

SUBMISSION FOR THE LIST OF ISSUES FOR KENYA BY THE KENYAN NETWORK OF SEX WORKERS – 68th Pre-Sessional Working Group

I. Introduction

The Kenyan Network of Sex Workers (hereinafter referred to as ‘KNSW’) is a group of various organizations headed by sex workers including organizations such as the Key Affected Populations Health and Legal Rights Alliance (KESWA)ⁱ, Bar Hostess Empowerment & Support Programme (BHESP)ⁱⁱ and Survivors Self-Help Group (SSG)ⁱⁱⁱ.

While both the National Aids Control Council and National AIDS and STI Control Program estimate the number of sex workers in Kenya to be 133,675, KNSW estimates the number at 400,000^{iv}.

The following submission focuses on 5 priority issues with specific questions KNSW would request the Committee to ask the Government. These priority issues focus on the everyday violations that sex workers face during the course of their business and otherwise. These issues have been shortlisted after a participatory process with the KNSW. Two meetings were conducted by the Network in November and December 2016 to discuss the issues highlighted herein. The Network will embark on a comprehensive shadow report to the Committee’s 68th Session.

Section II of the document highlights specific sections of the Kenya’s 8th State Party Report which are also applicable to sex workers. Section III of the document is the issues with specific questions for the Kenyan Government.

II. Provisions impacting sex workers in the State Party Report

Article 1: Definition of Discrimination

7. Legislation: Kenya’s Constitution 2010 has a strong focus on equality, a much improved right to non-discrimination, and special provisions on the protection of rights for particular groups vulnerable to discrimination.

10. Non-discrimination in governance: The Government of Kenya has entrenched non-discriminatory governance architecture in law and practice. In respect to Article 10(2)(b) of the Constitution of Kenya states that national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized and in land and property in Kenya.

Article 2: Measures for elimination of discrimination against women

22. Amendment to Sexual offences Act (2006):⁵ The Government repealed Section 38 of the Sexual Offences Act under which women face the risk of being victimized for initiating prosecutions against their abusers as of June 2012. Victims of sexual offences whom majority happen to be women are now able to report cases of sexual violence without fear of criminal sanctions. In addition, Regulations required for the implementation of the Sexual Offences Act have been passed.

23. *Victim protection Act 2013: gives effect to Article 50(9) of the constitution requiring that parliaments enacts legislation providing for the protection, rights and welfare of victims of offences.*

24. *In addition, the Act establishes a Victim Protection Board which plays an important role in policy development and Victim Trust Fund to cater for expenses arising out of assistance to victims of crime.*

Article 4: Adoption of temporary special measures to accelerate de facto equality between men and women

53. *The Beyond Zero Campaign: is an initiative of the First Lady in HIV control and promotion of maternal, newborn and child health in Kenya that was unveiled on World AIDS Day 2013. The framework aims to galvanize high-level leadership in ending new HIV infections among children and reducing HIV related deaths among women and children in Kenya. The strategic framework focuses on five key areas.*

- *The initiative has so far attracted development partners and private sector organizations who pledged funds to purchase mobile clinics that will provide integrated HIV, maternal and child health outreach services in the country. The Government has invested in 2014 an estimate of US\$ 400 million towards initiatives to reduce HIV transmission and maternal and child mortality, to increase the number of skilled health-care providers and to equip the existing facilities with relevant supplies.*

Article 6: Action to suppress all forms of trafficking in women and exploitation of prostitution of women

89. *Legislation: Enactment of Counter-Trafficking in Persons Act 2010. The constitution of Kenya also guarantees fundamental rights and freedoms for all, men and women alike as provided for in Article 27(3) and Article 53(d).*

Article 12: Measures to eliminate discrimination of women in the field of health

155. *The Kenya Health Policy 2012-2030 aims at attaining the highest standard of health in a manner responsive to population needs through supporting the provision of equitable, affordable and quality health care at the highest attainable standard to all Kenyans. Despite the advances made by Kenya in overcoming some development challenges, maternal and child health in Kenya remains a challenge. Statistics indicate that 43.8 per cent of births in Kenya were attended by skilled personnel in 2011.*

156. *According to the KDHS 2009 the contraceptive prevalence rate is 46 per cent against the MDG target of 56 per cent in 2015. The unmet need for family planning exists in roughly a quarter of all married women. HIV/AIDS still poses one of the greatest challenges in Kenya. HIV prevalence is largely highest among women at 8 per cent as compared to that of men at 4.3 per cent. Other key affected groups include sex workers, injecting drug users and MSM.*

164. *Various efforts have been put in place by the Government in the fight against HIV. Kenya has adopted multisectoral strategies to respond to HIV, particularly Kenya National HIV and AIDS*

Strategic Plan (KNASP) I; KNASP II; and currently KNASP III. The KNASP III contains a National Action Plan for the prevention and treatment of HIV

Article 15: Equality of men and women before the law

185. Women's experience in access to legal services has been largely documented in Kenya. Women in particular face a number of obstacles including:

- The physical location of courts and lawyers is beyond the reach of most Kenyans who are situated in rural areas;*
- Court and legal fees; most women (especially widows facing legal disputes about inheritance and property) cannot afford this;*
- Although there are legal aid services, these have only reached some of those who require assistance; most of the legal aid programmes are situated in urban areas and are therefore not accessible to many people in rural areas;*
- For those that have obtained legal aid, the length of the legal process can act as a deterrent. Claims can run for up to 6 years or more, which can lead poorer litigants to give up because justice is so delayed as to not be of any use;*
- Although the Constitution and the Protocol provide for access to justice for women in Kenya, the power of customary law and practices cannot be underestimated. Custom and practice may vary from community to community and even family to family. There is therefore invisible power within communities, which will often dictate a woman's standing and how her rights will be determined, which may not accord with the formal written.*

186. Legislation: Access to justice features in a number of Kenyan legislative provisions and is particularly prevalent throughout the Constitution, most notably, Article 22(1) and Article 48.

187. In addition to the various constitutional provisions, the Judicial Service Act aims to ensure that the Judicial Service Commission and the judiciary, to "facilitates access to justice to all Kenyans, be guided in their internal affairs, and in the discharge of their mandates by considerations of social and gender equity and the need to remove any historical factors of discrimination".

III. Suggestions on the List of Issues for the Kenyan Government

1. DISTINGUISHING VOLUNTARY ADULT SEX WORK AND HUMAN TRAFFICKING

It is important for the Government to separate trafficking from voluntary sex work. The conflation of trafficking and voluntary adult sex work has led to further violations of the rights of sex workers. It has been emphasized that the conflation of sex work and trafficking also severely undermines the human rights of sex workers while failing to secure rights of people who are trafficked; by misdirecting resources into policing sex work, rather than identifying people who are coerced and providing them appropriate support. It exacerbates the lack of

legal remedies to redress violence and erodes the efforts of sex workers fighting for legal and social recognition of their rights to dignity and livelihood.

KNSW recognizes that trafficking is illegal and one should not be forced into sex work. Equally, KNSW also recognizes that there is a need to have in place mechanisms for the rescue and rehabilitation of those who have been forced into sex work. KNSW's recognition of trafficking and the need to separate voluntary sex work from trafficking is further instated by the fact that they have signed on to the Global Network of Sex Workers Project (NSWP) anti trafficking policy. In fact KNSW takes advantage of various spaces to ensure this information reaches as many of its members to ensure that they make all the effort to oppose all forms of trafficking on women and minors into sex work.

It however needs to be recognised that forceful rescue and rehabilitation of sex workers is a violation of their fundamental rights as provided by the Kenyan Constitution. The rights and entitlements of consenting adults who enter into sex work should be recognised and not confused with the rights and needs of people who are forced into sex work and/ or are underage. An example of the disastrous consequences of conflating voluntary adult sex work and trafficking is the 'Rudisha Mama Nyumbani' Programme in Kiambu County. The County government has partnered with the New Hope Church of Kenya to '*rehabilitate*' sex workers. Though the intention of the programme is to economically empower sex workers and get them off the streets, it completely disregards the willingness and consent of sex workers to be rehabilitated. The programme promises seed funds to sex workers only if they are willing to abandon sex work. However, the implementers are forcefully taking sex workers off the streets and leaving them with no other option but to take the seed fund. Further, the government, by partnering with the church is in fact acting unconstitutionally. During the launch of the programme 4 ward representatives (MCAs), the Deputy County Commissioners, the Area Chief, Sub County Health Management Team, the County Minister of Health (representing the Governor) Youth and Gender Ministers of the County, the women representative as well as the area Member of Parliament were all present. Kenya is a secular country and no religious programme should be endorsed by the government of any county.

KNSW reiterates that the various sex worker collectives which are part of the Network have models and expertise in addressing trafficking for sex work. The Government should work with sex workers in their endeavour to eliminate trafficking of people for sex.

Question to the Government

- 1.1 What steps has the Government taken to engage and consult with sex workers networks when implementing programmes and policies on trafficking?
- 1.2 What measures has the Government taken to ensure voluntaries of rehabilitation of sex workers?
- 1.3 What measures has the Government taken to ensure that the various religious institutions, under the garb of rehabilitation programmes, do not encroach upon a sex workers fundamental right and human dignity?

2. DECRIMINALISATION OF SEX WORK & ACCESS TO JUSTICE

It needs to be recognized that sex workers rights are human rights. Criminalisation of sex work in any form including criminalizing those who profit from the earnings of sex workers puts sex workers at risk of sexual and physical violence. Sex workers in Kenya face violence and human rights violations from the police because of the indirect criminalisation. This includes threats, extortion, forceful detention, arrests and physical and sexual violence. In 2010, two sex workers, Mary and Tabitha, were arrested as they were leaving a night club. They had been stopped by the local police at Luthuli Avenue, Nairobi, Kenya. The police stopped them on the street at 4:00 am and demanded a bribe to release them. On them refusing the bribe, they were arrested and taken to jail where they were again asked for a bribe to be released. On them refusing, they were charged with loitering for the purpose of prostitution. They were later released by the court as the police was unable to provide any evidence (City Council of Nairobi Versus Tabitha Muthoni Chege and Peris Njeri Criminal case 9742 of 2012).

Criminalisation of sex work restricts the rights of a sex worker to access the formal justice system. Sex workers don't have access to lawyers which further hinders their right to justice. The Independent Policing Oversight Authority¹ (hereinafter referred to as 'Oversight Authority'), which was formed to provide for civilian oversight over the work of the police in Kenya, have failed to take action on complaints of violations made by sex workers.

Currently the Oversight Authority has two cases of violations of sex worker pending before it on which they have yet to taken any act. In one of the cases Alice, a sex worker, was leaving the lodging with a client on 2nd September 2014 when she was shot by the police, whom people say was aiming at her client. All attempts to register the murder at the local police station were futile. The Network approached the Oversight Authority, who at that point promised to take action but have since failed to register a complaint. The Network went to the extent of submitted the bloodied clothes of the victim for their investigation, however the Oversight Authority asked the members of the Network to return and did not take the clothes. On 8th September 2014 BHESP sent an email to the Kenyan National Human Rights Commission for follow-up but no avail.

Question for the Government

- 2.1 What measures are being taken by the Kenyan Government to ensure that complaints by sex workers against harassment by authorities are registered?
- 2.2 What measures have been put in place by the Kenyan Government to ensure that sex workers have a holistic access to justice including fair and speedy trial?
- 2.3 What accountability mechanisms are in present in situations of constitutional violations in access to justice by the State?

¹ <http://www.ipoa.go.ke/>

3. ADDRESSING ALL FORMS OF VIOLENCE AGAINST SEX WORKERS

The criminalization of sex work has led to violence and violations being perpetuated on sex workers by various State and non-State actors, this includes pimps, brothel owners, police, partners of sex workers and the wider community who extort money and physically and sexually abuse sex workers. Landlords and house owners in Kenya either refuse to let out their residence to sex workers or would illegally evict them. Children of sex workers face discrimination and abuse in school by both teachers and students. This violates the rights of children to education. There is no effective government mechanism in place to prevent or address violence inflicted on sex workers.

In a case in February 2010 in Thika, Kiambu County, four sex workers were killed under suspicious circumstances in different guest houses in a span of 2 days. However, members of BHESP confirmed that the numbers of killings were much higher and that there was a systematic cover-up. Eighteen women from BHESP went to the Thika police station on 8th Feb. 2010 to seek for assistance over the issue. However they were all arrested and charged for 'spreading rumours'. On denying the charges, they were forced to appear before the Court and pay a bond to be released. In fact, emissaries were sent to the prison to advise the women to plead guilty when they appear in court as a way of making it easy for the prosecution to continue trampling on the rights of sex workers. The police seemed to be more concerned with silencing the women than finding the perpetrator. Eventually one Philip Onyantha was arrested and charged with the murders, he admitted and said that he had murdered 17 people mostly sex workers and had more to go to reach his target of 100. He claimed sex workers were the easiest to kill because they were available.

It is also important to note that KESWA has noted that in the last one year there have been 14-20 murders of sex workers. Though complaints were registered, no arrests were made and no investigations into the murders have been conducted.

It further becomes more difficult for sex workers if the violators are State actors such as the police. Official procedure requires that for any offence to be investigated or for arrests to be made, it must be reported. However, because of the criminalised nature of sex work, offences relating to sex work are never reported. Periodically officers enter buildings and arrest women found in circumstances that suggest their engagement in sex work.

Question to the government

- 3.1 Does the government have any policy on a comprehensive structural response to eliminate violence against sex workers?
- 3.2 Has the government taken any action to ensure children of sex workers are not discriminated against in school?

4. LACK OF COMPREHENSIVE HIV/AIDS PROGRAMMES AND CRIMINALISING HIV/AIDS TRANSMISSION

Sex workers are at highest risk of HIV/STIs. Criminalisation of sex work and criminalizing persons who are HIV+ or have STI puts sex workers at a far greater risk to HIV/AIDS and violence. In 2015 in the Kisii county of Kenya, 65 sex workers were arrested and accused of 'spreading' HIV/AIDS and other sexually transmitted infections. They were forced to undertake testing for STIs and 26 of them, who tested positive, were locked up with no medical intervention. Contrary to law and in complete violation of their human rights, they were kept on prison for 3 days before they were produced before a judge. The girls were charged under the Public Health Act for exposing the public to infection without taking proper precaution.

Failure by the government to recognize sex workers and register their organizations for purposes of receiving funding and implementing HIV/AIDS prevention and support programs has meant that such programs are carried out by people/organizations that don't belong to the community. This results in little to no benefit to the health and rights of sex workers. Government HIV/AIDS programmes need to be led by sex workers. Further there is no comprehensive approach to addressing HIV/AIDS and there is a lack of participatory programmes in addressing the needs of sex workers.

Questions to the government

- 4.1 What measures has the government taken to amend the Public Health Act on decriminalizing people who are HIV+?
- 4.2 What provisions are in place for sex workers to access services under the KNASP III which contains a National Action Plan for the prevention and treatment of HIV?

5. STIGMA IN HEALTHCARE

Sex workers have an equal recognition of their right to the highest attainable standard of health that is being recognised in the Constitution and in CEDAW. Yet, sex workers routinely face discrimination and stigma by health care professionals in both government and private hospitals. Their access to comprehensive health services, including sexual and reproductive health services are often obstructed and denied. The clinics run by NGOs lack medication for sexually transmitted infections.

Questions to the government

- 5.1 What policies does the Government have in place to ensure that irrespective of profession, all persons, including sex workers are ensured equal access to comprehensive and quality health care?
- 5.2 What accountability mechanisms are in place in cases where sex workers face discrimination and stigma and are not able to access comprehensive and quality health care services?

ⁱKESWA has 65 member organizations including independent sex worker led organizations and other informal groups of sex workers drawn from across 39 counties in Kenya. Up to 70% of KESWA members are female sex worker led while around 25% are male sex worker led, and the rest are trans sex worker led. Some KESWA member organizations provide services, some are engaging in advocacy work, and some are engaged in community mobilization all in effort to address human rights issues that have an impact on sex workers access to quality healthcare services and their well being.

ⁱⁱBar Hostess Empowerment & Support Programme (BHESP) is an organization for female sex workers and bar hostesses in Kenya founded in 1998. The organization is currently operating in Nairobi, Central, Eastern, Western and north Rift regions of Kenya with a membership of 32,788. BHESP is sex worker led with more than 70% of staff and board consisting of sex workers. BHESP vision is that of a society where bar hostesses and sex workers are treated with dignity and respect and their rights upheld

ⁱⁱⁱSurvivors Self-help group (SSG), based in Busia, and is a community based organization and a local organization serving female sex workers. The organization was formed in the year 1999 and registered in 2000 under the Ministry of Gender, Children and Social department. The organization was formed by members to respond to HIV and AIDS as well as Gender based violence and human rights abuse among sex workers in Busia. SSG has a membership of 3067 members and has reached out to 5199 sex workers in the last 10 years

^{iv}Kenya has over 50,000 bars and brothels, each hosting an average of 4 sex workers, add to this the street and home based sex workers, a realistic estimation would be around 400,000 female sex workers in Kenya.