**CEDAW General Recommendation on Trafficking in Women and Girls in the Context of Global Migration**

**Introduction and background**

KESWA is the umbrella body of the sex worker led groups and organisations in Kenya comprised of 75 members across the 47 counties in Kenya. We exist to strengthen the voices of sex workers and to empower their health and human rights

We are a diverse network thus we work with male, female, transgender sex workers, sex workers using drugs and sex workers living positively.

The Kenya Sex Workers Alliance is committed to examining the strengths and weaknesses of international human rights and domestic legal frameworks as they apply to sex work. The aim is to evaluate the impact of various international and domestic laws and policies on the human rights of female, male and transgender sex workers and their communities. Our vision is to see a Kenyan society that recognises sex work as work and promotes equal protection of human rights which are the foundational principles of a democratic society.

Sex workers’ human rights are universally abused. In some cases, this means exposure to violence and barriers to accessing services, resources and justice. In other cases, they encounter arbitrary detention, criminal law and lack of access to clean and safe places to live and work in.

Criminalisation of sex work has led to increased violations against sex workers, our community. We have often been harassed persecuted all in the name of being a criminalised population. We recently conducted a research aimed at identifying the causes of rights violation amongst sex workers and possible remedies to this.[[1]](#footnote-1)

We raise this, in the context of the General Recommendation on trafficking and migration, as the rights of young people who are sexually exploited and of people who are trafficked in the sex industry are equally violated by the same laws and practices that violate the rights of sex workers.

As a signatory to many treaties, our country is obligated to protect and promote health, safety and security of sex workers. This has often sounded like a myth amongst my community. Access to health facilities and other social services like health insurance were among the things we realised have long been ignored as a need for sex workers.[[2]](#footnote-2) Take for instance post abortion care, recently, the government forced the **Marie Stopes** facility to discontinue all abortion related services and refer the patients to governmental clinics where you shall provide proof of consent from a spouse. As sex workers, we are quite uncomfortable when it comes to revealing partners this hinders access to health care as a basic right.

The safety and security of sex workers has often been viewed as a duty upon us as sex workers to ensure that we are not arrested, we are not harassed by our clients and we protect our families. The police and duty bearers to the state have been the enablers of this bad cycle of injustices. More often than not, they have been the perpetrators.[[3]](#footnote-3) Police men and county *‘askaris’* have forced us to have sex with them and experience less harsh conditions.[[4]](#footnote-4) This can be attributed to implementation of outdated laws in the country and little or no awareness of these laws.

We recently conducted research with adolescents who sell sex--those who are under 18.[[5]](#footnote-5) 33% had been detained or arrested for selling sex. 78% reported paying bribes, and 8% reported having sex with police in an effort to evade arrest.[[6]](#footnote-6) While adolescents who sell sex in Kenya experience violence from a variety of sources, their main concern, like that of adult workers, is police.

*“I fear the police most because they may arrest you and say they are taking you to the cells but later will force you to have sex without any protection and anywhere. County officers are the worst because they can use you anywhere even in their Lorries in front of others.”*

-Focus Group Discussion, Mombasa

*“A friend of mine was arrested was told she was being taken to Mbariki Police Station, she was however taken to the cemetery and asked for sexual favour by the police, she refused since it was in a cemetery. The police gave her a thorough beating. The following day, she filed a case was given a P3 form which she filled, and it became hard to arrest the police who kept on threatening her until she withdrew the case.”*

-Mature Minor Mombasa County FGD

Most adolescents who sell sex (88%), like consensual adult sex workers, do not believe law enforcement act to protect their safety and security[[7]](#footnote-7). Others do not report for fear of arrests. When adolescents who sell sex report to police, no action is taken, or when action is taken, perpetrators are held for a short time and released.

*“We know that cases of violence are supposed to be reported to the police but we have no faith in the police. The police are the ones who arrest us and harass us so if you go to report that a client hasn’t paid you or has beaten you up, the officers may arrest you instead. Police themselves want us and want to have sex with us so if they see you there reporting a case and they know you are young and what you do, you become a target for them as they can easily identify you in the field.”*

-Focus Group Discussion, Nairobi

Kenya has been part of very many treaty ratifications but has not ratified the convention on rights of migrant workers. This has made the migrant and refugee sex workers in the country to continue suffering and persecution. First it is the question of their legality and the nature of the job. It has made it extremely difficult for us to even defend our fellow sex workers after they have been arrested and are to be deported. Sex workers[[8]](#footnote-8) and sexually exploited youth[[9]](#footnote-9) are rarely provided with legal representation, and the situation is even worse for migrants. We just end up ‘*giving tea’* as bribes are referred to in the country.

The laws against trafficking are used to criminalise all sex work and our community. These laws are used to criminalise victims of trafficking, and those who seek to assist victims of trafficking. These laws are not effective against traffickers, nor do they protect the real victims of trafficking. These laws continue to empower traffickers. The perpetrators have been going Scott free for many years and enjoying money that they have made but they are the real criminals. It is time we talked about this at a global level. Women are not only trafficked to be sexually exploited. They do other things including working in plantations and textile production. Most adolescents who sell sex (91.9%) started on their own, and did so to meet economic needs: to support themselves and their families[[10]](#footnote-10). Contrary to popular belief, many are not under the control of a third party. When they are arrested, they do not disclose their age, because they would prefer a short sentence than a long time in juvenile detention with forced rehabilitation. Criminal frameworks and rescue raids do not address their economic needs, and rather than help, harm them. It is important to understand the story behind what you see or hear other than what is considered norm.

**Sex workers’ response to trafficking.**

In Kenya, sex workers over the age of eighteen have been taking the lead to ensure that our fellow sex worker as are not trafficked out of the country and those from other countries are working at their own free will and have not been forcefully brought to the country. During our research study, our protocol had to include a study on underage sex workers. We found that the young sex workers were most afraid of the adult sex workers who have often chased them from the streets and force them into going back to school.

Unfortunately, policy proposals responding to the problem of human trafficking often merge coerced trafficking victims with people who consensually exchange sexual services for money or goods — with harmful results for both trafficking victims and sex workers. “Cracking down” on sex work only drives it further underground while making it harder for trafficking victims to get help.[[11]](#footnote-11)

It is imperative that the General Recommendation support a rights-based response to trafficking. We urge the Committee to, within the General Recommendation:

* Recommend decriminalization of sex work and all related activities as necessary measure to guarantee sex workers’ right to work in our chosen occupation, to safe labour practices, and a safer working environment with less or no violence.
* Recommend that the government establish policies for state organs and state officials to deal with discrimination against sex workers by state-actors, in particular law enforcement officers.
* Recommend governments ensure people who sell sex (sex workers and victims of trafficking) have equal access to government services, including police protection.
* Prioritize access to justice to all victims of trafficking
* Support clear distinction in law and by fact between sex work, trafficking and exploitation.
* Support ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
* Recognize that adolescents frequently sell sex for economic reasons, not due to force, fraud or coercion, and urge governments to adopt prevention strategies that address economic root causes and foster peer support.

1. KESWA, 2018 “SILENCED BY LAW - THE IMPACT OFTHE LEGAL ENVIRONMENT ON HEALTH, SAFETY AND PROTECTION IN RELATION TO SEX WORK RELATED VIOLENCE IN KENYA,” available at <https://keswa-kenya.org/wp-content/uploads/2018/04/layout_small-2.pdf> [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)
3. KESWA & GNP+, 2015, "Speaking Out: Personal Testimonies of Rights Violations Experienced by Sex Workers in Kenya," available at: <https://www.nswp.org/resource/speaking-out-personal-testimonies-rights-violations-experienced-sex-workers-kenya> [↑](#footnote-ref-3)
4. SILENCED BY LAW - THE IMPACT OFTHE LEGAL ENVIRONMENT ON HEALTH, SAFETY AND PROTECTION IN RELATION TO SEX WORK RELATED VIOLENCE IN KENYA. 2018, KESWA-Kenya. available at <https://keswa-kenya.org/wp-content/uploads/2018/04/layout_small-2.pdf> [↑](#footnote-ref-4)
5. KESWA, 2018, “Underage and Legally Under Protected: A study on the Impact of Criminalization of Prostitution on Violence Prevention and Response for Sexually Exploited Adolescents who Sell Sex in Kenya”, available at: <https://keswa-kenya.org/wp-content/uploads/2018/05/layout.pdf> [↑](#footnote-ref-5)
6. Ibid, 17-18. [↑](#footnote-ref-6)
7. Ibid, 20. [↑](#footnote-ref-7)
8. BHESP and KESWA, 2017, ““AREN’T WE ALSO WOMEN?” KENYA SEX WORKERS’ SHADOW REPORT SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 68th SESSION,” 12. available at: <https://keswa-kenya.org/wp-content/uploads/2019/02/kenya_sex_workers_cedaw_shadow_report_bhesp_and_keswa_-_2017.pdf> [↑](#footnote-ref-8)
9. *91% of minors who were charged did not receive any legal representation.* KESWA, 2018, “Underage and Legally Under Protected: A study on the Impact of Criminalization of Prostitution on Violence Prevention and Response for Sexually Exploited Adolescents who Sell Sex in Kenya”, 23. [↑](#footnote-ref-9)
10. Ibid, 16. [↑](#footnote-ref-10)
11. [Improving Responses to Human Trafficking and Violence Against Sex workers https://transequality.org/.../improving-responses-to-human-trafficking-and-violence-a...](C:\\Users\\Katherine Koster\\AppData\\Local\\Microsoft\\Windows\\INetCache\\Content.Outlook\\O4PY7ARB\\Improving Responses to Human Trafficking and Violence Against Sex workers https:\\transequality.org\\...\\improving-responses-to-human-trafficking-and-violence-a) [↑](#footnote-ref-11)