



Submission by Tiyane Vavasate Association to the Committee on the Elimination of All Forms of Discrimination Against Women Mozambique

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This shadow report was developed by the Tiyane Vavasate Association, an organization focused on defending the rights of vulnerable women with a special focus on women sex workers in Mozambique. This submission is based on a review of research on the issue of sex work in Mozambique, such as reports produced on violence against sex workers in Maputo city, the Bio-behavioural survey on sex workers in the cities of Maputo, Beira and Nampula and the research carried out under the Aidsfonds' *Hands Off!* project implemented by Tiyane Vavasate and Pathfinder. In particular, this report draws heavily from the *Hands Off!* Needs Assessment Report¹.

A consultation was also carried out collectively by grassroots organizations working with sex workers, such as Ungagodoli Association, Abevamo Association and Tiyane Vavasate Association in May 2019. According to the data analysis and the context of sex work in Mozambique, the main problems that women sex workers face are:

- I. Sex workers' rights are not respected by health professionals in health units
- II. Sex workers' rights are not being respected by the Mozambican police
- III. Legislation on sex work is unclear
- IV. Sex workers should be respected as citizens and above all as women and with equal rights in all public domains.

Executive Summary:

Sex work in Mozambique is not a crime and it is not legal. The *Hands Off!* Survey on violence against sex workers in Mozambique (December 2016) evidenced that women sex workers in Mozambique experience high levels and multiple forms of violence. Despite constant dialogue with the Government, the police act as protectors of sex workers, but they can also be perpetrators of violence. The relationship between women sex workers and health unit professionals can also be problematic.

¹ Aidsfonds, Tiyane Vavasate, Pathfinder International. (2016, Dec). *Sex Work & Violence in Mozambique: Needs Assessment Report*. Retrieved from <https://aidsfonds.org/resource/sex-work-and-violence-in-mozambique>.

In this regard, we consider CEDAW, as mechanism for defending women's rights in general, to be an important venue to support the country in disseminating rights-affirming laws for all women including sex workers. With this, we come to illustrate the main problems faced by sex workers in Mozambique:

1. Sex workers' rights are not respected by health providers in health units (Article 11f)

The majority of sex workers who go to health units seeking health services are discriminated against and suffer verbal and psychological violence. Few sex workers receive comprehensive services to which they are entitled under various health protocols.

2. Sex workers' rights are not being respected by the police

Despite the efforts of the Mozambican government to protect sex workers, most police officers continue to make arrests without respecting the law and sex workers' human rights.

3. Legislation on sex work is unclear

There are several laws in Mozambique, most of which are unclear, not disclosed and not known by the sex workers, even by the agents of the state who have a duty to safeguard respect for and compliance with the law.

4. Sex workers should be respected as citizens and above all as women

In Mozambican legislation, all citizens are equal before the law, and have equal opportunity in labour relations and in the exercise of rights.

Context:

The Integrated Bio-behavioral Surveillance Survey among female sex workers, conducted in 2011-2012 by the Ministry of Health, estimated a total of 27 285 sex workers (FSW) in three main cities of Mozambique. Sex work is not specifically criminalised by Mozambican law. However, the legal framework also does not provide any protection for sex workers.

Although the Penal Code of 2014/35 does not criminalize the choice of an individual in hiring consensual sex work, article 227 penalizes anyone who "professionally or with all lucrative intent encourages, fosters or facilitates that another person engages in prostitution". Another provision linked to the sex work is Article 225 (from "outrage to public modesty"). This penalizes assault to public decency, which is open to conservative interpretations and can be used against sex workers who have sex in a public space or, for example, in a car.

With regard to HIV prevention in Mozambique, female sex workers are recognized as a key population in the global and national HIV response. Key strategic documents, such as the National Strategic Plan for HIV and AIDS in Mozambique for 2015-2019 (PENA IV) and Guidelines on HIV services for key populations by the Ministry of Health, recognize female sex workers as a priority group for interventions in HIV response.

In the exercise of the Rights the Constitution of the Republic of Mozambique, based on the provisions of article 254 of CRM states: 1. The police of the Republic of Mozambique, in collaboration with other institutions of the State, has the role of guaranteeing the law and order, safeguarding the security of persons and goods, public tranquillity, respect for the Democratic Law of the State and strict observance of the fundamental rights and freedoms of citizens.(2...).

3. *In the exercise of its duties the police obey the law and serve with independence and impartiality citizens and public and private institutions.*

- ***Civil Liability***

If the violation of the right to life is illegally practiced by an officer of the authority when in the exercise of his/her duties the state, he/she is also responsible by the force of the Constitution of the Republic which states: "The State is responsible for the damage caused by illegal acts of its agents in the performance of their duties, without prejudice to the right of returning under the law".

- ***Civil liability for violation of rights affecting life and physical integrity***

Civil liability for violation of the right to life and physical integrity, like any other liability of the same nature by a criminal offence, may be decreed by the Criminal Judge (the judge who appreciated and judged the criminal) or by Civil court Judge.

Problems

1. Sex workers' rights are not respected by health professionals in health units (article 11f)

CEDAW establishes in article 11 paragraph f) that, we quote: "*the right to protection of health and to safety in working conditions, including the safeguarding of the reproduction function.*"

Many health care centres are characterized by a context of discrimination and stigma against sex workers, which compromises the willingness of sex workers to seek prevention and treatment services. According to the *Hands Off!* Needs assessment, over a 12-month period, 32% of sex workers were verbally abused or judged by health professionals and 26% faced discrimination in access to health services. Transgender sex workers experience growing discrimination and ill-treatment in the health centres. 28% of sex workers were HIV positive or did not want to disclose their status.

From the study conducted by Namati Mozambique, out of 4,205 complaints registered by the paralegals between 2013 and 2018, about 973 complaints were associated with poor attendance/attendance without courtesy, 220 with lack of confidentiality and privacy, 439 with an absence of health professionals and 37 related to discrimination.

Sex workers believe that the attitude of health professionals towards them has worsened recently. Health professionals received sensitization to deal with sex workers as a key population and treat them accordingly. However, the results of these sensitization processes are wearing off and sex workers are again reluctant to visit health clinics.

2. Sex workers' rights are not being respected by the Mozambican Police (Article 2c)

CEDAW establishes in article 2 paragraph c) that, we quote: "establishing a judicial protection of women's rights on an equal footing with men and ensuring, through the competent national courts and other public institutions, the effective protection of women against any discriminatory act".

The *Hands Off!* Needs Assessment shows that sex workers in Mozambique experience high levels and multiple forms of violence, ranging from social stigma, discrimination, verbal abuse and humiliation to beatings, rape and theft. The main perpetrators are clients and law enforcement employees. Seventy percent (70%) of sex workers consulted in the study experienced violence within the last year.

Despite the constant dialogue with the Government, improvements to sex workers' relationship with police are limited. Police officers act as protectors of sex workers, but they can also be perpetrators of violence. Police officers are involved in physical and sexual violence against sex workers, and they deprive sex workers of their money in a number of ways. Some provide protection to sex workers, but this is uncertain and depends on the officers.

According to *Hands Off!* Study, in Maputo, 18% of the sex workers in the sample suffered violence by the police in the proceeding twelve months. They suffered economic (24%), physical (18%) and sexual (18%) violence by law enforcement officials. Sex workers reported that they were taken by police officers to remote places, raped in groups and/or that all of their belongings were taken. Law enforcement officials also pretend being clients, but they demand a lower price, or they ask for free sex.

"A police officer forced me to have sex with him and infected me with an STI. They shut us up in a cell and beat us up well, and we had to sleep on the floor. Next day they made us clean the cells and the bathrooms. They told us that what we were doing was prohibited, it wasn't legal and we were worth nothing. We had to pay them or have sex with them to get out. Some of the girls were shut up in prison for one or two months."

- Female sex worker

Sex workers also observed that they are being prevented from making money by police officers who make pressure and threaten their clients. In these cases, the police enter the work space of the sex workers and take the money that clients were due to pay them. They demand the clients' documents and threaten to inform their wives. To avoid problems, clients usually accompany the police to an ATM and pay a bribe, leaving the sex workers without their fee. Threatened clients are reluctant to return and the women see their work interrupted by police harassment. They usually hide their badges and car number plates to prevent sex workers from denouncing them.

As a result, many sex workers do not trust the police and avoid reporting violence or seeking legal assistance. During focus groups conducted as part of the *Hands Off!* Study, one sex worker explained why she did not seek assistance from the police after being threatened, robbed and raped by four men:

“There was no way for me to go to the police, because I am doing despicable work...For them I have no right to stand on the streets and sell sex...Police will not help me. There are these situations when a client doesn't want to pay and you have a fight. If you bring him to the police, they will turn the story around and agree with the person who robbed you, they won't agree with you because you are selling sex...When you bring the person who didn't pay to the police, instead of arresting that person, the police will threaten you, the one who has been mistreated. They can say that they will arrest you because what you are doing is not legal, you don't have the right to do it. What happens is that the person you brought to the police will pay them, and they will let him go, and they will call you names, insult you and send you away and it doesn't make sense at all.”

Importantly, sex workers consulted for this report observe that where law enforcement units that have been sensitized on effective engagement with sex workers, relationships between sex workers and police are significantly improved.

3. *Legislation on sex work is unclear (article 2b)*

CEDAW establishes in article 2 paragraph b) that, we quote: "Adopt legislative measures and other appropriate measures, including the determination of sanctions in case of necessity, prohibiting all discrimination against women".

Even though sex work is not a crime, it is not considered a legal activity nor is regulated by the Labour Law due to the belief that on an ethical, social and moral level sex work is at odds with the constitutional principles moral, economic and social order of the country are based (art. 1 of the Labour Law and articles 1 and 18 of the Law of Associations - Law No. 8/91 of 18 August).

*"... Several times I was found on the street with my friends by the police and I was taken to the police station because **I didn't have my identity card...**"*

-Female sex worker

These laws resulted in the arrest of sex workers, violence perpetrated by state actors against sex workers in detention and barriers to the access of sex workers to justice.

4. *Sex workers should be respected as citizens and above all as women and with equal rights in all public domains (Article 2b)*

CEDAW establishes in article 2 (b) that, we quote: "Take all appropriate measures, including legislative provisions, to modify or revoke any law, regulatory provision, custom or practice which constitutes discrimination against women".

The *Hands Off!* study has revealed that in the preceding 12 months, most sex workers experienced discrimination (80%), and 79% were called names. 13% of sex workers in Mozambique had been arrested. The specific reasons for the arrest were: being a sex worker (20%), being detained in a police raid (17%), soliciting clients on the street (13%), carrying a condom (6%) and stealing from a client (4%). On average, sex workers were arrested once, and in most cases, detention lasted four days. During detention, 18% of sex workers suffered violence. This violence included forced sex (17%), beatings (12%), and theft of money or condoms (6% and 2% respectively). To avoid detention, 25% of sex workers paid a bribe and 16% had sex with a policeman in exchange for their freedom.

" ... They found me at the corner² with my friends, they asked for an I.D., because I didn't bring it, they took me to the police station and I stayed in the cell for three days... I didn't eat anything nor I had a bath... I cleaned the cell, I felt very humiliated... "

-Female sex worker

Recommendations:

- **Ensure sex workers' access to health services** included through
 - monitoring the implementation of the National Strategy for the improvement of quality and humanization of health care in Mozambique;
 - the integration of friendly and comprehensive services for high-risk groups in health units;
 - the capacity building of health professionals on the guideline about key populations, sensitization against stigma and discrimination.
- **Take actions to address violence against sex workers, including by state actors, and guarantee their access to justice**, included through the training of the police officers of the Republic of Mozambique.
- **Addressing laws and gaps in legislation that promotes violence and discrimination against sex workers, including through:**
 - Promoting the participation of women sex workers in decision-making processes on access to justice, health and human rights; and
 - The inclusion of needs of women sex workers on the agenda of the country under the supervision of the Ministry of Gender, Child and Social Welfare (MGCAS)
- **Expand legislation that protects women in all forms of physical integrity and respect for human rights and ensure that sex workers and their work are not criminalised.**

² Place where sex workers are waiting for customers.

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