



Global Network of Sex Work Projects
Promoting Health and Human Rights

**How Sex Work Laws are Implemented on the Ground and Their
Impact on Sex Workers**

Kenya Case Study

Participants Demographics

Consultations with diverse sex workers were convened within the Nairobi County area with 25 community members taking part during a focus group discussion at a sex work support centre a few kilometres from the central business area. At the focus group discussion there were 15 female sex workers, 5 male sex workers and 5 trans sex workers. Five of the sex workers participating in the focus group used drugs and 7 were living with HIV. Among the 15 female sex workers 4 were migrant sex workers, originally from Tanzania, Uganda, Rwanda, and Somalia. The working location of the sex workers included brothel based, home based, venue based, and street based respectively. The age range of the sex workers involved in the focus groups was as follows: 19 were between the ages of 20 – 30, 5 were between the ages of 31- 40, and 1 was over 40. Individual interviews were also conducted with 3 sex worker outreach workers, an advocacy officer and a paralegal. In addition, an interview with a trusted legal representative and a female law enforcer attached to the Central police station were conducted.

The legal framework on sex work in Kenya

The legal framework governing sex work in Kenya is a combination of the criminal law that was inherited from the British colonial government, recent legislation (such as the Sexual Offences Act 2006) passed to address emergent crimes such as trafficking and local urban and municipal councils' by-laws. The Kenyan Penal Code and the Sexual Offences Act 2006 do not criminalise sex work per se. These codes criminalise the actions of third parties associated with sex work, for example, through offences of living on the earnings of prostitution, promoting the act of prostitution or willingly and knowingly offering the use of premises for sex work. The Penal Code does, however, contain an offence of "soliciting or importuning for immoral purposes" which can be used to criminalise sex workers. 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."

Sex workers' experience

Many sex workers are subjected to sexual abuse and extortion at the hands of police officers and county government law enforcement officials ("makanjoo" in Kiswahili slang). Among the 25 focus group participants and the 3 interviewees who are actively engaged in sex work, 19 reported cases in which police officers or makanjoo threatened to arrest them if they refused sex.

Most participants have developed different strategies to circumvent legal persecution and harassment by police such as only working within a venue that has both a club / bar and lodging / restaurant with accommodation where police cannot enter to harass or arrest sex workers. The focus group discussion brought about the fact that the state continues to discriminate against migrant sex workers through frequent arrests, denial of access to basic rights and amenities, and through all kinds of other exclusion mechanisms that hamper the migrant sex workers as rightful or temporary citizens in Kenyan society.

One of the female sex workers said during an individual interview:

"I've been arrested four or five times in a month on Latema road in the central business district near the municipal toilet, just for walking down the street, the police know me. As well as he arrests me, he beats me and tells me that no one can help me as I am a prostitute and it's "illegal in Kenya", dragging me on the tarmac road."

Participants all narrated different stories about random arrests of sex workers who were kept in police lock-up overnight only to be released without charges the following morning. Most times, however, male and trans sex workers had to pay hefty bribes in order to be released or to avoid being taken to court on trumped up charges. Some participants claimed that they were raped by police as a form of bribe to ensure their release but were unable to share further details due to the sensitivity of the experiences. A fine of 500Kshs-1000Kshs or 1 month remand in prison is the normal punishment at the municipal court when sex workers are charged under county by-laws for petty offences like loitering.

Three of the migrant sex workers spoke about how three police officers arrested them at gunpoint in their home and locked them up without charge. After they were released two days later, they allege another group of police officers tried to arrest them with claims that they had no legal identifying documents. Fortunately, the paralegal intervened and the sex workers were released without being charged.

In Kenya, no rights exist for sex workers. The laws that criminalise the sex industry drive sex workers away from legal redress and deprives them of safe working conditions.

The LGBT sex worker participants also spoke about the negative impact that other laws related to gender identity and sexual orientation have on them. Sexual acts between people of the same sex are illegal in Kenya (sections 162, 163 and 165 of the Penal Code). Violence towards transgender persons is fuelled by hate and exacerbated by sections 162(a) & (c) and 165 of the Penal Code of Kenya, which creates a misguided perception that gender minorities are criminalised. There is also no legal gender recognition for trans people.

The police continue to arrest LGBTI persons, particularly those involved in sex work although exact figures are not available due to fear of exposure among those arrested. Arrests usually occurred under public and county order laws rather than laws against same sex activity, with release shortly after. There have been reports of assaults by the police (including sexual), harassment, intimidation, and physical abuse in custody, along with reports of blackmail and extortion from organised gangs, believed to be working with the police, and police themselves.

For example, during the recent international sex workers day a friendly sex workers' football tournament was organised and a trans sex worker was attacked by an organised gang who stole her phone and handbag while trying to forcibly undress her with claims that she is a man. The organised group were heard shouting that they must kill them all but in solidarity female sex workers at the ground who were many intervened to rescue the trans woman and the police were called to assist. Instead, the police arrested the trans woman pretending to rescue them from the scene.

Sex workers do not feel able to report crimes they experience to the police as the police do not take it seriously and the sex workers risk being arrested themselves. One of the female sex workers we spoke to explained:

"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."

This also has an impact on sex worker health. When clients pressure sex workers to engage in practices that affect their health (such as having sex without condoms) they do this from a place of power knowing that no sex worker will report violence or harassment against them and there is no legal consequence for the clients.

Views of stakeholders

Many of the law enforcement officers in Kenya interpret the sex work laws according to their own individual understanding and use the laws as a way of expressing their power. For example, it is not unusual for them to arrest someone just for walking down the streets and to take them to court for loitering, which they often cannot prove. This violates Articles 33, 36 and 37 of the Constitution of Kenya, which protect the rights to freedom of expression, association and assembly, demonstration, picketing and petition. When COVID-19 hit, the police violated the rights of brothel-based sex workers by breaking into their premises to arrest them on charges of not distancing, not wearing a mask and other unreasonable issues. The lawyer also pointed out that wearing a short skirt or dress and being in possession of a condom is enough for the police to arrest you. An assumption that there has been an increase in STI infections in a particular county is seen by the police as enough evidence that the sex workers are responsible for the spread. This then leads to the arrest of sex workers and mandatory medical examinations to screen for STI infections, which is against the Constitution but implemented under the guise of public health protection. Article 27(1) of the Kenyan Constitution provides for the rights to equality, freedom from discrimination and that every person is equal before the law and has the right to equal protection and benefit of the law. Sex workers, however, do not have these rights realised due to the way they are treated by the authorities. The legal framework and the way the laws are enforced harms the social, economic, and political welfare of sex workers and largely contributes to mental health difficulties, which can lead to trauma and suicide among sex workers.

During an individual interview with an officer of the law in Nairobi, she said that it was important to acknowledge the violations perpetrated by some on the police force and to take steps to address the problem by reporting to higher authorities like the Independent Policing Oversight Authority (IPOA). Police play an ambiguous role. In some cases, they have protected sex worker communities from mob violence, but they have not brought the perpetrators of violence to justice. In other cases, they have outright failed in their responsibility to protect: refusing assistance to victims / survivors because of their presumed gender identity or sexual orientation; conducting arbitrary arrests; or even perpetrating violence themselves.

Conclusion

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. The fact that the 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. One of the best ways to end the abuse and human rights violations outlined in this consultation is to empower sex workers. 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 sex workers, including the migrant women engaged in sex work.

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