

Key-Population-Led Organization in Kenya Fast Tracks Access to Justice for Sex Workers Affected by Violence

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“The (alternative dispute resolution) process was fast. I was compensated, and my perpetrators were warned. I am now able to carry out my work smoothly.”

- Jane (pseudonym), female sex worker

In Kenya, female sex workers (FSWs) face a high risk of violence and other human rights abuses due to deep-rooted social stigma and discrimination. The risk of violence has worsened for everyone, including FSWs, in Kenya during the COVID-19 pandemic, as reflected in gender-based violence (GBV) cases. Reports of GBV between January and June 2020 increased 92 percent compared to the same period in 2019.¹ FSWs experience violence from co-workers, clients, and managers of establishments where sex work takes place. Violence against sex workers has been linked to inconsistent condom use, which increases the risk of sexually transmitted infections (STIs), and violence is a barrier to accessing HIV information and services. Addressing violence against FSWs protects their rights and welfare and has the potential to lead to a significant reduction in HIV infections among this key population.² However, many cases are not reported, denying survivors the opportunity to access psychosocial, legal, and other support services. Moreover, with most entertainment venues closed or operating fewer hours due to COVID-19 restrictions, many FSWs lack steady income, creating further obstacles to reporting violence and pursuing litigation.

Through the Key Population Investment Fund (KPIF), the FHI 360-led Meeting Targets and Maintaining Epidemic Control (EpiC) project is strengthening the capacity of key-population-led (KP-led) organizations to provide community-focused HIV prevention and treatment services and address structural barriers, including violence, that hinder access to services among key populations. From 2019 to 2021, the Bar Hostess Empowerment and Support Program (BHESP) was one of EpiC's KPIF grantees in Kenya. **With KPIF support, BHESP accelerated the use of alternative dispute resolution (ADR) as a quick, effective, and affordable path to justice for FSWs who have experienced violence.**

About BHESP

BHESP is an FSW-led Kenyan organization founded in 1998 to advocate for human rights and facilitate access to health services. The organization's programs have benefited more than 17,600 bar hostesses, sex workers, women who have sex with women, and women using drugs. BHESP's mission is to influence policy and facilitate provision of holistic, quality health services, human rights awareness, legal services, and economic empowerment for these key populations.

¹ National Crime Research Centre. Protecting the family in the time of COVID-19 pandemic: addressing the escalating cases of gender based-violence, girl child disempowerment and violation of children's rights in Kenya. 2020.

² Decker M, Wirtz AL, Pretorius C, et al. Estimating the impact of reducing violence against female sex workers on HIV epidemics in Kenya and Ukraine: a policy modeling exercise. *American Journal of Reproductive Immunology*, 2013; 69(Suppl 1):122–132.



Activities implemented by BHESP

- Ensuring comprehensive HIV prevention, care, and treatment services
- Training paralegals and providing legal aid
- Holding dialogue sessions with law enforcers
- Educating community and religious leaders, bar owners, and caretakers
- Sensitizing peer educators on human rights, violence prevention and response, and advocacy
- Conducting human rights awareness campaigns
- Supporting a crisis response team
- Providing mental health support groups through the project

Since 2016, BHESP has implemented interventions for FSWs in Nairobi County focused on improving access to comprehensive HIV prevention, treatment, and care services and seeking justice for survivors of violence. With funding from KPIF, BHESP was able to expand its work to address the structural barriers that inhibit access to and effectiveness of HIV services for FSWs. This grant built on work that BHESP implemented under the [LINKAGES Project](#), also funded by the United States Agency for International Development (USAID), which ended in 2018.



Advocacy Officer Mary Mwangi, right, talks to Dr. Caroline Ngunu, Nairobi Metropolitan Health Services director of preventive and promotive services, center, and a community paralegal about BHESP's GBV response.

Photo credit: BHESP

One of BHESP's most successful interventions is ADR, which is a legal strategy to fast-track justice for FSWs affected by gender-based and other forms of violence. The organization started implementing the grassroots ADR system in 2017, following increasing and widely publicized incidents of GBV perpetrated against FSWs. BHESP provided legal support to the sex workers affected by these incidents but quickly learned that litigation was costly, slow, tedious, and time-consuming. As a result, most of the sex workers never received justice through the legal system. BHESP introduced ADR in response to these challenges.



BHESP participates in International Women's Day activities in Nairobi.

Photo credit: BHESP

How the ADR system works

The Kenyan Constitution allows a prominent role for ADR, which is backed by civil procedure and penal codes. The government has proposed legislation that will further institutionalize ADR and make provisions for accreditation of mediators.

In the BHESP approach, both parties to a dispute must agree to seek a solution out of court. The parties seeking resolution of a dispute agree on the venue and present their cases before a lawyer retained by BHESP, who serves as the mediator, or before a senior police officer trained in ADR. A series of settlement conferences are held at a mutually agreed upon safe space, such as a police station or chief's camp with trained officers. The police have the power to summon perpetrators to participate in the dispute resolution process. BHESP paralegals participate in ADR cases as observers to build their capacity to provide frontline support to clients seeking justice.

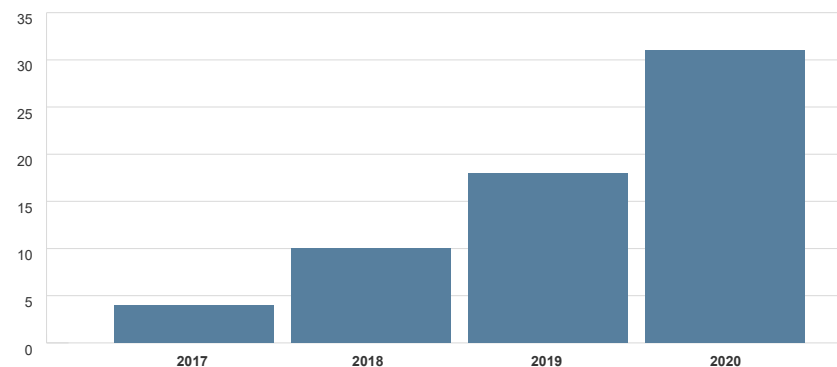
After hearing arguments and evidence by both sides, including witnesses, the mediator assists the parties in reaching an agreement or delivers a verdict on the dispute based on the facts. This formal process requires at least three conferences to reach a decision—typically an order or injunction. When a case ends, the parties sign a written agreement, which is stamped by a police station commander. The decisions are binding, but either party can ask the courts for a review or litigation.

According to Kenyan law, ADR can only be used in cases not of public interest, and survivors must provide informed consent to seek justice in their cases using ADR. In the context of sex work, most ADR cases involve clients refusing to pay for services, blackmail, physical assault, and verbal abuse related to a sex worker's HIV status. ADR mediators have no jurisdiction to handle sexual violence offenses. In those cases, BHESP works with the police to prosecute offenders while providing medical care and psychosocial support for survivors.

Achievements

In 2020, BHESP settled 31 cases through ADR, up from five in 2017. KPIF contributed to this increase by providing funding for sensitization of key individuals conducting dispute resolution including law enforcers, local administration personnel, and community leaders; transportation fare for the parties involved in the cases; and awareness-raising of ADR through success stories shared on social media and by peer educators. BHESP also retained a lawyer to serve as the mediator and build the organization's capacity in the ADR system. And, BHESP trained another local civil society organization, Jinsiangu, a transgender-focused partner, on how to conduct ADR to expand access to this important form of legal support for key populations.

Figure 1. Number of cases settled through ADR



In addition to successfully using ADR to resolve 31 cases of violence perpetrated against FSWs, BHESP also provided psychological and clinical support. Between 2019 and 2021, 2,777 violence cases were reported by FSWs to BHESP; all FSWs received psychological first aid, and 1,276 received clinical post-GBV care.

While the number of cases of violence against FSWs resolved through ADR remains small, the Kenyan government is encouraging the use of ADR as one way to increase access to justice and reduce the backlog of court cases. BHESP is poised to capitalize on the new legislation proposed by the Government of Kenya to expand the role of ADR to complement the court system. In the coming year, BHESP plans to expand its capacity to implement ADR by training its network of paralegals to become certified grassroots mediators.

SUCCESS STORY: HOW TWO SURVIVORS OF VIOLENCE RECEIVED JUSTICE

When Jane (pseudonym), a sex worker, experienced violence through her work, she sought justice through ADR.

“Sometimes, other sex workers insulted me because they knew I was HIV positive,” Jane said. “It became hard for me to work. Most of my clients left me after being discouraged by the other women.”

Jane confided in a friend about the matter. “She told me about the legal services BHESP offered and gave me the contact of a paralegal.”

Mary, the paralegal, advised Jane to seek redress through the ADR system. Mary also ensured Jane received counseling at the BHESP drop-in center.

“I was surprised to know that I did not have to go to court for my case to be heard,” Jane said. “The process started in November 2019. The people who had insulted me were summoned by the police commissioner.”

During five sessions, a settlement officer heard the arguments of the disputing parties. At the end, the women accused of perpetrating violence against Jane were cautioned to stop harassing her.

“The process was fast. I was compensated, and my perpetrators were warned. I am now able to carry out my work smoothly,” Jane said.

In another case, Akoth (pseudonym), also a sex worker, was compensated by a neighbor who had insulted and assaulted her.

“When COVID-19 broke out, the government imposed a curfew (between 7 p.m. and 4 a.m.). I couldn’t work at night as the bar where I was based was shut down,” Akoth said. “I had no choice but to work during the day next to the place where I lived.”

One day, a neighbor insulted Akoth and became violent, pulling and tearing her dress. “I was humiliated, but being a peer educator at BHESP, I knew my rights,” Akoth said. “The next day, I went to BHESP and reported the matter to the advocacy officer and a paralegal.

Through ADR, I faced my neighbor and demanded compensation.”

Fauzia, a paralegal with BHESP, said that although ADR works, many incidents of violence are not reported. “Sex workers are often afraid to report crimes committed against them for fear of not been taken seriously. In our country, sex work is criminalized. Many sex workers silently suffer verbal abuse, discrimination, harassment, physical abuse, and sexual violence. Most of us don’t have the capacity or resources to hire a lawyer. We often remain silent on the violent acts we encountered.”

Fauzia hopes that with increased awareness of ADR, more FSWs will seek justice.

According to BHESP, FSWs appreciate the ADR system. Nine out of 10 women interviewed after their cases closed reported satisfaction with the verdicts reached.

For all other inquiries, please contact  Hally Mahler, EpiC Project Director: hmahler@fhi360.org

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