

**ASSESSING THE EFFECTS OF SELECTIVE ENFORCEMENT OF
ANTI-PROSTITUTION LAWS IN KENYA: THE CASE OF KASARANI SUB-COUNTY
SEX WORKERS**

BY

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DECLARATION

This project is my original work and has not been presented for a degree in any other university.

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DEDICATION

This research is dedicated to all sex workers in Kenya who work tirelessly to provide for their families.

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I want to thank my supervisors, Dr. Wamae W. Muriuki and Dr. Patrick Nyabul, for all their efforts in guiding me through this research. Most importantly, I appreciate the role played by the staff members at the Bar Hostesses and Empowerment Programme in their endeavour to find justice and a safe working environment for sex workers.

TABLE OF CONTENTS

DECLARATION.....	i
DEDICATION.....	ii
ACKNOWLEDGEMENT.....	iii
LIST OF TABLES.....	vi
LIST OF CHARTS.....	vii
LIST OF ABBREVIATIONS AND ACRONYMS.....	viii
ABSTRACT.....	ix
CHAPTER ONE: GENERAL INTRODUCTION.....	1
1.1 Introduction and Background to the Study.....	1
1.2 Statement of the Problem.....	4
1.3 Research Questions.....	6
1.4 Objectives of the Study.....	6
1.5 Justification of The Study.....	7
1.6 Scope and Limitation of the Study.....	8
CHAPTER TWO: LITERATURE REVIEW.....	9
2.1 Literature Review.....	9
2.1.1 Reasons for Involvement in Sex Work.....	9
2.1.2 Legal Framework on Sex Work in Kenya.....	15
2.1.3 Sex Workers’ Experience with Regard to Petty Offences.....	18
2.2 Theoretical Framework.....	25
CHAPTER THREE: METHODOLOGY.....	29
3.1 Research Design.....	29
3.2 Study Site.....	31

3.3 Sampling and Unit of Analysis	31
3.4 Data Sources	32
CHAPTER FOUR: PRESENTATION OF DATA	35
4.1 Introduction.....	35
4.2 Enforcement of Petty Offences and Violation of Sex Workers Rights	35
4.2.1 Period of Engagement in Sex Work.....	35
4.2.2 Time of engagement in sex work.....	36
4.2.3 Reasons for engagement in sex work.....	37
4.2.4 Violation of human rights	39
4.2.5 Frequency of arrest	40
4.2.6 Offences charged for.....	43
4.3 Effects of Anti-Prostitution Laws on Sex Workers	44
4.3.1 Violation of human dignity.....	45
4.3.2 Unfair treatment.....	46
CHAPTER FIVE: FINDINGS, CONCLUSION AND RECOMMENDATIONS	50
5.1 Conclusion	50
5.2 Recommendations.....	52
REFERENCES.....	54
Annexure 1: Survey Questionnaire, Key Informant and Focus Group Discussion Guides.....	56
1.1 Information about the sex workers	56
1.2 Human rights.....	58
1.3 Key Informant Guide	60
1.4 FGD Guide.....	60

LIST OF TABLES

Table 1: Reasons for engagement in sex work	37
Table 2: Respondents by perpetrators of their human rights	40
Table 3: Frequency of arrest	41
Table 4: Respondents by grouped ages.....	41
Table 5: Respondents by Violation of Human Dignity	45

LIST OF CHARTS

Chart 1: Respondents by Period of Engagement in Sex Work	36
Chart 2: Respondents by monthly income	38
Chart 3: Respondents by levels of education.....	42
Chart 4: Respondents by offences charged for	43
Chart 5: Respondents by Right to Fair Treatment	46
Chart 6: Respondents by Violation of Economic Rights	47
Chart 7: Respondents by Violation of Security of Persons.....	48

LIST OF ABBREVIATIONS AND ACRONYMS

BHESP	Bar Hostess Empowerment & Support Programme
CBD	Central Business District
CBO	Community Based Organisation
KELIN	Kenya Legal and Ethical Issues Network
NCAJ	National Council on the Administration of Justice
OSF	Open Society Foundations
SPSS	Statistical Packages for Social Sciences

ABSTRACT

This research assesses the effect of selective enforcement of anti-prostitution laws on sex workers in Kasarani in Nairobi County. The study distinguishes the term sex work and prostitution in that prostitution implies criminality, which has the effect of denying sex workers access to fundamental human rights such as health and access to justice. On the other hand, sex work is described as sexual services between two consenting adults for commercial gain.

Sex work is criminalized under section 153 and 154 of the Penal Code Chapter 63 of the Laws of Kenya. However, arrests and prosecution for sex work are rarely based on these provisions as it is challenging to prove. Instead, they are based on county by-laws, for example, the Nairobi city by-law which criminalizes prostitution by stating under ‘‘general nuisance’’ section that, ‘‘loitering, importuning or attempting to procure a female /male for prostitution is an offence’’.

Laws are designed to protect citizens and when exercised arbitrarily can infringe on human rights. Therefore, the threefold purpose of this research is: (a) to establish which human rights are violated; (b) to establish the effects of enforcement of the anti-prostitution laws on the human rights of sex workers; and (c) to examine how decriminalization of sex work would ensure the protection of human rights of sex workers. The research investigates the existing laws that criminalize sex work and the role of enforcement officers in the criminal justice process in enforcing anti-prostitution laws.

This research highlights the various instances where human rights of sex workers are violated by different actors in the criminal justice system, including by members of the public. The research

then highlights the various constitutional safeguards available to sex workers and how criminal laws can be reviewed to align with the Constitution.

This research was restricted to Kasarani Sub County, Nairobi because the Bar Hostess Empowerment and Support Program, an organization that advocates for the rights of sex workers, is located here. A small sample size of sex workers was also identified in this area. The research was limited to examining how human rights of sex workers are violated and ways of overcoming the legal challenges surrounding the enforcement of petty offences and anti-prostitution laws.

This research will be useful in providing insights into how policies and practices on dealing with sex workers can be aligned with human rights principles; how enforcement officers should carry out their role and exercise their powers responsibly; and how State prosecutorial powers can be regulated to promote sex workers' right to human dignity as well as other fundamental freedoms and liberties.

This research used both qualitative and quantitative research methods, and data was collected through fieldwork where interviews were conducted among sex workers, and focus group discussions conducted. The research used the feminist theory which was instrumental in highlighting: sex workers as victims of exploitation and non-feminists; sex work as an act of empowerment or reclamation; and sex work as labour without taking a moral or ethical stand.

The research establishes that violations of human rights of sex workers happen despite the right to dignity and access to justice being provided in the Bill of Rights in the Constitution of Kenya. The research further establishes that criminalization of sex work is directly linked to gross and violent abuse of human rights of sex workers. Sex workers suffer extra-judicial abuse in the hands of law enforcement agents.

This research advances the position that there is need for comprehensive legal reforms to protect the human dignity of sex workers and solve the challenges presently associated with prosecuting sex workers with the minor offences of idleness, loitering and indecent exposure in Kenya.

This research recommends decriminalization of petty offences, repeal of the anti-prostitution laws, and legalization of sex work to facilitate its recognition as a legitimate business activity to warrant the State protection of sex workers' fundamental rights, freedoms and liberties, and end the violation of sex workers' right to human dignity.

CHAPTER ONE: GENERAL INTRODUCTION

1.1 Introduction and Background to the Study

The Open Society Foundations (OSF) describes sex work as acts of consensual sexual services or erotic performance between adults in exchange for material gain, whether money or any good.¹ In doing so, the Foundation considers sex work as a form of economic activity. Women engage in sex work for several reasons. OSF has identified financial gain as the main reason for women involvement in sex work as a majority of those involved do it to earn a living. The other reasons for their engagement in sex work include using it for pleasure and expressing sexuality.

Karni Kassil et al. (2010) points out that sex workers are driven into prostitution due to poverty and lack of better employment opportunities.² Ntsika argues that historical violence that is those who suffered physical and sexual abuse during their childhood are being compelled into sex work. He postulates that such violations tend to have a negative psychological impact on the victims, which lower their regard for chasteness.³

In “Prostitution Policy: Legalization, Decriminalization and the Nordic Model”, Ane Mathieson looks at the two dimensions of concerns surrounding female prostitution, namely the practice is exploitative, empowering or the results of a person being deficient in moral character.⁴ This

¹ ‘Understanding Sex Work in an Open Society’ (Open Society Foundations, June 2017) <<https://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society>> accessed on 18th December 2018.

² Karni Kissil & Maureen Davey, ‘The Prostitution Debate in Feminism: Current Trends, Policy and Clinical Issues Facing an Invisible Population,’ (2010) *Journal of Feminist Family Therapy*, 22:1 7.

³ Ntsika Edward Mlamla, *Perceptions of Masters Students on Decriminalisation of Sex Work in South Africa*, Dissertation submitted to the University of Kwanzulu-Natal for the award of Masters of Social Science Degree 2016 at 26.

⁴ Ane Mathieson et al, ‘Prostitution Policy: Legalisation, Decriminalisation and the Nordic Model’ (2015) 14 (2) *Seattle Journal for Social Justice* 368.

position is rooted in patriarchal and religious beliefs in which it is said that the immorality of prostitution is because female sexuality is tempting to the men and leads them astray.⁵ For this reason, in countries where prostitution is outlawed or criminalized, the laws are couched in a discriminatory manner, so that female prostitute are easily found guilty and heavier penalties imposed on them and not buyers of sexual services majority of whom are men.⁶

In Kenya, for instance, the burden of the adverse effects of the enforcement of the anti-prostitution laws is more on female prostitutes than it is on their male counterparts and the buyers of sexual services which is why a majority of people caught in police swoops are women⁷ . In viewing prostitution as empowering to the female prostitutes, on the other hand, the author does not only see it as sex work per se but as a form of income generating activity as well in which sex workers employ their labour to fulfil erotic desires of men in exchange for a material benefit.

The chapter of the Bill of Rights in the Constitution of Kenya safeguards individual freedoms and liberties against unwarranted encroachment by the State.⁸ Articles 47- 51 of the Constitution provide for fair administrative action, access to justice, rights of arrested persons, fair hearing requiring every person to be treated fairly before a court or by any independent and impartial tribunal or body, and the rights of persons in detention.⁹

⁵ Ibid 369.

⁶ Ibid.

⁷ Ibid.

⁸ See the Chapter on the Bill of Rights as set out in the Constitution of Kenya, 2010.

⁹ Ibid.

The country's criminal justice system defines a wide range of petty offences including idleness, begging, loitering, drunkenness, disorderliness, indecent exposure and being a nuisance.¹⁰ In this regard, the Nairobi City County by-laws prohibit loitering for purposes of prostitution, which is why the police arrest sex workers who are found in public places waiting for clients.¹¹

The enforcement of these crimes usually targets sex workers because of their mode of dressing. They are beaten during an arrest, locked up in congested police cells where they are held for an extended period and are sometimes denied the opportunity to access friends, relatives or legal representation.¹²

This research argues that the broad enforcement powers of the police to arrest and charge sex workers with offences such as idling, loitering and indecent exposure exposes sex workers to the arbitrariness of the law enforcers resulting into the violation of their rights to dignity and the right to access justice. This research will, therefore assess the effects of enforcing anti-prostitution laws on sex workers in specifically in Kasarani sub-county.

During the research, sex workers in Kasarani sub-county who were members of Bar Hostess Empowerment & Support Programme (BHESP), an organization that advocates for the sex workers' rights and recognition, recounted their experiences with law enforcement officers and criminal justice systems. They noted that they were not aware of laws that criminalize sex work. They emphasized that the main reason they engaged in sex work was for financial gain. Their first

¹⁰ National Council on the Administration of Justice, 'Criminal Justice System in Kenya: An Audit' [2015] 35.

¹¹ Section 19(m) of the Nairobi General Nuisance By-laws (2007) stipulates that "any person who in any street – loiters or importunes for purposes of prostitution is guilty of an offence."

¹² National Council on the Administration of Justice (n 11) 35.

point of contact with the criminal justice system was during arrests which were mostly done at night, which was the preferred time of meeting with their clients.

The arrests were conducted by city inspectorate officers and sometimes police officers. During arrest, the arresting officers usually don't inform them of the reasons for arrest. The arresting officers usually drive around the town centre with them in county vehicles, confiscate their property for example phones, demand for sex in case the sex workers don't have money to pay and sometimes assault them.

At the police stations, the sex workers are usually charged with committing petty offences such as idling. They usually don't have access to legal representation or family members who they could call to help them raise police bond. The sex workers are generally put in congested detention facilities and sometimes put together with male detainees.

When arraigned in court, they usually plead guilty, and for those who plead not guilty, they are imprisoned for not more than six months. After the six months, reintegration back to the community becomes a challenge due to the stigma associated with sex work. They are branded as prostitutes. In addition, they are not able to continue providing for their families due to the long period that they were away from work.

1.2 Statement of the Problem

Criminalization of sex work is directly linked to gross and violent abuse of human rights of sex workers. Sex work is criminalized under section 153 and 154 of the Penal Code Chapter 63 of the Laws of Kenya. However, arrests and prosecution for sex work are rarely based on these provisions as it is challenging to prove. Instead, they are based on county by-laws, for example. This Nairobi

city by-law criminalize prostitution by stating under ‘‘general nuisance’’ section that, ‘‘loitering, importuning or attempting to procure a female /male for prostitution’’ is an offence.

Consequently, sex workers fear arrest and suffer extra-judicial abuse including illegal detention; they are reluctant to report crimes so are vulnerable to further abuse; have unequal power to negotiate condom use; face discrimination and barriers to accessing services such as health and reproductive services; and they face many prejudices and are subject to fines or arrest when they seek access to justice, social services and health care. As a result of this, sex workers are exposed to many daily oppressive actions, violence and abuse including corruption; coerced sexual favours by police; rape and sexual assault in police custody; gang rape by police and their clients; arbitrary killings; violent assault such as beatings and verbal abuse by police and clients; illegal detention in police officers and clients’ houses; forceful initiation into sex work; being chased away from church; stigma and discrimination at health care centres.

Sex workers in Kenya are driven into prostitution due to poverty and lack of better employment opportunities.¹³ Reports from BHESP indicate that the sex workers supported by the program are economically downtrodden deserving of State protection from human rights abuses as opposed to subjection to violations by the very government agencies legally obligated to protect them.

Sex workers are an easy target for law enforcement officers because of their mode of dressing and operation hours, mostly at night and around major streets in the cities and hotels or bars.¹⁴

¹³ Karni Kissil & Maureen Davey, ‘The Prostitution Debate in Feminism: Current Trends, Policy and Clinical Issues Facing an Invisible Population,’ (2010) *Journal of Feminist Family Therapy*, 22:1 7.

¹⁴ Kibicho, *Sex Tourism in Africa* (n 27) 53.

Violations of human rights of sex workers happen despite the right to dignity and access to justice being provided in the Bill of Rights in the Constitution of Kenya and remarkable steps being initiated to reform the criminal justice sector to align it with principles of human rights. This study seeks to explore the effects the enforcement of the prostitution laws has on sex workers.

1.3 Research Questions

The guiding question for this study was: what are the effects of enforcement of the anti-prostitution laws on women sex workers? To answer this question, the following specific questions were developed:

1. How does the enforcement of the anti-prostitution laws violate human rights of sex workers?
2. What are the effects of these violations on human rights of sex workers?
3. How would the decriminalization of sex work ensure the protection of human rights of sex workers?

1.4 Objectives of the Study

The primary aim of this research was to assess the effects of enforcing anti-prostitution laws on sex workers in Kasarani Sub-county. In this regard, the specific objectives were as follows:

1. To establish which human rights are violated.
2. To establish the effects of enforcement of the anti-prostitution laws on the human rights of sex workers.
3. To examine how decriminalization of sex work would ensure the protection of human rights of sex workers.

1.5 Justification of The Study

Sex workers suffer violations of their right to dignity when harassed, beaten and arrested by law enforcement officers for allegedly committing offences such as idling, loitering and indecent exposure. The situation is compounded by the vagueness of these offences, which law enforcement officers take advantage of to violate the rights of sex workers.

This research will provide insights into how policies and practices on dealing with sex workers can be aligned with human rights principles; how enforcement officers should carry out their role and exercise their powers responsibly; and how State prosecutorial powers can be regulated to promote sex workers' right to human dignity as well as other fundamental freedoms and liberties.

This research will be useful in reforming laws on sex work and petty offences in Kenya and provide recommendations on how to protect the human rights of sex workers. Assessing the effects of enforcement of anti-prostitution laws on women sex workers will influence the development of strategies to protect and uphold the dignity of sex workers.

Overall, this research will benefit the police (the county and the national police), the judiciary, sex workers, human rights non-governmental organizations and other stakeholders concerned with advocating for the rights of sex workers in Kenya. In addition, considering the majority of neighbouring countries are also experiencing the same problems as Kenya, it is hoped that vital lessons can be learnt in this regard.

1.6 Scope and Limitation of the Study

This research was restricted to Kasarani Sub County, Nairobi because BHESP is located here and subsequently a small sample size of sex workers was identified from this area. The findings therefore, may not be generalized to include other regions of the country.

This research was limited to examining how human rights of sex workers are violated and ways of overcoming the legal challenges surrounding the enforcement of petty offences and anti-prostitution laws to enable the promotion and protection of the sex workers' rights to human dignity in Kenya. The research did not focus on petty crimes that are not tied to sex work, and it did not discuss the enforcement challenges facing felonies. The enforcement of anti-prostitution laws mostly targets female sex workers; therefore, this research did not focus on the effect of anti-prostitution laws on male sex workers.

CHAPTER TWO: LITERATURE REVIEW

2.1 Literature Review

Although the literature on petty offences in Kenya continues to grow, very little exists concerning the effects of enforcing anti-prostitution laws and prosecuting sex work as minor offences in the country. To fully appreciate the research efforts in this area and highlights the gaps obtaining thereof, this review will assess the reasons for involvement in sex work, the legal framework in Kenya and the experience of sex workers in the enforcement of anti-prostitution laws as well as those related to petty offences in the country.

2.1.1 Reasons for Involvement in Sex Work

Open Society Foundations describes sex work as acts of consensual sexual services between adults for material benefit and effectively recognizes sex work as work and a form of economic activity that should be distinguished from prostitution.¹⁵ It explains in this regard that the term prostitution implies criminality, which demeans and stigmatize those involved in sex work and consequently depriving them of access to legal, health and other social services on equal footing as the rest of other labourers.¹⁶

To this end, Open Society Foundations identifies several reasons to explain the involvement of women in sex work. The reason is mostly economic as the majority of those engaged in doing it earn a living from it. To this end, the Foundations calls for the reformation of legal systems around

¹⁵ 'Understanding Sex Work in an Open Society' (Open Society Foundations, June 2017) <<https://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society>> accessed on 18th December 2018.

¹⁶ Ibid.

the world to remove the criminal sanctions associated with sex work as a step towards protecting the sex worker from human rights violations.¹⁷

While concurring with economic factor as the major reason for women involvement in sex work, Karni Kissil and Maureen Davey in their article “The Prostitution Debate in Feminism: Current Trends, Policy and Clinical Issues Facing an Invisible Population” point out however that sex worker are driven into prostitution due to poverty and lack of better employment opportunities, put differently, it is their view that these women would not be engaged in sex work if there were better economic opportunities. Nonetheless, as is the challenge with most people struggling to find a means of earning a livelihood and settling for less favourable options so too is the case with sex workers. Hence, these authors champion for the establishment of a favourable environment to allow this group of women to carry out their business unhindered.¹⁸ Radical feminists base their arguments on the understanding of social organization and structure as inherently patriarchal. Susan Tiefenburn highlights that sex work is never entirely consensual and can never be regarded as such.¹⁹

Other scholars categorize the reasons into voluntary and involuntary ones. For instance, Ntsika in “Perceptions of Masters Students on Decriminalization of Sex Work in South Africa ” notes in this regard that voluntary reasons are because of individual choices and a sex worker is regarded as having exercised the free will to consider the trade a better option amongst other economic

¹⁷ ‘Understanding Sex Work in an Open Society’ (Open Society Foundations, June 2017) <<https://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society>> accessed on 18th December 2018.

¹⁸ Ibid.

¹⁹ Tiefenburn S. The saga of Susannah: A U. S. remedy for sex trafficking in women: The Victims of Trafficking and Violence Protection Act of 2000. Utah Law Review. 2002;107(1):107–175

opportunities.²⁰ To these women, sex work is flexible, pays better and suits their needs compared to other conventional jobs.²¹ It is these same reasons that compel others into sex work for pleasure. This category enjoys experiencing sex with different partners and hence would engage in sex work for recreational purposes.²²

Those compelled involuntarily into this form of activity are driven by poverty or lack of employment and not discretion to consider sex work as a source of income. They are the category who would not be engaged in sex work if there were better economic opportunities.²³ It is also in this group where we find those involved in sex work because of drug addiction. These women use drugs, cannot find employment and as such, are forced into the business as a way of sustaining their addiction.²⁴

Sex workers who suffered physical and sexual abuse during their childhood are being compelled into sex work. Such abuses are postulated by Ntsika in “Perceptions of Masters Students on Decriminalization of Sex Work in South Africa” to have a negative psychological impact on the victims, which lower their regard for chasteness.²⁵ This is a pointer to the significant impact that abuse has on this category of sex workers. Towards this end, even though the works of these authors do not mention the reasons why female sex workers in Kenya involve in the trade, their research is vital since they will help guide explore the experience of sex workers in the context of the country’s scenario.

²⁰ Ibid at page24.

²¹ Ntsika Edward Mlamla, *Perceptions of Masters Students on Decriminalisation of Sex Work in South Africa*, Dissertation submitted to the University of Kwanzulu-Natal for the award of Masters of Social Science Degree 2016 at 24.

²² Supra note 21 at page 25.

²³ Ibid.

²⁴ Ibid at page 26.

²⁵ Ibid.

In “Prostitution Policy: Legalization, Decriminalization and the Nordic model”, Ane Mathieson looks at the two dimensions of concerns surrounding female prostitution, namely the practice is exploitative, empowering or the results of immorality and observes that with regard to the first position that the practice of prostitution is due to a person being deficient in moral character.²⁶ This position is rooted in patriarchal and religious beliefs in which it is said that the immorality of prostitution is because female sexuality is tempting to the men and leads them astray.²⁷ For this reason, in countries where prostitution is outlawed or criminalized, the laws are couched in a discriminatory manner so that female prostitutes are easily found culpable and heavier penalties are imposed than it does either to the male prostitutes or even to clients or buyers of sexual services majority of whom are men.²⁸

In Kenya, for instance, the burden of the negative effects of the enforcement of the anti-prostitution laws is more on the female prostitutes than it is on their male counterparts and the buyers of sexual services which is why the majority of people caught in police swoops are females.²⁹ In viewing prostitution as empowering to the female prostitutes, on the other hand, Mathieson does not only see it as sex work per se but as a form of income generating activity as well in which sex workers employ their labour to fulfil erotic desires of men in exchange for a material benefit.

In this regard, the female prostitutes are perceived as free people who are not forced into prostitution but willingly engage in the practice, which is a profession like any other.³⁰ Jane

²⁶ Ane Mathieson et al, ‘Prostitution Policy: Legalisation, Decriminalisation and the Nordic Model’ (2015) 14 (2) *Seattle Journal for Social Justice* 368.

²⁷ *Ibid* 369.

²⁸ *Ibid*.

²⁹ *Ibid*.

³⁰ *Ibid*.

Scoular³¹ recognizes two models of regulation of sex work, one of which is the Dutch model which allows licensing of sex work business.³² This model is more accommodative of the sex work, protects the offerors of sex services and is characterized either by decriminalization or legalization of prostitution and recognizes sex work as ‘work’ for which the government raises taxes and other forms of revenue income.³³ Australia has followed suit and is legalizing prostitution as a business in the hope that regulation would help correct the inequalities traditionally connected with sexual relations between men and women in the society. Katie Beran views sexual free choice as contributing to gender equality by liberating women.³⁴

Chi Mgbako in “The Case for Decriminalization of Sex Work in South Africa”, advocates for the repeal of anti-sex work laws in South Africa as a step towards respecting and safeguarding the fundamental rights, freedoms and liberties of sex workers who suffer various forms of human rights abuses due to criminalization of prostitution. Mgbako takes stock of the social economic benefits of legal prohibition against prostitution and concludes that outlawing sex work is not only ineffective as it does not end the solicitation of sex services but also is costly on the government of South Africa to enforce these laws.³⁵ He estimated that the country spends 14 million Rands annually to run the enforcement on anti-prostitution laws without much correspondence in social, economic benefit.³⁶

³¹ Scoular, Jane, *Regulating the Spaces of Sex Work* (June 20, 2011). Available at SSRN: <https://ssrn.com/abstract=1868191> or <http://dx.doi.org/10.2139/ssrn.1868191>

³² Joyce Outshoorn, *Legalizing Prostitution as Sexual Service: The Case of The Netherlands*, at 1 available at <https://ecpr.eu/Filestore/PaperProposal/8ceddd9-302d-4870-8d0b-618c34524ef4.pdf> accessed on March 17, 2019.

³³ *Ibid.*

³⁴ Katie Beran, *Revisiting the Prostitution Debate: Uniting Liberal and Radical Feminism in Pursuit of Policy Reform*, 30 *Law & Ineq.* 19 (2012). Available at: <http://scholarship.law.umn.edu/lawineq/vol30/iss1/2>.

³⁵ Chi Mgbako, ‘The Case for Decriminalisation of Sex Work in South Africa’ (2013) *Georgetown Journal of International Law* 1425.

³⁶ *Ibid.*

Apart from the cost benefit analysis, Mgbako also notes that criminalization of prostitution is a failed project because sex workers are generally stigmatized by the society, suffer both police abuse and violation by their clients and are unable to access justice as well as health services since they can neither influence health policies nor get medication.³⁷ The other challenge experienced by the South African sex workers relates to labour rights. This is because criminalization of prostitution means the practice is not recognized by law as a legitimate economic activity and as such, sex work cannot be termed as work in the real sense of the term to deserve the attention of labour rights protection of the government.³⁸

To this end, Mgbako champions for the decriminalization of prostitution in order to promote respect for sex workers' fundamental rights as guaranteed in the country's Constitution. This, according to this author, would help fight incidences of human trafficking, exploitative sex trade and child prostitution. South Africa's Constitution acknowledges everyone's freedom of choice of work, freedom of association, the right to the highest attainable health standard of health, the right to freedom and security of the person and right to dignity and obligates the state institutions such as the legislature and the judiciary to take proactive steps to ensure the protection of the rights guaranteed in the Bill of Rights in this regard.³⁹

Mgbako's article "The Case for Decriminalization of Sex Work in South Africa", is instructive for this research as it will guide in identifying ways of justifying the decriminalization of prostitution in Kenya as well as the fundamental human rights, freedoms and liberties that are violated as a consequence of criminalization of sex work.

³⁷ Ibid 1426-29.

³⁸ Ibid 1431.

³⁹ Ibid 1447-53.

2.1.2 Legal Framework on Sex Work in Kenya

Sex work, according to Penal Code, is not an offence but to live on the earnings of prostitution is an offence.⁴⁰ There are two kinds of crimes that can be identified with sex work in this regard, such as “living on the earnings of prostitution” and “soliciting or importuning for immoral purposes.”⁴¹ The Penal Code also criminalizes detention of females for immoral purposes⁴², a male person living on the earnings of prostitution or soliciting,⁴³ a woman living on earnings of prostitution or aiding, abetting or compelling an individual to engage in sex work.⁴⁴ Use of premises for prostitution or residing in or frequenting or living in a house wholly or in part on the earnings of prostitution⁴⁵ and running a brothel also attracts penalties.⁴⁶

The Sexual Offences Act of 2006 protects those persons who may be forced into prostitution or exploited as prostitutes and hence, the Act outlaws compelling a person into sex work or being in control of a sex worker.⁴⁷ Human trafficking for prostitution and sexual exploitation the mentally disable persons is equally prohibited by the Sexual Offences Act.⁴⁸

Apart from the Penal Code and the Sexual Offences Act, the by-laws of former municipalities refer to sex work differently with difficulty being the vague description of what it entails, which leaves the law enforcers with a wide latitude of discretion for interpretation. For example, section 19(m)

⁴⁰ KELIN, ‘Kenya Legal and Ethical Issues Network, Punitive Laws Affecting Sex Workers’ [2016] 3.

⁴¹ Ibid 3.

⁴² Penal Code Cap 60 s 151.

⁴³ Penal Code (n6) s 153.

⁴⁴ Ibid s 154.

⁴⁵ Ibid s 155.

⁴⁶ Ibid s 156.

⁴⁷ Sexual Offence Act No. 3 of 2006 of the Laws of Kenya s 17.

⁴⁸ Ibid ss 18 and 19.

of the Nairobi General Nuisance By-laws (2007) stipulates that “any person who in any street – loiters or importunes for purposes of prostitution is guilty of an offence.” Just as is the case with the Penal Code and Sexual Offences Act, this law prohibits loitering for purposes of prostitution but not the act of prostitution itself. This explains why the police arrest sex workers who are found in public places waiting for clients.

Kenya Legal and Ethical Issues Network (KELIN) has analyzed laws criminalizing sex work in Kenya and criticizes the legal framework for creating a conducive atmosphere for oppression, discrimination and the violation of the rights of sex workers in the country.⁴⁹ While referring to the concerns by the former UN Secretary-General Ban-ki Moon against the dangers of discriminating sex workers in the fight against HIV/AIDS, KELIN explains that criminalization of sex work is a significant hindrance to access to health services for sex workers.⁵⁰

In this regard, KELIN explains that prostitution related laws are used to penalize sex workers. In addition, county by-laws enacted the now-repealed Local Government Act are also used to repress sex workers and have been found to create an environment for prohibition. As previously mentioned, the main problem with these by-laws relates to the unclear description of what the offence of sex work entails, thereby giving the police broad freedom to interpret these laws as they wish. As a result, sex workers suffer discrimination and experience violence and stigmatization.⁵¹

In pointing out the gender discriminatory nature of the Penal Code, which is one of the laws punishing sex work in Kenya, KELIN notes that whereas the commission of the offence of

⁴⁹ KELIN, *Kenya Legal and Ethical Issues Network* (n 39) 3.

⁵⁰ *Ibid* 3.

⁵¹ *Ibid* 3.

prostitution ordinarily involves both men and women, this offence is crafted in a manner that it is only the female who is punished for prostitution. The male sex workers, on the other hand, is charged for committing the crime of unnatural offences or indecent practices.⁵²

However, KELIN's analysis falls short of highlighting the legal challenges characterizing the prosecution of sex work; a felony, as petty offences in Kenya. As such, this research proposes to take up the task of not only highlighting the said challenges but also intends to assess the impact such problems have on sex workers in Kasarani Sub County, Nairobi.

Wanjohi in his article, "Sex Tourism in Africa: Kenya's Booming Industry", takes a brief look at factors leading to the prosecution of sex work as petty offences in the country. He attributes the tendency to penalize sex work as petty crimes is attributable to two interrelated legal challenges. The first relates to the difficulties associated with procuring a conviction for a suspected offender of the crime of living off the proceeds of prostitution. Proving that an accused person depends on prostitution for their survival is difficult, considering that one could also be engaged in other legitimate income generation activities.⁵³

The second is with regard to the wide latitude of powers that the enforcement officers have to substitute the charge of prostitution with lesser offences such as idling, loitering and indecent exposure. In other words, even if one is caught soliciting clients for prostitution, the police often prefer charging such a person with a lesser offence than the actual one. This gives law enforcement officers the leeway to manipulate the prosecution process to extort money from the suspected

⁵² Ibid 3.

⁵³ Wanjohi Kibicho, *Sex Tourism in Africa: Kenya's Booming Industry* (Surrey, England: Ashgate 2009) 53.

offenders and, sometimes, sexual favours.⁵⁴ This practice fails to recognize the Rule of law as one of the tenets in respect for human rights.

Mutakha Kangu argues that with regard to the enforcement of petty offences and anti-prostitution laws, it is vital to note that the Rule of law sets out the due process to ensure regulation of state's prosecutorial powers. As such, whereas the power to undertake criminal prosecutions is the preserve of the state, the government's function to punish is not absolute as it is subject to limitations presented in the form of respect for the fundamental human freedoms and liberties, a fact well recognized in constitutional theory.⁵⁵

However, whereas Wanjohi's article will be instructive in the development of this research, his analysis has hardly linked the identified challenges to the effects that lack of statutory meaning of petty offences has had on sex workers in terms of exposing them to the arbitrariness of the police resulting into various human right abuses. As such, this research proposes to fill these gaps by evaluating the effects of penalizing sex work as minor wrongs as opposed to a felony, which essentially is what sex work entails.

2.1.3 Sex Workers' Experience with Regard to Petty Offences

The Kenya Section of the International Commission of Jurists (ICJ Kenya) in its study, "Poverty is not a Crime: Laws and Policies on Petty Offences and Practices Affecting Population at the National Level and in Kisumu, Mombasa and Nairobi Counties", calls for the decriminalization and reclassification of petty offences in Kenya. ICJ Kenya recognizes decriminalization of petty offences as an essential step towards enhancing the fundamental freedoms and liberties of Kenyans

⁵⁴ Ibid 53.

⁵⁵ Mutakha Kangu 'Social Contractarian Conceptualization of the Theory and Institution of Law and Governance,' (2007) 1:2 *Moi University Law Journal* 1

as outlined in the country's Constitution.⁵⁶ These offences are listed in the report to include idling, indecent exposure, and loitering.

ICJ Kenya in its study notes that enforcement of petty offences is akin to criminalizing poverty because poor Kenyans who cannot afford housing and lack other necessities of life like food, clothing, and education are the major targets.⁵⁷ The study further highlights that enforcement of petty offences results in congestion of detention facilities.⁵⁸ In addition, finding legal fault with a person's social economic difficulties has not only led to the creation of misdemeanours but also felonies. With regard to Kenya, for instance, prostitution is a felony, and hence, any person found living off such acts would be liable to punishment if adjudged guilty.

For sex workers, the enforcement of these crimes usually leaves them profiled by law enforcement officers because of their skimpy mode of dressing. They are also assaulted sexually by some law enforcement officers.⁵⁹ They face violations of their human dignity from the point of arrest to the post-sentencing stage. They are beaten during an arrest, locked up in congested police cells where they are held for long periods and are sometimes denied the opportunity to access friends, relatives or legal representation.⁶⁰ Sex workers who can afford bribes are set free while those ones not lucky to have money risk being forced into sexual intercourse with the law enforcers or having the charge of prostitution against them substituted with offences such as idling, loitering and indecent exposure.⁶¹

⁵⁶ ICJ-Kenya, *Poverty is not a Crime* (n 29) 8.

⁵⁷ Ibid 8.

⁵⁸ Ibid 8.

⁵⁹ Kibicho, *Sex Tourism in Africa* (n 27) 53.

⁶⁰ National Council on the Administration of Justice (n 1) 35.

⁶¹ Ibid 35.

In addition, the majority of these women cannot afford bail due to destitution forcing them to attend trial from the confines of remand. Coupled with slow court processes in Kenya, this leaves them languishing in detention for an inordinately long period as they wait to be freed.⁶² Furthermore, even upon serving their sentences, sex workers are discriminated against by the community, making it difficult to reintegrate them back into society to continue with their everyday life. There are also instances when they are outrightly rejected by their family members and are seen as moral outcasts.⁶³ However, the ICJ Kenya report has not discussed this in detail since prostitution is not a petty offence, but a felony and hence fell out of the scope of this study.

The National Council on the Administration of Justice (NCAJ) in its 2015 report, “Criminal Justice System in Kenya: An Audit”, criticizes the continued retention of the petty offences laws in Kenya for various reasons all of which represents human rights concerns in one way or the other. The concerns range from broad and vague wording of the offences to the extent that they fail to enumerate the elements of criminal conduct to the unparalleled human rights abuses that characterize enforcement due to unawareness by the victims of their rights, to demands for bribes by the law enforcers. The report is also concerned about the discriminatory treatment suffered by petty offenders and the deplorable state of the detention facilities in which they are kept.⁶⁴

The NCAJ also holds the view that these offences are crafted in such a manner that they target the poor since they criminalize the social and economic status of these people.⁶⁵ In addition, a reflection on the colonial background of most of these laws reveals that the laws were intentionally

⁶² ICJ-Kenya, *Poverty is not a Crime* (n 32) 8.

⁶³ Kissil, *The Prostitution Debate in Feminism* (n 32) 7.

⁶⁴ National Council on the Administration of Justice (n 1) xxiv.

⁶⁵ *Ibid* 35.

designed to force people to work, restrict movement, curtail criminal activity, punish idleness and allow arrest without proof of the actual commission of offences. In any case, even the UK from where these laws originated has since repealed them, which fact subsumes implied recognition of their negative impacts.⁶⁶

The NCAJ also noted that many poor people are arrested, charged and imprisoned compared to the rich. A majority of the rich can afford representations and access reliefs such as bail and even manage to pay bribes demanded by the police. This organization further observed that felonies and serious offences registered the highest rate of acquittal and withdrawals while petty criminals charged with crimes such drunkenness, failure to pay license and such like offences languished in prisons.⁶⁷ However, despite the NCAJ's report being instrumental in making a case for reforming the regime of petty offences, this review has revealed that there is no discussion linking sex work with petty wrongs despite the former being enforced as minor wrongdoing. This research, therefore, intends to fill this significant gap in the literature.

Muntingh LM and Petersen in, "Punished for Being Poor Evidence and Arguments for the Decriminalization and Declassification of Petty Offences", decries the sluggish pace characterizing reforms in the area of minor offences by most African countries. These authors note that despite a majority of these countries being signatories to various global human rights treaties such as the International Covenant on Civil and Political Rights and the African Charter on Human

⁶⁶ Ibid 35.

⁶⁷ Ibid xxiv.

and People's Rights, which informs governments' responsibilities toward promoting, protecting and respecting individual freedoms and liberties, there is little that has been done in this regard.⁶⁸

They argue that decriminalization and declassification of petty offences is crucial for accomplishing the objectives of the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa. It recommends measures aimed at bettering the prison conditions, and its passage was preceded by numerous penal reform initiatives within the continent. The Ouagadougou Declaration is a consolidation of these efforts. Worth noting in this regard are the 1996 Kampala Declaration on Prison Conditions, which focused on advocating for the improvement of detention facilities, the Kadoma Declaration on Community Service Orders in Africa of 1997 in which alternative options to imprisonment were explored and Arusha Declaration on Good Prison Practice 1999 on good prison administration.⁶⁹

Other initiatives included the Egham Conference on, "A new approach for penal reform in a new century", and the standard guidelines developed by the African Commission on Human and Peoples' Rights and its Special Rapporteur on prisons and conditions of detention. The Ouagadougou Declaration was also influenced by the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Basic Rights of Prisoners and the United Nations Standard Minimum Rules for non-custodial measures (the 'Tokyo Rules').⁷⁰

⁶⁸ Muntingh LM and Petersen. K, 'Punished for Being Poor Evidence and Arguments for The Decriminalisation and Declassification of Petty Offences' [2016] 4.

⁶⁹ Ibid 4; see also ACHPR, 'The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa' <<http://www.achpr.org/instruments/ouagadougou-planofaction/>> accessed on 18th December 2018.

⁷⁰ Ibid 6.

One notable aspect of these Declarations is the call for the decriminalization of some offences such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience of parents as a step towards reducing congestion in prison and improving the overall management of detention facilities.⁷¹ Other measures identified included the use of alternatives to penal prosecution for example diversion in cases of minor offences with particular focus on young offenders and people with mental health or addiction problems and use of traditional justice to deal with petty crime.⁷²

The Declaration calls for the introduction of non-custodial sentences for petty offences. As such, it gives preference to restorative justice approaches to create harmony within the community as opposed to punishment by the formal justice system. In other words, the Ouagadougou Declaration favours the use of less punitive measures in dealing with petty crimes.⁷³

Whereas the article, “Punished for Being Poor: Evidence and Arguments for the Decriminalization and Declassification of Petty Offences” is a commendable analysis of petty offences, it falls short of highlighting the legal challenges for the targeted sex workers encountered in the enforcement of anti-prostitution laws that leads to the prosecution of sex work as a petty crime as opposed to felony as is the case in Kenya. As such, this research takes the work of not only highlighting such challenges but also the effects they have on sex workers.

Mary C. Warner in her article, “The Trials and Tribulations of Petty Offences in the Federal Courts”, while discussing the potential challenges posed by petty offences to the constitutional

⁷¹ Ibid 7.

⁷² Ibid 7.

⁷³ Ibid 7.

liberties of the individuals residing in the US, has recognized the significance of defining petty offences by the US Crimes and Criminal Procedure. This, she notes, is critical in distinguishing class A misdemeanours from the less serious ones as set out in class B and C misdemeanours, respectively.⁷⁴ To this end, she has defined such wrongdoings as those misdemeanours for which the potential punishment is not greater than six months in jail and a fine.⁷⁵

According to the US Crimes and Criminal Procedure, an offence is categorized as a petty offence if it either falls in class B for which the maximum penalty is less than six months in jail, class C in which case the accused is liable to a maximum penalty is less than thirty days in jail or an infraction. An infraction attracts a maximum punishment of five days or less in prison.⁷⁶

Class A misdemeanours, on the other hand, are considered serious offences not only in terms of the nature of the conduct alleged or complained of but also the potential punishment. They include those criminal wrongs such as assault resulting in bodily harm, conspiracy, resisting arrest and perjury, among others for which the maximum term of imprisonment authorized is one year or less but more than six months.⁷⁷ The foregoing observation is also true for Kenya.

Some of the non-felonies crimes that are classified by Kenya's Penal Code as misdemeanours are not "petty" and ought not to be considered as minor wrongdoings, strictly speaking. For instance, the commission of offences such as aiding mutiny or inciting sedition, inducing desertion and negligently aiding the escape of prisoners of war, for example, may result in the accused being

⁷⁴ Warner, *The Trials and Tribulations of Petty Offences in the Federal Courts* (n 45) 2421.

⁷⁵ Ibid 2421.

⁷⁶ The US Crimes and Criminal Procedure, s.19.

⁷⁷ Warner, *The Trials and Tribulations of Petty Offences in the Federal Courts* (n 45) 2421.

found guilty for a misdemeanour.⁷⁸ Hence, in spite of their classification by the law as such, these offences are nevertheless serious, and any punishment prescribed in this regard is vital for the preservation of law and order.

2.2 Theoretical Framework

The penalization of sex workers with petty crimes such as loitering and indecent exposure violates the sex workers' rights to human dignity and exposes them to numerous challenges. As such, this research uses the feminist theory of sex work; in particular, the Dutch model of sex work to assess the effects of enforcing minor wrongs on sex workers in Kenya.

It also employs the theory of the Rule of law in relation to due process and emphasis on the centrality of legal certainty in enforcing laws to ensure fair treatment of suspects. The Rule of law is the principle that everyone is subject to laws which should be fairly applied and enforced. It requires that legal processes conform to human rights principles such as equality and accountability. This study highlights the extrajudicial abuse suffered by sex workers, prejudices and subjection to fines or arrest when they seek access to justice, social services and health care.

At the centre of feminists call for reforms lies the assumption that law discriminates against women and ignores their experience with life as it is primarily modelled with a masculine framework to serve the values and needs of men.⁷⁹ In other words, the law reflects social relations between men and women, which, however, creates unequal power between the two genders to the disadvantage of the latter whose interests are subordinated. This arrangement is suspect in a number of instances

⁷⁸ Penal Code (n 6), ss 48, 49 and 50.

⁷⁹ Catherine Albertyn, "Feminism and the Law" in Christopher Roedere and Darrel Moellendorf (ed), *Jurisprudence* (London: Juta and Company, 2004) 299.

and it explains why despite the act of prostitution, for example, ordinarily involving both men and women; it's only the females who are punished for prostitution.⁸⁰

However, whereas there is general agreement among feminists that law is a tool for perpetuating inequalities against women and as such, needs reform, their voices vary on how to go about correcting the identified inequalities giving rise to different waves and perspectives of feminism.⁸¹

For instance, the radical feminists are concerned about the transformation of the ideological and institutional structures while liberal feminists are more into the content of the law and its application within the existing political and social set up.⁸²

With regard to prostitution, this variation of opinions has seen some feminist scholars look at prostitutes as victims of coerced social arrangement while others see them as free-willed entrepreneurs who are in the business of offering sex services in exchange for material gains or benefits.⁸³ The first group, also known as the anti-prostitution group, views prostitutes as victims of circumstances who are forced into turning sexual intercourse into a commodity for sale.⁸⁴ These women are driven by poverty and destitution and would not otherwise engage in sex work if there were better economic opportunities. To this category of feminists, majorly composed of the radical groups, a prostitute is a victim of sex slavery and does not engage in sex consensually or voluntarily but one that is forced to act out of desperations.⁸⁵

⁸⁰ KELIN, *Kenya Legal and Ethical Issues Network* (n 17) 3.

⁸¹ Albertyn, *Feminism and the Law* (n 73) 294.

⁸² Ibid 294.

⁸³ Kissil, *The Prostitution Debate in Feminism* (n 32) 6.

⁸⁴ Ibid 7.

⁸⁵ Ibid 7.

To the pro-prostitution feminists, on the other hand, in spite of reality that women face numerous hurdles such as joblessness, the decision to become a prostitute is discretionary. That is, women are active decision-makers who have resolved to engage in sex work rather than resort to other forms of economic generation activities to get money.⁸⁶ In this regard, this group advocates for the creation of a conducive atmosphere to enable these class of women to go about their businesses unhindered and are opposed to the restriction of women's choice to opt for prostitution as a form of occupation.⁸⁷

The feminist's differences are also manifest in their solutions or recommendations to the identified challenges; with some arguing for decriminalization, others criminalization and another group vouching for legalization of sex work.⁸⁸ Decriminalization of prostitution is associated mainly with the pro-prostitution feminists who blame the law and the institutions responsible for enforcement such as the police, courts and so on as being the major violators of the rights of sex workers. For this reason, they argue that decriminalization will ensure that prostitutes are safe and rely on the police more for protection than exploitation that is associated with either criminalization or legalization of sex work.⁸⁹

The anti-prostitution group is opposed to decriminalization as a sole solution to the problem of gender disparity and argue that such a move is likely to expand the prostitution industry, increase incidences of sex trafficking and child prostitution, and reinforce male control over women's sexuality and objectification of the latter as sex objects.⁹⁰ In this regard, this group advises that the

⁸⁶ Ibid 6.

⁸⁷ Ibid 6.

⁸⁸ Ibid 8.

⁸⁹ Ibid 8.

⁹⁰ Ibid 8.

solution lie in instituting comprehensive reforms that target societal structures and correcting the gender inequalities instead of pursuing decriminalization in isolation as vouched by the prostitution groups.⁹¹ Despite the contrasting views on decriminalization, these groups are opposed to criminalization as well as legalization of prostitution.⁹² To them, sex work whether criminalized or legalized gives the state the power to interfere with prostitutes either by seeking to regulate this trade in the event of legalization or through arrests and prosecution in case of criminalization of prostitution.⁹³

However, the legalization of prostitution by Netherlands signifies a change of heart by feminists who seem convinced that prostitution is not entirely sexual exploitation and distinguishes between voluntary prostitution and the forced one.⁹⁴ Voluntary prostitution is sex work and is regulated as a form of economic activity and brothels established in designated places for that purpose. Forced prostitution, on the other hand, goes against one's free will and ought to be combated.⁹⁵

The legalization of prostitution would not only make sex work a legitimate economic business but more fundamentally, the move is critical in enhancing the protection of sex workers against human rights violations they have endured for years in Kenya. With the legalization on prostitution, the government would be able to collect taxes, issue business permits to brothel owners and improve the protection of human rights of sex workers.

⁹¹ Ibid 8.

⁹² Ibid 9.

⁹³ Ibid 9.

⁹⁴ Ibid n34.

⁹⁵ Ibid 1.

CHAPTER THREE: METHODOLOGY

3.1 Research Design

The study used a mixed method approach involving both qualitative and quantitative techniques. This study uses case study approach as well as a survey within a case study. Creswell (2007) defines a case study as a type of design in qualitative research which explores a single case or multiple cases over time through detailed, in-depth data collection involving multiple sources of information. Kasarani BHESP that supports women engaged in sex work lends this study to a case study approach. This study focused on a single unit for analysis and used specific research questions and sought a range of different kinds of evidence. This involved in depth study of purposively selected women sex workers under BHESP. A case study approach was preferred in this study because human activities happen in their natural setting hence this approach made it appropriate to study human phenomena as it happened in reality⁹⁶.

A cross-sectional survey method was used to collect data within the case study. This method involved data collection at a point in time from a sample of sex workers selected to represent the women sex workers population⁹⁷. The study involved a survey of women sex workers in Kasarani in the program mentioned above. This was because the survey method allowed the researcher to gather information not available from other sources, and also the same information was collected from all the respondents⁹⁸. The survey questionnaire allowed for convergence of information gathered from the sex workers.

⁹⁶ Gillham.B.2000. Case Study Research Methods. New York: Brijbasi Art Press Ltd

⁹⁷ Owens, L. 2002. "Introduction to Survey Research Design". (Accessed on 15th September 2019)
<http://www.srl.uic.edu/seminars/Intro/introsrm.pdf>

⁹⁸ ibid

Focus Group Discussions (FGD) and Key Informants interviews were also used. FGD is a form of group interview in which there are several participants, and there is an emphasis in the questioning on a particular fairly tightly defined topic and the emphasis is upon interaction within a group and the joint construction meaning⁹⁹. A total of two focus group discussions were held each with between 6-8 participants. The rationale for the focus group discussions was to allow the researcher to study how individuals collectively made sense of a phenomenon and construct meanings around it. The techniques also allowed the researcher to develop an understanding of why the women sex workers felt the way they did with regard to an understanding of the violation of their rights.

Key informants were also interviewed. Key informants are defined as resource persons who have specialized knowledge of a particular area of study. The key informants provided background information on sex work which other sources could not provide. The key informants included: The county and the national police service officers. They shared information on the time of arrest and offences they arrested the sex workers for committing. A magistrate at the Makadara law courts and Nairobi county legal personnel shared their experiences with handling sex workers brought before a court to face trial for offences committed. Officials of BHESP were instrumental in sharing information on the human rights violations the sex workers reported to their office and helped in linking up the researcher with sex workers in Kasarani. The sex workers provided information on the impact enforcement of anti-prostitution laws had on their human rights.

Finally, observation was also used. Observation means watching and noting phenomena as they occur in their natural state with regard to cause and effect or mutual relation¹⁰⁰. Observation during

⁹⁹ Bryman, A. (2004). *Social Research Methods*. New York: Oxford University Press.

¹⁰⁰ Babbie 2001

the focus group discussions allowed the researcher to find information in cases where the respondents were unwilling to express themselves verbally and also helped in qualifying findings from other methods. The observations were recorded down in writing.

3.2 Study Site

The study focused on BHESP in Kasarani Sub-county. The rationale for picking the aforementioned was based on the researcher's knowledge of the program, and by this fact accessing women sex workers for interviews would be eased.

BHESP is an organization for and by all women working in bars and sex workers in Kenya. BHESP was founded in the year 1998 by a group of sex workers as a 'loose' association to advocate for their rights and recognition. Within a short period of six months, its impact was well received by members of the community, including sex workers within Nairobi. Still, new challenges emerging from HIV/AIDS were overwhelming. In recognition of this, the group sought official registration in 2001 and was registered as a community-based organization (CBO) under the Ministry of Gender, Sport, Culture and Social Services. The organization rapidly evolved from its humble beginning as a CBO to registration as a national NGO in 2005.

3.3 Sampling and Unit of Analysis

The target population were women sex workers under the BHESP. The unit of analysis was individual sex workers. The study looked at the women sex workers both as individuals and groups within the community; hence the effects of anti-prostitution laws on sex workers analyzed at both individual and group level.

The sample was obtained from the existing database at the BHESP. From a sample frame of 4000, a sample size of 36 respondents were selected through simple random sampling—this enhanced unbiased representation of the population. The rationale for a sample size of 36 was to enable the researcher to carry out the research effectively and analyze data within the shortest time possible. Furthermore, a sample of 30 and above is statistically representative of the study population.

3.4 Data Sources

Primary data was collected from the women sex workers, key informants and focus group discussions. Key informants included: 2 city council askaris, 2 police officers, 1 BHESP staff, one magistrate and 1 clinician. Secondary data was obtained from review of both published and unpublished data. Published data involved review of books, government articles specifically laws on petty offences and sex work including the Penal Code, Nairobi county by-laws, the Constitution of Kenya 2010 and International laws to which Kenya is a state signatory. Unpublished data was reviewed from documents such as policy statements, regulations, records and official reports about the Community project.

3.5 Data Collection Methods

Data collection involved the use of structured questionnaires. The questionnaires had both open-ended and closed-ended questions. The researcher administered semi-structured questionnaires to Key informants. Interview of key informants was conducted on a one-on-one basis. The other method of data collection was through Focus Group Discussions. The researcher held FGDs with women sex workers. Two FGD's were preferred because it was expected that the women sex workers would be in different age categories and hence their experiences would vary therefore the need to categorize the sex work workers into groups and hold the discussions separately.

The researcher followed a sequence in data collection. First, the key informants were interviewed. This stage enabled the researcher to identify information that was omitted in the survey questionnaire and which would be vital in answering research questions and consequently meeting the research objectives. The second stage was a pre-test of the survey questionnaire. A pre-test was conducted with a few of the women sex workers who did not participate in the main survey. The pre-test enabled the researcher to establish if the questionnaire had been properly formulated. The fourth stage involved an actual survey of the 36 respondents randomly selected from the BHESP sampling frame. The final step was discussions with two focus group discussion participants. During the data collection period, the researcher kept a research log where all the observed evidence and personal notes were recorded.

3.6 Research Ethics

Considering that the study was on a sensitive topic, all efforts were made to ensure quality and integrity of the research through seeking informed consent of the sex workers, respecting confidentiality and maintaining the anonymity of the interviewees and encouraging their voluntary participation. Pseudonyms were used to protect the identity of the informants and the research notes and documents from access.

The researcher also undertook to take necessary measures to minimize or eliminate exposure to harm of the respondents. As such, the selection of cases for inclusion considered particular circumstances of respondents to avoid a situation where such interviews may traumatize the victims or put them in additional risk. For trauma cases, in particular, researchers would be prepared to identify such cases and seek advice and support (including presence) of professional

support staff before conducting any interviews. The sessions were also facilitated professionally to focus on objective analysis of issues and solution finding using non- confrontational methods of engagement.

3.7 Data Analysis

Analysis of qualitative data from interviews and focus group discussions involved identifying common patterns within the responses and critically analyzing them to achieve the objectives of the research. On the other hand, quantitative data, including figures and numbers, were critically analyzed and interpreted and attempts made to find the rationale behind the emergence of main findings.

Statistical Package for Social Sciences (SPSS) was used to analyze quantitative data and presented the information in the form of frequency tables, charts and graphs. Qualitative data was coded and then analyzed according to various thematic issues. Coding is an aspect borrowed from quantitative analysis, where the information obtained from the field is changed into text form, and the text is cut into pieces with each piece being assigned a numeral. The pieces are then analyzed individually for particular meaning and collectively to understand the collective information. The various themes that arose from the analysis were stated under different subheadings and an interpretation of the same made.

CHAPTER FOUR: PRESENTATION OF DATA

4.1 Introduction

This section presents data on sex workers and how their human rights are violated. The study took place in Kasarani sub-county. The methods and tools used to collect data were discussed in the methodology chapter. In this section, data has been presented in a narrative format. Where applicable, the study has made use of tables for clarity and exactness.

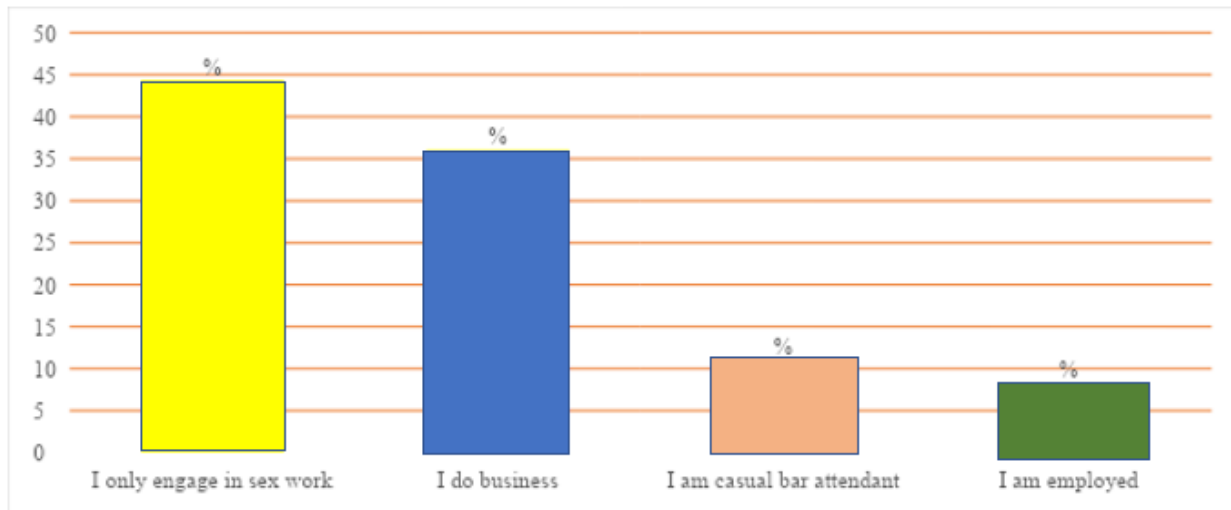
4.2 Enforcement of Petty Offences and Violation of Sex Workers Rights

This section looks at the period the sex workers had been engaging in sex work, time of engagement and the reasons for involvement in sex work. Further, it discusses when arrests take place, perpetrators of sex workers rights and the offences the sex workers are charged for.

4.2.1 Period of Engagement in Sex Work

The sex workers had been engaged in sex work for varying periods. For periods between 1-5 years 66.7 percent, 6-10 years 27.8 percent and above 11years 5.6 percent. Further, they were asked what else they engage in apart from sex work, 44.4 percent reported that they only engage in sex work, 36.1 percent reported that they do business aside from sex work, 11.1 percent reported that they are casual bar attendants aside from sex work and 8.3 percent reported that they are in employment as shown in Chart 4.1.

Chart 1: Respondents by Period of Engagement in Sex Work



Source: Field data 2019

Upon inquiry on why they only engaged in sex work, the discussants unanimously agreed that it was like any other job because it brought in an income to them. Mary said: “The money I earn from sex work is the same money those in big offices earn, and the money buys the same goods they buy, so I am comfortable”.

Lucy, a discussant, said, “I am a student, doing design, so during the day I am in class learning and at night I go to do my work so that I can get money to pay my college fees and meet my other needs”. From the discussions with these sex workers, it was evident that for them, sex work was just like any other form of employment, and a source of livelihood.

4.2.2 Time of engagement in sex work

The findings established that sex work was majorly done in the night as reported by 83.3 percent of the respondents. A few others engaged in sex work at any time of the day or the night as reported by 13.9 percent and 2.8 percent reported engaging in sex work during the day.

Focus group discussants opined that they get their clients from clubs in different places, including places in their vicinity such as Githurai, Mathare and Roysambu. A Key informant called David,

not his real name reported that sex workers no longer concentrate in the Central Business District (CBD). This is because sex work has become more organized, and the business is carried out in rented houses. The second reason because of an increase in the number of bars in the estates; hence sex workers find it easy to get clients, and they do not have to go to the CBD to access them. A county council *askari* who was a key informant pointed out that sex workers frequent Latema, River Road, Accra and Koinange streets.

4.2.3 Reasons for engagement in sex work

A total of 36 respondents were interviewed. They pointed out the reasons for engaging in sex work, as presented in Table 4.1. A multiple response analysis was done to establish the reasons for women engagement in sex work. There were 41 responses. The responses exceed the sample size because some respondents had more than one reason for engagement in sex work. Thirty-six respondents (87.8 percent) reported that they engage in sex work for economic reasons, 4 (9.8 percent) were coerced into sex work and 1 (2.4 percent) do it for fun.

Table 1: Reasons for engagement in sex work

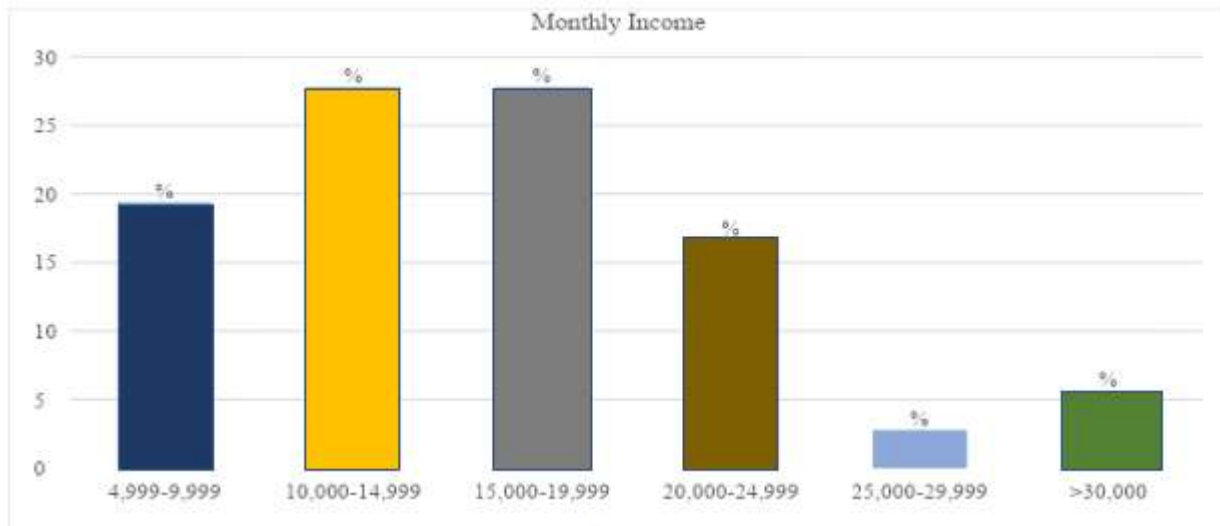
	Responses	
	N	Percent
Economic reasons	36	87.8
Coercion	4	9.8
Fun	1	2.4
Total	41	100

Source: Field data 2019

FGD participants pointed out two reasons for their engagement to sex work. The first reason is their low economic circumstances. Given the challenging economic times and the high rate of unemployment, the sex workers have to find means of getting income to feed their families and also meet their basic needs. This finding corroborates Open Society Foundations and Karni Kissil et al (2010) study findings.

The survey participants reported on the monthly incomes from sex work as shown in Chart 4.2. Income brackets of 10,000-14,999 and 15,000-19,999 were each reported by 27.8 percent of the sex workers. This was followed by 19.4 percent in the 4,999-14,999 income brackets. The 25,000 and above was reported by 8.4 percent.

Chart 2: Respondents by monthly income



Source: Field data 2019

Minimum wages in Kenya, according to trading economics,¹⁰¹ is 13,572 shillings. From the chart majority earned more than Kenya’s minimum wage.

Shiko, a discussant, reported: “I can’t complain, the money I get from sex work does a lot for me. I can pay my rent, pay school fees for my children, feed and clothe them and also myself. I am not begging from anyone; I work for my money”.

Mary, not her real name, said: ‘I am only 18, and I have to engage in sex work to get an income to fend for my siblings and mother. Imagine when there is no food at home, my mother asks me to get food for the family. I just have to do what I do to keep my family going. I also do it because I

¹⁰¹ Data accessible at <https://tradingeconomics.com/kenya/indicators>

wouldn't want my siblings to be lured to sex life. It is not a good life. I have put my life in this to provide for my siblings and also pay for their fees and mum”.

Irene, an orphaned sex worker, said; “life in Nairobi is difficult and expensive. I do not want to be bothersome to my extended family members having lost my parents many years ago. I resorted to sex work because I have to provide for myself”.

The second reason is coercion from friends. Shiru, said; “I begged for money from a friend who was a sex worker, she refused to give me money and told me that I have what it takes to make my own money. Considering that I was desperate and needed money to buy my clothes, makeup and just look good as a lady, I tried her advice once, twice and that is how I got hooked to sex work. I don't mind, I am satisfied with the work that I do”.

The narrative points to the link between poverty and sex work. The sex workers were satisfied with it because their needs were met in one way or the other. As established in an earlier section in this report, some sex workers were from single-parent households and had to make sure that their children did not go to bed on empty stomachs. Others were from a child-headed family where there was no one willing to help the children; hence the children were compelled to delve into sex work that is frowned upon and stigmatized. This finding is in line with Ntiska Edward Mlama (2016) that showed that there are categories of women who are pushed to sex work involuntarily and in the event, that they would find alternative sources of income, they would stop engaging in sex work.

4.2.4 Violation of human rights

The sex workers reported more than one perpetrator violated their human rights, 29.3 percent said that the police violated them, 25.9 percent reported violation by the city council askaris, 15.5

percent reported that both the police and the city council askaris violate them. Seventeen (17.2) percent said violation from the public, including their neighbours and the general community. Ten percent of the clients also violated them. A small proportion (1.7 percent) reported that the courts violated their rights, as shown in Table 4.2.

Table 2: Respondents by perpetrators of their human rights

	Responses	
	N	Percent
Police	17	29.3
County Council Askaris	15	25.9
Public	10	17.2
Both (Police and City askaris)	9	15.5
Clients	6	10.3
Courts	1	1.7
Total	36	100

Source: Field data 2019

It emerged from the study that sex workers human rights are often violated. Focus group discussants identified violation of human rights by the following acts being meted on them; rape, both physical and verbal abuse, harassment, tearing of clothes, among others. The researcher observed that one respondent was swollen on the cheeks and on inquiring, the respondent said that her client really beat her the previous day after the service and worse still failed to pay her for the service. The other discussants noted that the police rape them, with many preferring anal sex. The majority do not resist as doing so could result in them being locked up in the cells. The police do not think of it as rape, as they argue that sex is their work. Those who end up in court usually lack legal representation and money to pay bail.

4.2.5 Frequency of arrest

The sex workers interviewed reported that most arrests (47. 2 percent) take place every month. This means the period when people have been paid salaries, and there is money in circulation.

There is a proportion (19.4 percent) that reported arresting time was unpredictable. Another 15.6 percent reported arrests once in two months. Once in a week and bi-weekly arrests were reported by 8.3 percent in each of the scenarios as shown in Table 4.3.

Table 3: Frequency of arrest

	Frequency	Percent
Once a week	3	8.3
Bi-weekly	3	8.3
Monthly	17	47.2
Once in two months	2	15.6
Never been arrested	4	11.1
Unpredictable	7	19.4
Total	36	100

Source: Field data 2019

Further, 97.2 percent reported that arrests take place any time of the night and 2.8 percent said that arrests take place both in the day and in the night. Focus group discussion Participants reported that whereas they are arrested by the police and city askaris, those who procure their service are never arrested. Many a time, they lack police bond hence rely on their colleagues in sex work to bail them out.

It also emerged that women initiate sex work at ages below the age of majority. Hence, there is a need to protect children in early ages. Table 4.4 shows grouped ages for the sex workers.

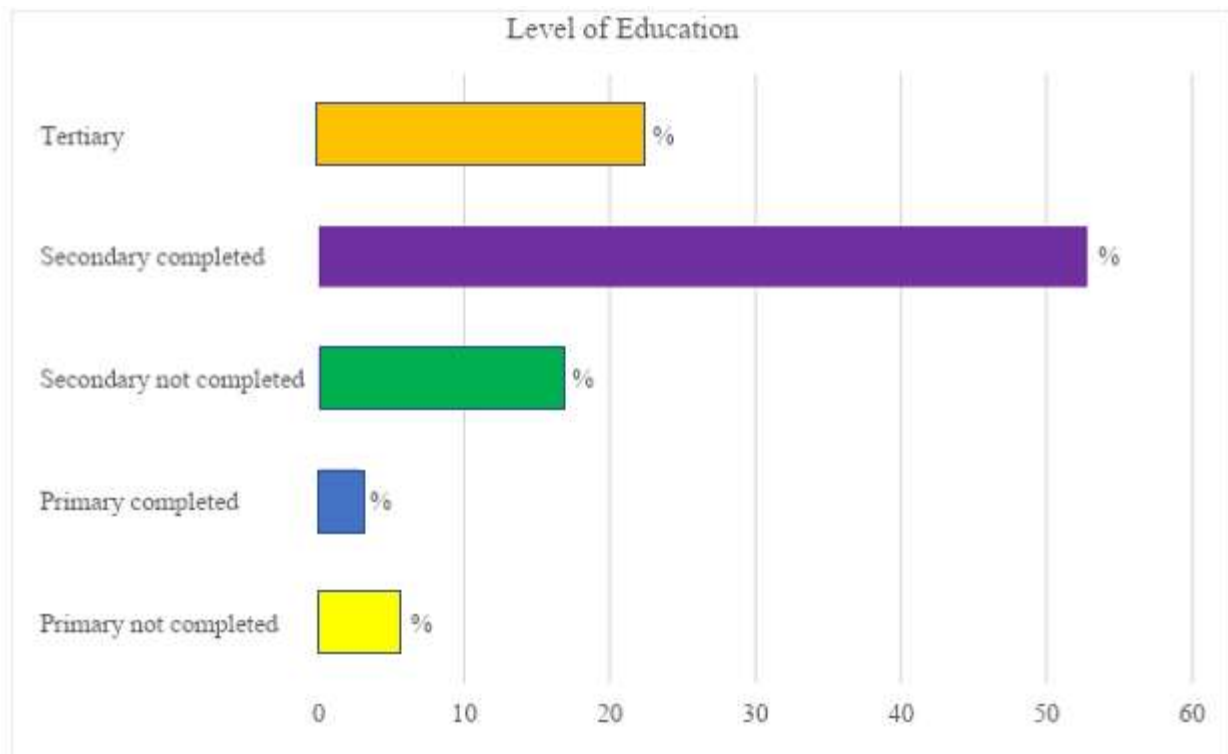
Table 4: Respondents by grouped ages

Age	Frequency	Percent
15-19	9	25
20-24	8	22.2
25-29	13	36.1
30-34	4	11.1
>34	2	5.6
Total	36	100

Source: Field data 2019

Asked about their ages, 25 percent reported that they were aged between 18-22 years, and 22.2 percent were aged between 23-27 years. Majority (36.1 percent) were in the 28-32 years age brackets, the 11.1 percent were in 33-37 age brackets, and those above 37 years were 5.6 percent as shown in Table 4.1. The findings further showed that debut into sex work was done at teenage ages by girls who had just basic education. Sex workers exhibited varying levels of education. Slightly over half (52.8 percent) had completed secondary education, and 16.7 percent had not. Regarding tertiary schooling, 22.2 percent reported having attained tertiary level certificates or were in tertiary institutions. Primary level education regarding the highest level of education attained, 5.6 percent of the respondents reported that they had not completed primary education and 2.8 percent as shown in Chart 4.3.

Chart 3: Respondents by levels of education



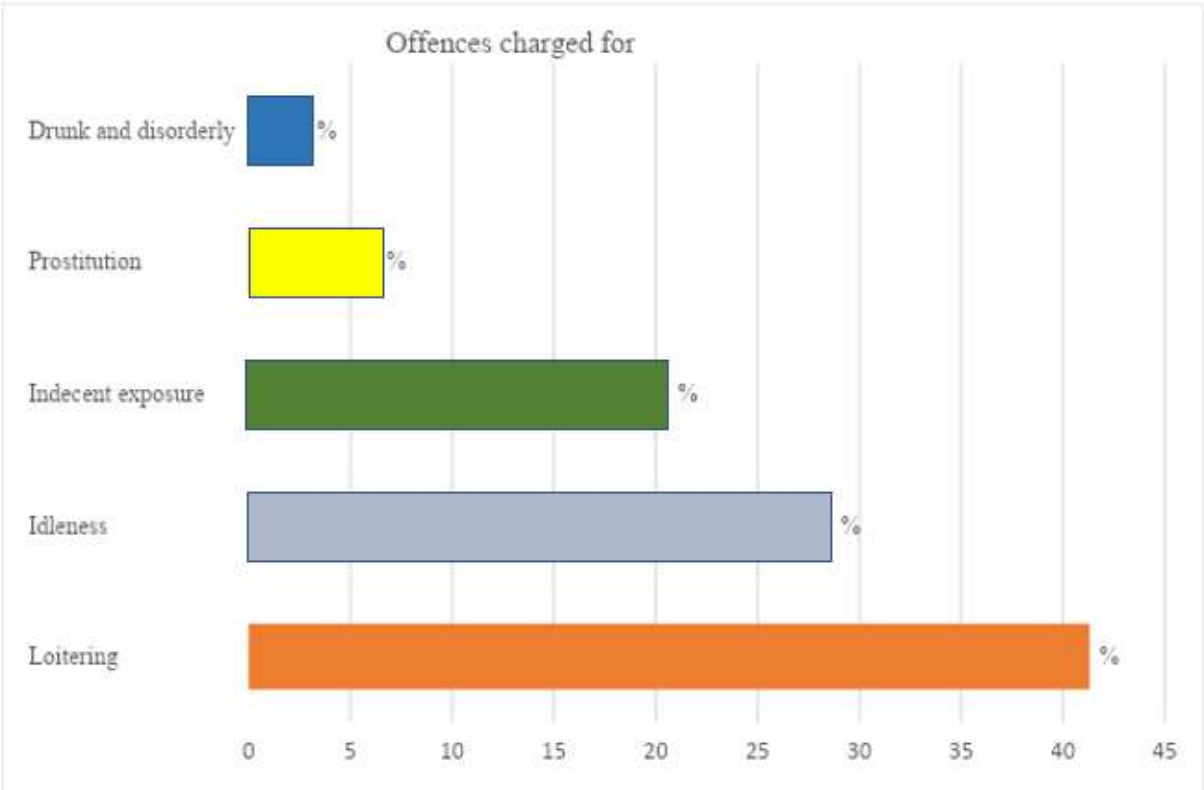
Source: Field data 2019

Paul, a key informant at the Nairobi City Court pointed out that the sex workers are charged with general nuisance laws. He was also of the view that County -by-laws which have provisions on arrest of sex workers are good, as some of them are very young, of ages between 15-18 years. When sex workers in the aforementioned age categories are arrested, they are taken to rehabilitation centres.

4.2.6 Offences charged for

The respondents reported loitering, idleness, indecent exposure, prostitution and drunk and disorderly as the offences they were charged with. Loitering was reported by 41.3 percent of the sample, idleness 28.6 percent, indecent exposure 20.6, prostitution 6.3 percent and drunk and disorderly 3.2 percent as shown in Chart 4.4.

Chart 4: Respondents by offences charged for



Source: Field data 2019

Focus groups discussants reported that they were charged with false offences. Atieno, an FGD participant, narrated: “One day I was arrested together with my client when we were standing outside a club trying to negotiate on the payment. We were arrested by the police and charged with planning to steal from a bank, a grievous crime. My plea landed on deaf ears. I had to mobilize money from my colleagues and friends to bribe the police officer to earn us release. I feared being locked up in the cells and subsequently being taken to court because it would be difficult to defend myself. Imagine because of the false charge I had to part with 3,000 shillings, and on that day, I did not do any work so I went back empty-handed, lost money through bribes and my children could not get food on that day. What we go through.....”.

The above claim was corroborated by a key informant who pointed out that the number of sex workers charged in court was low due to the bribes given to the police and city council *askaris* by the arrested sex workers. Further, he said that sex workers are usually charged with loitering for purposes of prostitution. In cases where there is an altercation between the sex workers and the county *askaris*, the sex workers may be charged with resisting arrest. However, most of the sex workers are not confrontational.

4.3: Effects of Anti-Prostitution Laws on Sex Workers

This section discusses four effects of anti-prostitution laws on sex workers. The first effect is the violation of human dignity; the second effect is unfair treatment, the third effect is poverty deepening, and the fourth effect is the insecurity of the sex workers.

4.3.1 Violation of human dignity

Table 4.5 shows the different forms of violation meted on sex workers and which violates their human dignity. The forms of violations include verbal abuse reported by 32.3 percent, stigmatization reported by 29.2 percent, forced sex reported by 20.8 percent and inhumane conditions in the detention facilities reported by 17.7 percent. The sex workers were abused by arresting authorities and also by the public. The latter included the neighbours and the community at large. They were commonly referred to as “*Malaya*”¹⁰².

Table 5: Respondents by Violation of Human Dignity

	Responses	
	N	Percent
Verbal abuse	31	32.3
Stigmatization	28	29.2
Forced sex	20	20.8
Inhumane conditions in the detention facilities	17	17.7
Total	96	100

Source: Field data 2019

Children of the sex workers were not spared either; neighbours dissuaded their children from playing with “*watoto wa malaya*”¹⁰³ as they were a bad influence. As a researcher, I observed that one of the respondents became so emotional when narrating this, she asked why the neighbours stigmatized the innocent children.

The sex workers were raped by their clients or even the arresting officers, and when they reported to the police station, they were often turned away on the premise that sex work is their work. This means that sex workers are denied justice.

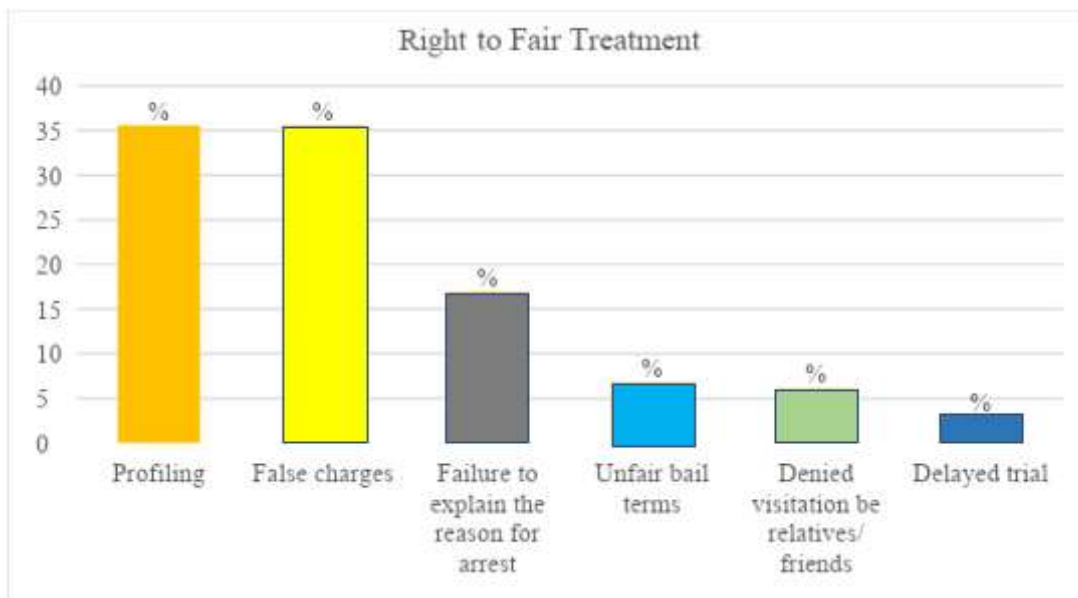
¹⁰² This is a Swahili word for prostitute

¹⁰³ Sex workers children

4.3.2 Unfair treatment

Chart 4.5 shows the proportions by which the respondents felt they were mistreated. Twenty-one (35.6 percent) reported that they were profiled and another 21 (35.6 percent) reported that false charges were imposed on them. Ten (16.9 percent) reported failure by the arresting authorities to explain the reason(s) for arrest. Four (6.8 percent) reported unfair bail terms and two (6.1 percent) reported that they were denied visits by relatives or friends while locked in the cells. There was 1 case (3 percent) of delayed trial.

Chart 5: Respondents by Right to Fair Treatment



Source: Field data 2019

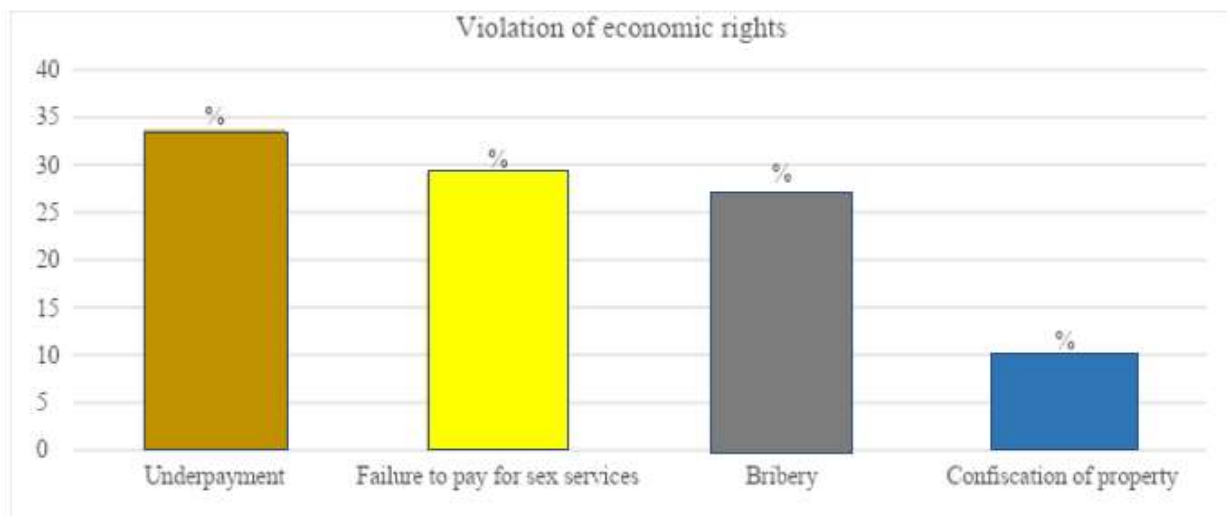
Participants in focus group discussions were angered by the fact that they are falsely charged. They also reiterated that the police detain them in their cars and even put bhang rolls in their bags and charge them with being in possession of bhang. Others charge them with intention to commit felony. It therefore emerges that the sex workers are not actually charged for crimes they have committed.

David, a key informant pointed out that sex workers are usually profiled because of the clothes they wear. However, he argued that prostitution contravenes the county by-laws. Most of the sex workers plead guilty to the charges and the fine does not exceed Kshs. 2000. He further argued that that whenever the sex workers raise issues of human rights violation by askaris in court, the magistrate would order for an investigation into the matter and take judicial notice of the same.

4.3.3 Poverty deepening

The sex workers reported that they were economically violated in the course of their work. This violation was through underpayment by the clients as reported by 33.7 percent. Some clients failed to pay for the sex workers they offered as reported by 29.2 percent of the respondents. Twenty-seven (27 percent) reported that they had to pay bribes to bail themselves from arrest by the police and/or city council askaris. Nine (9) percent reported confiscation of their property. See Chart 4.6.

Chart 6: Respondents by Violation of Economic Rights



Source: Field data 2019

Participants in the focus group discussions explained that the clients they get sometimes renege on the negotiations they had earlier had. One said, “If we agree that he is going to pay 300 shillings per session, some would want to do many sessions and pay 300 shillings instead of multiplying the number of sessions by 300 shillings, others who finish the session and fail to pay for the service. Worse still, others can carry all your belongings, clothes, shoes and leave you in the living room naked. We suffer a lot while doing this work, but we still have to do it because it is our only source of income”.

Regarding bribes, one discussant said, “I was once arrested when I was negotiating with my client. The police told me that he was going to charge me with planning to steal and given that as sex workers we are not listened to, I had to call my fellow sex workers to help me raise the money he asked in bribes. I did not have any money on me; the client I was negotiating with was my first one for that night. Luckily for me, my friends sent me 2,000 shillings which I gave to the police”.

4.3.4 Insecurity of persons

Sex workers did not feel secure in the spaces where they operated as they were harassed or beaten. This was reported by 54.5 and 45.5 of the respondents, respectively. See Chart 4.7.

Chart 7: Respondents by Violation of Security of Persons



Source: Field data 2019

Peter, a key informant, agreed with the sex workers as over half of the respondents, complained about harassment by arresting officers. Further, he opined that this emanated from the absence of female officers when arresting the sex workers. Focus group discussants reported that on the one hand, the arresting officers harass and beat up. The non-paying type of clients, on the other hand, beat them when they ask to be paid after the service. A key informant said that during court user committee meetings, representatives of sex workers complain that county askaris harass them.

CHAPTER FIVE: FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The study established that the enforcement of anti-prostitution laws led to discrimination against female sex workers. Female sex workers are the victims of the effects of anti-prostitution laws while their male partners are neither arrested nor charged for the offences the women were charged for. Whereas the commission of the offence of prostitution ordinarily involves both men and women; this offence is crafted in a manner that it is only women who are punished for prostitution. The male sex workers on the other hand, are instead charged with unnatural offences or indecent practices between males in the case of sex between men. The male partners are never charged yet the two are involved in sex work with female sex worker for financial reasons and the male sex worker for his enjoyment. The study concludes that there is gender discrimination as the female gender is the only one targeted.

The study established that sex workers human rights are often violated through acts being meted on them such as rape, physical and verbal abuse, harassment, tearing of clothes, among others. The enforcement of anti-prostitution laws violates the human rights of sex workers which include: right to dignity, personal insecurity, and socio- economic rights. The study concludes that criminalization of sex work leaves sex workers without recourse to legal protection from such human rights abuses.

The study established that the unchecked discretion of law enforcement officers leads to further violations such as arbitrary arrests, excessive use of force during arrest, solicitation of bribes, excessive bail terms and inefficient or planting of evidence by investigating officers. Sex workers face violations of their human dignity from the point of arrest to post-sentencing stage. They are

beaten during the arrest, locked up in congested police cells where they are held for an extended period and are sometimes denied the opportunity to access friends, relatives or legal representation.

The study established that anti-prostitution laws are vague and unfairly targets female sex worker. Sex workers are charged with offences unrelated to what they do. Sex workers are arrested for allegedly committing petty offences such as loitering, idleness, indecent exposure, and drunk and disorderly. This is usually due to the difficulty in procuring a conviction for the offence of prostitution. These offences are not well defined within the law; therefore, their enforcement is discretionary and without checks and balances of the excesses of law enforcement. In other words, even if one is caught soliciting clients for prostitution, the police often prefer charging such a person with a lesser offence than the actual one. This gives the law enforcement officers the leeway to manipulate the prosecution process to extort money from the suspected offenders and, sometimes, sexual favours.

The study established that when sex workers come into contact with the criminal justice system, it deepens poverty. From the research findings, it was clear that sex workers engage in sex work because of lack of financial resources as a result of their low economic circumstances and hard-economic times. Therefore, sex workers are forced to find means of getting income to feed their families and also meet their basic needs. Enforcement of petty offences criminalizes a person's status, and targets the poor and marginalized in the community. Criminalization of petty offences is tantamount to penalizing individuals like sex workers for their economic status and thereby only affect the poor in society. This is discriminatory and undermines the right of sex workers to equal protection of the law.

The research also established that the number of sex workers charged in court was low due to the bribes given to the police and city council *askaris* by the arrested sex workers. Sex workers who can afford bribes are left free while those ones not lucky to have money risk being forced into sexual intercourse with the law enforcers or having the charge of prostitution against them substituted with lesser offences such as idling, loitering and indecent exposure

5.2 Recommendations

This research recommends the following:

- i. Comprehensive legal reform to protect the human rights of sex workers and solve the challenges presently associated with prosecuting sex workers with minor offences of idleness, loitering and indecent exposure.
- ii. Law enforcement officers need to be trained on human rights to enable them to uphold the human rights of all citizens, including sex workers. Related to this is sex workers empowerment on their rights and linkage to reporting avenues in case of violation and to psycho-social support systems. conducive spaces within the police station for the sex workers to report when their rights are violated. Related to this is to avoid frequent transfers of enforcement officers, especially the ones who have been sensitized on the rights of sex workers. The transfers make gains made to be in vain as negotiations have to begin afresh.
- iii. Decriminalization of petty offences through repealing provisions of the Penal Code and County by-laws that criminalize petty offences. The government should also repeal the anti-prostitution laws and legalize sex work to facilitate its recognition as a legitimate

business activity to warrant the State protection of sex workers' fundamental rights, freedoms and liberties and end violation of sex workers' right to human dignity.

- iv. Gender non- discrimination with regard to arresting women sex workers. The study recommends that arrest should not be biased. Further, female police officers should be designated to arrest the women sex workers as opposed to the male officers to reduce or eliminate human rights violations the male officers mete on the female sex workers.
- v. Sex workers need sensitization on public funds like the youth fund to enable them to initiate income-generating activities. Sex work should be regarded as any other employment to allow them to do their work and their rights observed.

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Annexure 1: Survey Questionnaire, Key Informant and Focus Group Discussion Guides

UNIVERSITY OF NAIROBI

FACULTY OF ARTS

DEPARTMENT OF PHILOSOPHY AND RELIGIOUS STUDIES

**ASSESSING THE EFFECTS OF SELECTIVE ENFORCEMENT OF
ANTI-PROSTITUTION LAWS IN KENYA: THE CASE OF KASARANI SUB-COUNTY
SEX WORKERS**

My name is Edigah Kavuravu Mugamangi a student at University of Nairobi in the department of Philosophy and Religious Studies. I am undertaking the above-mentioned research in partial fulfilment of a Master of Arts in human rights. I would like to ask you a few related questions on the research topic. The information you give will remain confidential.

A) Survey Questionnaire

Questionnaire number -----

Name of the respondent-----

1. Personal Characteristics

1.1 Information about the sex workers

1. What is your age?

<18	1
18-22	2
23-27	3
28-32	4
33-37	5
38-42	6
43-47	7
48-52	8
>52	9

2. What is your highest level of education levels?

Primary not completed	1
Primary completed	2
Secondary not completed	3
Secondary completed	4
Tertiary/university	5

3. What is your marital status?

Single	1
Married	2
Separated/Divorced	3
Widowed	4

4. For how long have been in sex work?

1-5 years	1
6-10	2
11-15	3
>15	4

5. Apart from sex work what else do you do?

I only engage in sex work	1
I do business	2
I am employed	3
Others specify	4

6. What are your reasons for engaging in sex work?

Economic reasons	1
Drug abuse and addiction	2
Like being sex worker (Fun)	3
Likelihood of physical and sexual abuse when young	4
Coercion	5
Others (specify)	6

7. What is your monthly income from sex work?

5000-10,000	1
11,000-15,000	2
16,000-20,000	3
25,000-30,000	4
35,000-40,000	5
40,000-45,000	6
46,000-50,000	7
>50,000	8
Others specify	9

1.2 Human rights

8a. At what time do you engage in sex work?

Day time	1
Night	2
Others specify	3

8b. What is the frequency of arrest?

Daily	1
Once a week	2
Bi-weekly	3
Monthly	4
Others specify	5

8c. When do the arrests take place?

Any time of the day	1
Any time of the night	2
Day and night	3
Others specify	4

9. What is your experience with police (county askaris and national police)?

9a. Who violates your rights in the course sex work?

Police	1
County askaris	2

Both	3
Public	4
Courts	5
Others specify	6

9b. What violations do you experience?

9bi. How is your human dignity violated?	
Forced sex (abuse),	1
Stigmatization	2
Verbal abuse	3
Inhumane conditions in the detention facilities	4
Others specify	5

9bii. How is right to security of person violated?	
Beaten (physically abused)	1
Harassment	2
Others specify	3

9biii. How is your economic right violated?	
Failure to pay for sex service	1
Underpayment	2
Bribery	3
Confiscation of property	4
Others specify	5

9biv. How is your right to fair treatment violated?	
Profiling	1
False charges	2
Failure to explain reason for arrest	3
Delayed trial	4
Unfair bail terms	5
Denied visitation by relatives, friends etc	

10. What offences are you charged/prosecuted with?

Idleness	1
Loitering	2
Indecent exposure	3
Others specify	4

11. What do you suggest be done to protect/safeguard your rights as sex workers?

1.3 Key Informant Guide

(For Nairobi county legal personnel, the county and the national police, sex workers, one magistrate of the Makadara Law Courts and officials of the Bar Hostess Empowerment and Support Programme).

1. How prevalent is sex work in Kasarani Subcounty?
2. What offences are the sex workers arrested with?
3. What is your opinion regarding violation of their rights in the process of arrest?
4. What safeguards/ reforms are necessary to ensure the rights of sex workers in Kenya are protected?
5. Would decriminalization of sex work ensure protection of rights of sex workers? How? /Why not?

1.4 FGD Guide

1. Why are you engaged in sex work?
2. Are your rights violated? Who violates them? How?
3. What offences are you charged with?
4. What is your experience during arrest, detention and trial by courts?
5. What do you suggest be done to protect your rights as a sex worker?