a primary school level of education. 39% had a mid-secondary level of education and 4 respondents had no formal education. This level of education is similar to the overall population of Kenya.⁸ It is noted that no respondent indicated concerns about linguistic challenges arising from limited exposure to formal schooling, even though clients come from varied linguistic backgrounds.

Family and community relationships

Sex workers interviewed were almost all heads of households and provide for several dependents. At the time of the study, almost all (97%) were not married. 28 respondents were single, 34 were separated, 3 were divorced, and 3 were widowed. 94% of sex workers interviewed had dependants, including children, aged parents and grandparents, siblings, and orphaned nephews and nieces, for whom they provide materially. Sex workers in this study had an average of two children. Four respondents did not have children of their own, but were supporting aged parents and grandparents.

We sought to know whether the family members of the respondents knew that they were sex workers. 86% of the respondents answered the question. More than half of those who answered affirmed that their families (mostly parents and siblings) know about their occupation. On the other hand, only a few sex workers had shared information about their profession with their neighbours primarily because of negative views held by others in society about the work they do. Participants noted that neighbours are often negative, some despising and insulting, about sex work. Sex workers can find support amongst others involved in sex work. Focus group participants discussed building friendships and support networks with fellow sex workers.

Sex work experience

76% of respondents indicated that they had been in sex work for five years or less. 24% had been in the business for between 6 and 21 years.

⁸ Free primary school education was introduced in 2003. Before this change approximately two thirds of Kenyan children enrolled in primary school and only 23.5% enrolled for secondary education. Accessed from http://www.itelttd.com/icts/KENYA_COUNTRY_PROFILE.HTM September 30, 2008.

90% of respondents engage in paid sex between 3 and 7 days per week. A number of respondents reported having regular/seasonal clients who had become trusted and supportive friends over a period of time. 70% of respondents meet with their clients in their own private spaces.

Some respondents provided more information about why they became involved in sex work. Sex work provided women with a way to address economic needs with flexible work schedules that allow them to juggle childcare and head of household responsibilities. During focus groups sex worker respondents concurred that they engage in sex work in order to be able to provide for themselves and for their families' material needs. Prominently mentioned among the family needs were: schooling needs for the children, payment of rent for accommodation, food, and providing for the needs of aged parents and other dependants from the extended family. A significant portion of women interviewed also noted that they had heard about sex work as a possible form of employment from a trusted person in their lives (such as a sister).

Earnings from commercial sex

Income from sex work varies widely. 69% of respondents earn between Kshs. 1001.00 (USD 15) and 10,000.00 (USD 151) per week. Estimates of average incomes in Kenya for the overall population range from \$7 to \$30 per week.⁹ Ten respondents said they did not keep records of their earnings and therefore could not answer this question. These respondents also noted that their earnings were often spent immediately on their daily needs and the needs of family members.

Only 18 respondents answered the question about individual property ownership and operating savings accounts. Of these, six respondents reported owning buildings (acquired from their savings from sex work) for rental and income generation, and ten operate personal savings accounts.

⁹ Chebutuk Rotich, D. (2004) The affordability of school text books in Kenya: Consumer experiences in the transformation to a liberalizing economy. *Nordic Journal of African Studies* 13(2): 175–187. Clemens, M. and Pritchett, L. (2008) *Income per natural: Measuring development as if people mattered more than places*. Working Paper Number 143, Center for Global Development.

3.2 Findings from sex workers

Negotiations with clients

About half the respondents entertained both known regular clients and occasional unknown newcomers as their customers. Slightly more than half of the respondents said that they negotiate for charges for their services at the time of being picked up, or just before they provide the services. An engagement with a client, called a “shot,” typically lasts between 30 minutes and 1 hour.

The study sought to find out what happens should a client refuse to pay for services rendered. Even when fees have been negotiated and agreed, clients may sometimes renege on the agreements.

I have met many clients who have refused to pay me and I have done nothing about it because even if you report, the police will do nothing. They will tell you that an agreement for payment for sex is illegal and are likely to end up forcing you to have sex with them... One client paid me before the service and then asked for his money back after... he assaulted me saying he couldn't see what he had bought.

36 respondents answered this question about client refusal to pay and almost all of them (92%) felt that they had no recourse to address the situation. Three respondents listed some ways in which they could individually resolve this issue with clients.

Sex workers in Nanyuki, a city that hosts both local and foreign troops, reported some significant problems with clients from the army bases. They reported that Kenyan soldiers are known to refuse to pay once the service has been rendered. Some use army vehicles to take sex workers into lonely forested areas. The soldiers then rape the sex workers and abandon them in the forested areas. If culprits are officially reported, their colleagues and seniors defend them and police take no action against the offenders. Individual foreign soldiers from the West, called *Johnys* by sex workers, may negotiate a one on one engagement with a woman, then several turn up demanding sexual services for all at the price of one. Foreign soldiers sometimes demean sex workers or order them to perform services that the sex workers had not initially negotiated. Despite these abuses, Western

soldiers pay well and sex workers still opt to do business with them. Focus group participants report that troops from other nations, such as China, prefer under age girls (ages 14 to 15 years old). Although these activities are common knowledge in the locality, no action is taken by the local administration or police against the offenders.

Safe sex, unsafe sex and condom use

49 sex workers, 70% of the sample, said that they always insist on the use of condoms when providing sexual services. Respondents reported that they know from their experience that most customers would offer to pay at higher rates to have sex without the use of condom. Most sex workers interviewed were categorical that they would not have unprotected sex even if they were offered substantially more money.

However, some men insist or force sex workers to have unsafe sex. A significant majority (77.1%) of respondents have met clients who insisted on, or preferred having, unprotected sex. About 39% of those with this experience reported having successfully opted out of having unprotected sex. Others willingly complied for a higher fee and, the rest were forced to have unprotected sex. Sex workers in Nanyuki, Malindi and Mombasa, tourist areas where women often meet with foreign clients, reported some very high price offers for unprotected sex. One woman in Malindi accepted Kshs. 30 000 (USD 454) for unprotected sex with a tourist. She felt it was an excellent offer that she could not turn down. On the other end of the scale, a sex worker in Majengo in Nairobi had unprotected sex for Kshs. 100 (USD 1.50) because it was 11 am and her child was going to get back home for lunch and find no food. She explained that many of her clients pay as little as Kshs. 40 (US 60 Cents) for a shot so when a client offered Kshs. 100 (USD 1.50) she could not turn it down.

Use of female condoms appears to have an empowering effect for some sex workers as is illustrated by the following statement from one of the interviewees:

I use female condom and I put it before . . . I have had a situation where I have done it without a condom because of money. Without condom the payment is Kshs 2000 (USD 30) and above.

Female condoms can be placed before sex workers meet with clients and can help sex workers safely address client requests for sex without using a male condom.

Rape and sexual assault

41 respondents answered the question “have you ever been forced to have sex against your will?” 59% of those who responded had experienced forced sexual encounters. Respondents noted that sex workers are unlikely to report these violations to the police for fear of further violations and/or public condemnation because of their occupation.

Understanding of the Kenyan law concerning sex work

Slightly more than half of the group of interviewees, 36 respondents, provided information about their knowledge of the law. The majority of those who responded thought that the law prohibits sex work. A third of those answering the question did not know anything about the laws affecting them. Similarly participants in focus groups said that they did not know the relevant laws that affect them as sex workers, but were simultaneously cognizant of the negative labels and condemnation of sex work in the public mind-set. The majority assumed that sex work is illegal based on the frequent arrests and treatment they experience at the hands of law enforcement officers. Focus group discussions revealed that almost all sex workers were unaware of their right, occupation notwithstanding, to claim protection from the government against abuse of their human rights.

Associations and professional support systems

22 of the respondents indicated that they belonged to social support groups. They said, however, that these support have been registered under pseudonyms because sex work is presumed to be illegal. Consequently these groups cannot openly advocate for their collective interests and concerns as sex workers.

The respondents said that they support one another in these groups financially through revolving loan schemes (popularly known as merry-go-rounds, in which friends or neighbours contribute funds to a common kitty which goes to each of them in turn). They also look out for one another during financial hard times such as during arrests, sickness or bereavement.

Sex workers protect each other against bad clients in various ways: by sharing their stories, ganging up against the perpetrators of physical violence, or walking in groups to back up each other for safety. Sex workers also support each other in regards to screening new/unknown clients. Sex workers who were interviewed noted that there are risks associated with new/unknown clients such as non-payment for services and physical abuse. Respondents said that they inquire about the stranger/new customer from friends, do not get into the stranger's car, let friends know of their whereabouts, and operate during daylight hours and within familiar environments in order to increase safety.

Focus group discussions revealed some additional barriers to sex worker organizing. In the border town of Busia, for example, high mobility and the competitive nature of sex work in the border area makes it difficult for the sex workers to belong to regular support groups in fixed localities for personal support. In the interviews with sex workers in this town, respondents expressed concerns over the competition they experience from sex workers from the Ugandan side of the border.

Sex workers' experience with police

Individual interviews provided ample information about the negative experiences sex workers have with law enforcement. Participants in all six focus groups affirmed that sex workers suffer more abuse and disruptions of their activities at the hands of the police than from any other source.

Respondents noted that many police officers detain sex workers either on the basis of their dress or the time of day in which they encounter with the police. For example, focus group participants in Nairobi said that some police officers considered it an offence for women to dress in certain ways and walk along Luthuli Avenue or Koinange Street.

Many police officers arbitrarily arrest sex workers to demand bribes from them. 12 respondents who were individually interviewed said they were forced to pay a bribe to the police in order to secure their release. Only one respondent reported being arrested, taken to court within 24 hours of her arrest, and set free by the court without paying a fine or bribe. Participants in focus groups revealed that they have learnt that it is more expedient to negotiate with and pay the arresting officer an agreed bribe, than to be arrested and taken to a court of law where the fines for the trumped up

charges may be higher than the bribe that the officers ask for. Additionally, sex workers who are arrested risk other forms of abuse while in custody. They also lose valuable work time when they are locked up. The system of bribery is so entrenched for certain sex workers that they pay on a regular schedule. Street sex workers in Nairobi pay police officers and the City Council of Nairobi's law enforcement officers set amounts on certain days of the week in order not to be arrested.¹⁰

Patrol officers may also purport to arrest sex workers, but instead of taking them to the station to be booked, they take the sex workers to other locations such as isolated areas of the city or even to officers' own quarters. In these isolated situations officers rape sex workers and/or demand sex in exchange for their freedom. Nairobi focus group participants shared that some officers from Kamkunji police station arrest sex workers, force them into having sex, rob them, drive them into the dark alleys in Gikomba area and abandon them there. Nine respondents who were interviewed individually reported being raped by police officers.

Rape may also occur at the police station and booking cells provide no protection from sexual abuse. One of the respondents shared information about the experience of a close friend whose 17-year old daughter was arrested in Thika allegedly for loitering. The young woman was booked into a cell at the station. During the evening, the corporal asked the officer in charge of booking to bring the girl to him in the early hours of the morning. The corporal raped the girl until 5 a.m. when she was finally returned to the cell. Two other male police officers engaged in the same pattern of activities for the two days that followed. Focus group participants in Kisumu reported that some senior officers call booking officers and ask for sex workers to be released directly into their hands. In one instance, a sex worker was locked in an officer's house for over four days, forced to provide sexual services and perform domestic chores. She was released only when another victim was arrested and directed to replace her in the officer's quarters.

Interview respondents said that when they were kept in custody they were given insufficient food, slept on the bare floor, and were forced to perform cleaning chores. In Kisumu, focus group participants said that officers

¹⁰ Sex workers working along a particular street contribute Kshs. 100 (USD 1.50) every Tuesday to be paid to the police and Kshs. 50 each every Thursday to be paid to the City Council of Nairobi's law enforcement officers. This protects them from frequent arrests but from time to time police arrest them anyway.

make the sex workers mop the floor to the cells at 5 in the morning using water mixed with urine in order to punish them. Others reported physical violence and some were verbally taunted and humiliated. Respondents noted that female police officers and female prison warders were often no better than their male counterparts. Focus group participants said that female officers forced remandees to perform domestic chores in the officers' houses. Sometimes female officers order remandees to crawl on fours on rough surfaces. Some officers forced remandees to strip naked in order to ridicule them and female officers carried out mock examination of the sex workers' bodies in order to humiliate them.

Experiences with the criminal justice system

Approximately one half of the respondents reported having the experience of being charged with an offense in a court of law. 20 respondents provided more information about the offences they were charged with: 14 had been charged with "loitering," four for "drunk and disorderly" conduct, one for touting and one for "prostitution." All 20 (100%) sex workers arrested and charged in court pleaded guilty. 13 respondents provided reasons for pleading guilty in court: almost all (12) pleaded guilty so that they could gain quick release. Some sex workers had paid fines as a result of arrests; more than half of them had been fined more than three times.

15 respondents provided information about their experience in prison. 11 had served jail terms for sex work. Some sex workers were unable to pay fines and served prison time instead. Seven respondents provided more information about their access to legal representation. All said that they had no access to legal representation during the mentions and hearings of their cases and while in prison.

Suggestions from sex workers to defend their rights

Sex workers were asked for their suggestions about what it would take to stop the violations of their human rights. The majority favoured decriminalizing sex work as this would give them the basis to go to court, standardise and regulate activities of the trade openly, and give grounds to prosecute violators of their rights.

Some sex workers suggested civic education targeting police would be helpful. Two sex workers said that violators of sex workers' rights should be prosecuted.

Other responses were that FIDA Kenya should be more visible in its support of sex workers' human rights, and that the government should give financial support and other public funded welfare safety nets to the unemployed of Kenya.

3.3 Findings from police focus group

During the focus group with police held in Nairobi, the facilitator asked whether officers had ever had the opportunity to internally discuss issues around the enforcement of laws against sex work. Participants said that this was the first discussion they had ever had on issues of this kind.

Officers explained that “offences against morality” are difficult for them to prove. Official procedure requires that offences “must be reported and investigated” in order for arrest to occur. However, offences relating to sex work are never reported, so police are compelled to “look for it ourselves and arrest those we think are acting in violation.” Participants indicated that much sex work occurs indoors making police observation and investigation more difficult. Periodically officers enter buildings and arrest women found in circumstances that suggest their engagement in sex work. Asked whether they have ever arrested and charged owners of lodgings for facilitating sex work, they answered in the negative. Police also said that they never arrested the customers of sex workers.

Police said that they arrest women on the streets who they suspected to be engaged in sex work almost daily. These women are arrested and charged with “soliciting for immoral purposes or loitering.” Evidence for women’s engagement in “soliciting for immoral purposes and loitering” included:

- manner of dress (provocative dress, short skirts and see-through garments, tight clothing, a lot of make up);
- walking along certain streets like Koinange Street and Luthuli Avenue in Nairobi;
- being on these streets at late hours (after 10pm);
- stopping cars on the streets;
- walking in the streets aimlessly.

When questioned further about the rationale police used to determine the above criteria, the officers were not able to give any explanation other than, *“every one knows that short tight skirts are only worn by women with immoral purposes who want to attract men for sex.”*

Officers indicated that the women they arrested for soliciting or loitering for immoral purposes plead guilty. The officers were not aware of any incident where the arrested individual pleaded not guilty and the case was heard and determined by the court. The facilitator shared with the police that sex workers had indicated that they normally plead guilty in order to pay the fine expeditiously and escape problems associated with a full hearing of a case. The police officers were happy that the sex workers usually plead guilty. The police hold the view that this makes their work easier and demonstrated that they had successfully prosecuted an offence. When asked how effective the laws on sex work are in keeping “law and order,” police admitted that the current approach has not decreased the number of women coming into the streets to engage in sex work.

The facilitator asked whether or not sex work was illegal under Kenyan law the police officers unanimously answered “yes.” However, most officers were not able to quote the citation that makes sex work illegal. When the facilitator explained that the national law only prohibits the actions of third parties in regards to prostitution most officers were surprised. Discussions then focused on the meaning of “living on the earnings of prostitution.” The following issues emerged:

1. those who live on the earnings of sex work must include the dependants of sex worker e.g. children of sex workers, their parents, relatives and anyone that they financially support with their earnings.
2. given that the government receives revenue from all other business transactions some involve money earned from sex work (including purchase of consumer goods on which taxes are levied), to what extent can it be said that the government is *‘living’* on the earnings of sex work?
3. it is difficult to determine the evidence for “living on the earnings of prostitution” particularly in cases where a person is simultaneously involved in other occupations. To what extent can a police officer determine that the finances from sex work bought the meal being eaten by a family?

The facilitator informed the participants about the reports of violations of sex workers' human rights by the police officers. Violations discussed included:

1. extortion of bribes from the sex workers. In some regions, sex workers regularly pay the police a "protection from arrest fee;"
2. extortion of sex from sex workers so that they are not arraigned before the courts;
3. gang rape of sex workers by police officers;
4. officers negotiating engagement with sex workers for an agreed charge and threatening the women with arrest if they request to be paid after the officers have had sex with them;
5. violent assaults, such as beatings, perpetrated by police officers;
6. illegal detention of sex workers in officers' own houses for several days, a week, or more. Sex workers have been forced to provide domestic and sexual services in these situations;
7. abuses perpetrated by female officers including physically beating sex workers, verbally abusing them and saying that the sex workers should be engaged in other occupations.

The police officers' initial reaction to these accusations was outright denial. After a few minutes of discussion some officers softened their stance and agreed that some of these violations have occurred. These participants said that it was important for the officers not to deny the violations but to discuss the problem. It was also agreed that not all officers are engaged in these violations, but that since the issues were raised, it was prudent to discuss them and suggest a way forward. Some officers thought that the sex workers "should not complain of being violated" because sex workers "know that what they are doing is wrong and illegal." When asked if violators of the law have no right to be protected from violations by others, a few officers reluctantly agreed that violators had basic human rights, which should be protected.

CHAPTER FOUR

4

Sex work, policing and human rights

The findings of the study illustrate how the current law and policy approach to sex work in Kenya allows for serious violations of sex workers' rights. Overall sex workers in Kenya have no way to claim their individual human rights under the current operating laws. Culturally, the public mindset denies Kenyan sex workers even basic social capital and support because of stigma and social marginalization based on their profession. This chapter explores how Kenya breaches, in the law and practices relating to the treatment of sex workers, its own constitutional provisions and international standards as contained in international human rights instruments.

4.1 Kenya's human rights framework

Kenya's Constitution makes no reference to issues relating to commercial sex and does not specifically mention sex workers in any way. The Constitution does, however, provide for protection of all citizens from inhuman treatment and discrimination.¹¹

Kenya has ratified several international human rights instruments that have direct bearing on sex workers' human rights. These are the: International Covenant on Civil and Political Rights (ICCPR),¹² the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹³ African Charter on Human and Peoples Rights ("African

¹¹ Section 82 of Constitution of Kenya.

¹² Acceded to by Kenya on March 23, 1976.

¹³ Kenya ratified the ICESCR in 1972.

Charter”);¹⁴ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);¹⁵ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁶

The instruments set out above, to which Kenya is party, advocate for the protection of rights that have specific reference to situations confronted by sex workers. These include: the right to equal protection of the law; freedom from arbitrary arrest and detention; freedom from torture, cruel, inhuman and degrading treatment; the right to information; freedom of movement; the right to enjoy just and favorable conditions of work; the right to organise; the right to adequate standard of living; equal access to public services, including the right to healthcare; and the right to be free from discrimination. Many of these rights are also included in the Kenyan Constitution.

4.2 Violations of the human rights of sex workers

The Kenyan Government has obligations arising from the Constitution and international human rights agreements. The serious violations against sex workers by the police and other officials detailed in this research illustrate how the government is not fulfilling its duty to respect, protect and promote the rights of all citizens, including sex workers.

The right to equal protection of the law

Article 26 of the ICCPR states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” Article 3 of the African Charter and Section 70 of the Kenyan Constitution provide for similar protection. General Recommendation No 19 of the UN Committee on CEDAW requires states to ensure equal protection under the law for sex workers because they “are especially vulnerable to violence because their status, which may be unlawful, tends to marginalise them.”¹⁷ The Kenyan Government must therefore ensure that sex workers are treated equally and without discrimination and protected against crimes committed against them.

Sex workers who participated in this study were very reluctant to seek protection or remedies from the authorities. They were unlikely to report

¹⁴ Ratified by Kenya in 1992.

¹⁵ Acceded to by Kenya on September 2, 1990.

¹⁶ Acceded to by Kenya on February 21, 1997.

¹⁷ The full text of General Comment 19 is available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

instances of rape and sexual assault to the police for fear that they would be further harmed by the police and humiliated because of their profession. Sex workers do not expect justice to be done and they fear that if police become aware of their engagement in sex work that they will be targeted for future arrests. Some Kenyan police are aware that all people, even if they are violators of the law, have the right to be protected from violations by others. However, sex workers' belief that police do not view them as worthy of protection is borne out by information emerging during the focus group with police officers. Some officers thought that the sex workers "should not complain of being violated" because sex workers "know that what they are doing is wrong and illegal."

Freedom from arbitrary arrest and detention

Article 9 of the International Covenant on Civil and Political Rights (ICCPR) states that, "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 procedures as are established by law." Article 6 of the African Charter and section 72 of the Kenyan Constitution provide similar protections. Police are not at liberty to arrest people they believe to be sex workers in street sweeps simply to remove them from an area, all arrests should be carried out under strict judicial control, and sex workers should be informed, at the time of arrest, of the specific reasons for their arrest. Kenyan police are not at liberty to keep sex workers for longer than the legal limit of 24 hours without being brought before a court.

This study has revealed that sex workers' right to be free from arbitrary arrest and detention is routinely violated by the Kenyan police. Police falsely arrest sex workers in many areas across Kenya purely for the purpose of extorting money from them. Some police illegally detain sex workers at their residences for days and weeks at a time in order to force them to provide sexual and domestic services. These violations are so frequent that this research found only one instance in which a sex worker was treated in accordance of the law when she was arrested. Sex workers very rarely have access to legal representation to challenge their arrest and detention.

Freedom from torture, and other cruel, inhuman and degrading treatment

Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 74 of the

Kenyan Constitution and article 5 of the African Charter provide similar protection. The Convention Against Torture provides extensive guidance on these issues. Article 10 of the ICCPR further provides that “all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.”

This research reveals that the agents of the Kenyan State frequently violate sex workers’ right to be free from torture and cruel, inhuman and degrading treatment. Rape and sexual assault in custody is torture.¹⁸ Interviews and focus group discussions reveal that police officers rape and sexually assault sex workers in their custody. Kenyan law explicitly forbids sexual contact between police officers and those in their custody under Section 24 of the Sexual Offences Act of 2006.¹⁹

Police officers beat and humiliate sex workers in their custody. Sex workers held in booking cells were given insufficient food, slept on the bare floor, were forced to perform demeaning “cleaning chores” and were subjected to violating examinations of their bodies by guards. The Standard Minimum Rules for the Treatment of Prisoners,²⁰ a UN resolution that is considered the authoritative explanation of standards relating to prisoners, categorises all of these actions as cruel, inhuman or degrading treatment.

The right to non-discrimination

This human rights principle provides for equal treatment of persons, including ensuring the application of the rule of law and fair trial. CEDAW states that governments should not discriminate against women. The current law and policy framework in Kenya allows police to target women for arrest using highly subjective criteria. Criteria such as manner of dress, walking along certain streets, or being on streets at odd hours are so subjective they could

18 Human Rights Watch, *Torture and Other Cruel, Inhuman or Degrading Treatment*, accessed at <http://www.hrw.org/about/projects/womrep/General-86.htm> October 1, 2008.

19 Paragraph 2 of Section 24 states that, “Any person who being a law enforcement officer takes advantage of his or her position and has sexual intercourse or commits any other sexual offence under this Act -(a) within the limits of the station to which he or she is appointed; or (b) in the premises of any station house whether or not situated in the station to which he or she is appointed; or (c) on a person in his or her custody or in the custody of a law enforcement officer subordinate to him or her, commits an offence of abuse of position of authority and is liable upon conviction to imprisonment for a term of not less than ten years.”

20 The Standard Minimum Rules for the Treatment of Prisoners was approved by the Economic and Social Council by resolutions in 1957 and 1977. The Standard Minimum Rules does not constitute a binding agreement but is considered an authoritative explanation of standards in the ICCPR, other treaties, and customary law that are binding. Human Rights Watch, *Torture and Other Cruel, Inhuman or Degrading Treatment*, accessed at <http://www.hrw.org/about/projects/womrep/General-86.htm> October 1, 2008.

translate into anything depending on who is in charge; this fact appears to bestow an unjustifiable amount of power and control to the law enforcing agencies over the individual sex workers, while simultaneously denying the sex workers access to the due process of the law. Furthermore, the criteria used by police are inherently discriminatory in regards to gender. Women are criminalised not for what they do but for how they dress.

4.3 Lack of a rights enabling environment for sex workers

In order to fully address the human rights needs of sex workers, governments should protect them from the kinds of violations enumerated above and create the conditions in which sex workers can live freely and enjoy their human rights. In this formulation, several different rights, such as the right to enjoy just and favorable conditions of work, the right to organise, the right to adequate standard of living, and the right to be free from discrimination, are interconnected and interdependent. This study reveals several ways in which the Kenyan Government has failed to create the conditions in which sex workers can enjoy their human rights. Kenya's current approach to sex work also prevents sex workers from participating in actions to address human rights issues affecting them.

The right to just and favourable conditions of work

Article 7 of ICESCR recognises the “right of everyone to the enjoyment of just and favourable conditions of work” including “safe and healthy working conditions.” Article 15 of the African Charter on Human and Peoples’ Rights also recognises these rights, emphasising conditions and pay. Sex workers in Kenya are unable to enjoy just and favorable working conditions because they are relentlessly subject to police harassment, arrest and abuse as listed above, and because sex work is viewed as an “immoral activity” rather than as a form of labour. Consequently, many in society believe that sex workers are immoral, lazy, dangerous and “disposable” people who deserve to be punished for what they do. Sex workers have no recourse if customers refuse to pay or if they experience violence and other problems in the workplace. The Kenyan Government has failed to create the conditions for sex workers’ to enjoy safe and healthy working conditions because it has not reformed the law and policy that allows for police abuse, nor has the government addressed

discrimination that bolsters the view that sex workers are not deserving of safe and healthy working conditions.

Equal access to public services, including the right to healthcare

This study did not focus on health issues and access per se. However, the research did gather information that illustrates the ways in which sex workers are pressured to engage in practices that affect their health (such as client requests for sex without condoms and clients forcing sex workers to have sex without condoms). Article 12 of ICESCR describes states' responsibilities to "recognize the rights of everyone to the highest attainable standard of physical and mental health." General Comment 14 adds this includes the "right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."²¹ No programs provide comprehensive health services, counseling and support for sex workers in Kenya. The few organisations that work with sex workers do in fact focus on HIV/AIDS prevention and the supply of condoms. Unfortunately, these organisations do not have the logistical capacity to cover all the geographical areas where sex workers work. Their work on HIV and sex workers is on an ad hoc basis and not entrenched in a public policy framework. Consequently, even access to condoms is very limited and most sex workers must buy them—at considerable expense—rather than receive them from NGOs or government health programs.²² The Kenyan Government has failed to ensure that sex workers have access to health services and support. The government has failed to provide even the most basic forms of peer education and HIV prevention that would begin to address the serious problem of client demand for unsafe sex.

Right to organise

The participation of individuals and groups in the determination of issues affecting them is a central element of a human rights approach. This study showed that sex workers do not have the information needed about their rights to defend themselves as individuals or as a group. Sex workers do not understand the laws under which they are arrested and were unaware of their right, occupation notwithstanding, to claim protection from the government against abuse of their human rights. The sex workers who

²¹ The full text of General Comment 14 is available at: <http://www1.umn.edu/humanrts/gencomm/econ.htm>

²² Male condoms cost between 50 and 100 Kenyan Shilling (Ksh) for three while a single female condom is 100-150 Ksh.

participated in this study have only been able to form support associations covertly because they believe that they are not permitted to organise as sex workers under Kenyan law. Consequently these groups cannot openly advocate for their collective interests and concerns as sex workers. Article 26 of ICCPR recognises the right to “freedom of association with others” and article 80 of the Kenyan Constitution provides similarly. Sex workers, therefore, have the right to form organisations to defend their rights, the right to work together and form working relationships with each other to improve their working conditions. The Kenyan Government has not created the conditions for sex workers to enjoy this right.

4.4 Key issues regarding Kenya’s approach to sex work

Kenyan national law does not prohibit sex work per se but municipal by-laws that outlaw “loitering for the purpose of prostitution,” “importuning” for the purpose of prostitution and “indecent exposure,” criminalise sex work at local levels for all intents and purposes.

Police use broad criteria to arrest sex workers such as style of dress or for walking “aimlessly” on the street. Furthermore, police simply arrest women who they believe are sex workers without any evidence. Several factors support this system of arbitrary arrest:

- municipal by-laws provide the police with extremely broad justifications to arrest sex workers;
- police officers’ limited understanding of the law, operating rules, lack of adequate civic education and in-service training creates room for subjective interpretation and application of the law;
- the pervasive sense in Kenyan society that sex work is both immoral and illegal means that police feel justified in taking any action against sex workers at any time.

Providing the police with training would be a step forward but is not a sufficient action to bring about fundamental change. Police routinely abuse sex workers in a myriad of ways, violating both Kenyan and International law. A major issue emerging from this report is a lack of oversight in regards to police behaviour. As demonstrated in the findings, the police have exercised the

powers of the arresting agent, prosecutor, moral judge, and the implementer of the law with no checks and balances. Currently, no safe way exists for sex workers to report violations committed by police and there is no responsive system to hold police accountable for violating the rights of sex workers. These issues of police corruption and misconduct are of concern to many in Kenyan society in general.²³

Law enforcers admit that the current approach has not decreased the number of women engaging in sex work. These women rely on sex work to provide for themselves and their families and will find ways to continue to sex work in order to do so.

“We cannot stop the sex work because it is our livelihood; how can we eat and pay our rent if we leave?”

The current approach to sex work in Kenya not only criminalises sex workers means of livelihood, but also punishes them for providing for their vulnerable dependants. Furthermore, sex workers are denied human capital (a sense of belonging), when the community ostracises them. Most sectors of the Kenyan society exercise moral judgment collectively and individually on sex workers on account of their occupation rather than their humanity.

Even though it is the responsibility of the State to protect all of its citizens, the findings of this study demonstrate that law enforcement agents in Kenya are the greatest violators of sex workers’ human rights. Despite its obligations under international law, Kenya, as noted above, has not created a system of accountability for its law enforcement officers and has not created the conditions for sex workers to be safe from human rights violations. It would serve the interests of sex workers and be in conformity with international human rights standards for lawmakers to decriminalise sex work. During the research process it was found that senior officials also believed that the current approach to sex work in Kenya needs to be reconsidered. Senior state counsel from the Office of the Attorney General, and the Chairman of the Law Reform Commission, both opined that the Kenyan laws on commercial sex work need to be reviewed.

²³ Kenyans are extremely distrustful of the police believing them to be corrupt, to use excessive force and to be responsible for extra-judicial killings. Commonwealth Human Right Initiative and Kenyan Human Rights Commission (2006) *The police, the people, the politics: Police accountability in Kenya*: 19-23.

Recommendations

This chapter highlights the necessary steps that should be taken by organisations and institutions to address the problems associated with law and the public mindset which, when combined, result in abuses of the human rights of sex workers in Kenya.

5.1 To the Government and Parliament of Kenya

- 5.1.1 Review and change the existing laws to adequately address issues of protection and respect for human rights of Kenyans, especially marginalised groups such as sex workers.** The findings of this report demonstrate that criminalizing sex work has a negative consequence for the health and rights of sex workers.
- 5.1.2 Ensure availability of legal aid to all persons, especially marginalised groups such as sex workers.** Lack of access to legal representation during the hearing of cases against sex workers and the widespread belief amongst sex workers that they will not receive justice from the courts has led them to enter “guilty” pleas even when they have been falsely arrested. Ensuring that sex workers have legal representation helps them defend their rights and provides the judiciary an opportunity to pronounce on the law on sex work in a manner that can facilitate a judicial scrutiny of the legal provisions.

- 5.1.3 Support appropriate and quality health programmes, including HIV prevention, for sex workers using evidence-based and human rights-based approaches.** Currently, sex workers do not have access to even the most basic HIV prevention materials such as condoms and do not have access to health services that address their reproductive and sexual health. Providing sex workers with programmes that address their needs will prevent the transmission of HIV and assist them in attaining better health outcomes.
- 5.1.4 Support comprehensive social programs sensitive to the fact that sex workers are often heads of households, confronting both economic and social pressures.** The study found that sex workers are almost always the breadwinners, often the sole financial supporters, for their children, aged parents and other needy members of the extended family. Providing sex workers with programmes that allow them to access social welfare safety nets for their dependents will enhance their ability to work safely and under less pressure.
- 5.1.5 Support programs that provide sex workers with information about their human rights.** Sex workers do not have sufficient information about their rights to address abuses that occur to them as individuals and collectively. Providing them with accurate rights information will allow them to organise to ensure safe working environments and to challenge abuse.

5.2 To the office of the Attorney General and the Judiciary

- 5.2.1 Facilitate the interpretation and implementation of the Sexual Offences Act to ensure the protection of the survivors of sexual violence, including sex workers.** This includes: informing all prosecutors and judges that all individuals affected by sexual violence and other crimes are to be treated equally and with respect, and not disregarded or abused because of evidence or assumptions of their involvement in sex work or

any other sexual activity; training and monitoring prosecutors to ensure that they are conforming to the law and not disregarding victims of crime who have (or are presumed to have) exchanged sex for money; and thoroughly investigating allegations of criminal conduct by police officers, including seeking convictions where appropriate.

5.3 To the Commissioner of Police

- 5.3.1 Implement rigorous training of law enforcement officials on legal and human rights standards with regards to sex work.** Police also need training in issues relating to the experience of people involved in sex work and crimes that may potentially be committed against them.
- 5.3.2 Institute mechanisms that allow sex workers to find redress for human rights violations and hold police officers accountable for their actions.** Officers who extort money and sex from sex workers, subject them to degrading treatment, illegally detain sex workers and abuse their human rights, must be subject to appropriate disciplinary procedures for misusing their power and position. These measures will strengthen the work and reputation of the police in general.
- 5.3.3 Partner with civil society organisations, such as FIDA Kenya, to address violence perpetrated against sex workers and violations of sex workers' human rights.** Stigma associated with sex work, coupled with sex workers' vulnerability, inhibits them from reporting violations against them by police officers and others. As a result, violations against sex workers are not currently being addressed at any level. According to the findings of this study, it would be accurate to say that presently the law and existing policy framework do not adequately protect the rights of sex workers who are a marginalised group. FIDA Kenya is well placed to partner with others to lobby for change in the society's mindset, and more importantly, among the law enforcers.

5.4 To local governments

5.4.1 Repeal the existing by-laws that undermine protection and respect for human rights of sex workers and other marginalised groups. The study found that by-laws relating to outlawing “loitering for the purpose of prostitution,” “importuning” for the purpose of prostitution and “indecent exposure” are fraught with problems, ambiguities and subjectivities that defeat the course of justice for the protection of human rights of sex workers. Furthermore, the police implement these by-laws in ways that augment gender-based discrimination in Kenya.

5.5 To civil society organisations

- 5.5.1 Create awareness about the problems associated with the existing laws and their application.** The current provisions on sex work in the law have made it difficult for the adoption of policies that will facilitate work and projects with sex workers in many sectors, especially the health sector.
- 5.5.2 Support sex worker-led projects for their empowerment and to enable them to both prevent and protect themselves from violence and other human rights abuses.** FIDA Kenya and other women’s rights organisations should support sex worker leadership and empowerment. The formation of organisations like the Bar Hostess Empowerment and Support Programme (BHESP) and Likii should be encouraged and supported.
- 5.5.3 Work with the local authorities and the police on the protection of sex workers from violence from the public, or officers in these sectors.** FIDA Kenya is committed to initiating this work.
- 5.5.4 Develop and implement programmes to protect children of sex workers from prejudices and violence based on their parents’ occupations.** Some organisations such as SOLWODI and SOLGIDI are already focusing on children in this category and should be encouraged and supported.

- 5.5.5 Invest more time and resources in educating about and advocating for the protection of the rights of the marginalised women engaged in the trade.** These should include the provision of legal aid, including the undertaking of public interest litigation to challenge the violations of rights of sex workers.
- 5.5.6 Include sex workers in NGO, CSO and CBO decision-making processes and projects.** A good beginning would be to conduct empowerment workshops for CBOs to encourage these organisations to include sex workers and also ensure the protection of their rights in the activities of other sectors such as the public health sector. Such efforts at stakeholders' engagement is currently being undertaken by KASH in Kisumu.
- 5.5.7 Encourage mainstream human and women rights organisations such as the Kenya National Commission on Human Rights (KNCHR) Kenya Human Rights Commission (KHRC) and FIDA Kenya to take on the agenda of sex workers and advocate for awareness on and protection of their rights.**
- 5.5.8 Initiate a study and discussion on the need to re-define sex work in Kenya with a focus on protecting the human rights of sex workers.** The study should include a comparative analysis of provisions and definitions in other jurisdictions particularly those with environments similar to Kenya. Women's rights organisations like FIDA Kenya should be encouraged to take the lead role in subjecting the existing law to a human rights audit in order to safeguard the human rights of sex workers as Kenyan citizens.

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Appendix

Selected organisations working with sex workers in Kenya.

Kisumu AIDS Self Help Group (KASH)

The study interviewed the Programme officer in KASH which is the only organisation in Kisumu whose core function is to work with Sex workers. The organisation focuses on a range of issues from health education, working with reproductive health organisations to facilitating access to health services and to condoms and participation in AIDS awareness campaign activities like sports. One of their successful programs is the holding of joint workshops for the police and sex workers. The program has been successful in reducing the levels of abuse of sex workers in Kisumu by police officers.

Pambazuko Project

Pambazuko was engineered by the Institute of Tropical Medicine in 1997, who came up with a proposal to start a programme that would design interventions for working with sex workers in Kisumu. The study interviewed the manager of the Medical Center of FHOK. The officer in charge informed us that they deal with individual sex workers and other CSOs. They also train peer educators with whom they hold monthly meetings. FHOK pays them Kshs. 1500 (USD 23) every month for motivation. It is estimated that approximately 2000 women are directly or indirectly involved in sex work in Kisumu. The project symbolises a new start to a healthy life for women and targets all female sex workers in Kisumu and surrounding areas. Pambazuko collaborates with other organisations that provide other complementary services. For instance they

have been collaborating with FIDA Kenya on legal and human rights issues affecting the sex workers.

Women in Fishing Industry Program (WIFIP)

The WIFIP targets women working in the fish industry and vulnerable women who trade in fish. They do not work with sex workers primarily.

Likii HIV/AIDS Home Based Care

Likii HIV/AIDS Home Based Care is a Community Based Organisation based in Nanyuki. Its main objective is to bring together vulnerable women and men in the context of HIV/AIDS, to support the sick to access free healthcare, and to work with the government to care for orphans. The home based care program focuses on counseling and also provides condoms for safe sex; it also provides home based care for the sick, burial services to deceased members that are abandoned by their families, transport services to hospitals and also looks for bursaries for children in secondary schools. Most of the members are sex workers. Likii collaborates with the local hospital, the provincial administration and local government.

International Center for Reproductive Health (ICRH)

Based in Mombasa, ICRH focuses on the promotion of reproductive health as a basic human right for all men and women. One of its programs is the female sex workers program that covers seven priority sites. The research deals with sex workers because they are at high risk of HIV infection given the nature of their work. ICRH is the only Organisation we found working with men sex workers, most of whom are married.

Solidarity with Women in Distress (SOLWODI)

SOLWODI provides support to sex workers and girls at risk of joining the trade in the Kenyan Coastal districts. Their objective is to facilitate and provide guidance and counseling to the target group, to initiate, co-ordinate and facilitate networking geared towards utilizing available resources in other organisations and institutions in order to assist the target group, to facilitate and enhance the process of assisting the target group towards seeking alternative means of economic social reliance, and lobbying and advocating for the development policies which are gender sensitive.

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