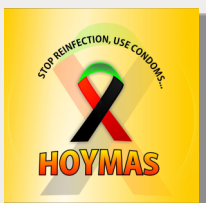


VISIBLE SCARS

Addressing Violence, Stigma and
Discrimination Against Sex Workers in Kenya



Research brief from the project *Sex Work & Violence in Kenya*; a study completed in partnership between the Health Options for Young Men on HIV/AIDS and STIs (HOYMAS) and Kenya Sex Workers Alliance (KESWA)

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For purposes of this research brief, violence has been categorised and defined as:

Physical violence - any deliberate use of physical force against sex workers with the potential for causing harm. This includes but is not restricted to beatings with hands or objects, kicking and pushing.

Sexual violence - any sexual act or attempt to obtain a sexual act, to which consent is not given. This includes but is not restricted to rape, attempted rape, unwanted sexual touching and sexual harassment.

Emotional violence - any act that diminishes sex workers' sense of identity, dignity and self-worth, including threats, harassment, belittling and shaming and being made to feel unworthy. This includes but is not restricted to discrimination.

Economic violence - any act aimed at depriving sex workers of their money, including but not restricted to exploitation, theft and not paying for sexual services.

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BACKGROUND

Criminalisation and Violence

In Kenya, sex work, sex work-related behaviours, and same-sex sexual practices remain criminalised through national laws and County by-laws. Studies show that criminalisation of sex work obstructs sex workers' safety, health, and rights and hinders them from accessing police protection and justice (Kru?si, Kerr, Taylor, Rhodes, & Shannon, 2016; Nelson, 2019) and leaves them vulnerable to violence, stigma, and discrimination (Bhattacharjee et al., 2018). In contexts where criminalisation of sex work exists, police officers frequently misuse their powers to conduct arbitrary arrest and forceful detention of sex workers, perpetrate violence against sex workers, and refuse to provide adequate police protection to sex workers (Deering et al., 2014, 2015; Shannon & Csete, 2010; Shannon et al., 2018).

KENYAN'S LEGAL FRAMEWORK AND ITS RELATION TO CRIMINALISATION OF SEX WORK

Kenyan law does not directly criminalise sex work. However, numerous legal provisions that prohibit activities associated with sex work, including living off the earnings of sex work, soliciting clients, and public indecency, have an indirect criminalising effect on sex work. Such legal provisions deny sex workers their fundamental constitutional rights, including equality before the law, human rights, and security. The laws that indirectly criminalises sex work in Kenya include:

The Kenyan Penal Code, Sections 151, 153, 154, 155, and 156

These sections criminalise 'detention of females for immoral purposes' (151), 'male persons living off the earnings of prostitution or soliciting' (153); 'women living on the earnings of prostitution or aiding, abetting or compelling an individual to engage in sex work' (154); 'premises used for prostitution or residing in or frequenting or living in a house wholly or in part on the earnings of prostitution' (155) and 'running a brothel' (Section 156).

County by-laws

All County governments have by-laws prohibiting loitering for immoral purposes, importuning for prostitution, and indecent exposure. Such by-laws indirectly criminalise sex work as they empower law enforcement officers to frequently arrest and detain sex workers (KESWA, 2018). For example, the Nairobi City General Nuisance By-law (2007) prohibits 'loitering, importuning or attempting to procure a female/male for prostitution' empowers law enforcement officers to arrest sex workers arbitrarily.

The Penal Code, Sections 162 a and c, 163 and 165

These sections criminalise persons who identify under the umbrella of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) identities by criminalising 'unnatural offenses-carnal knowledge of any person against the order of nature' or 'permits a male person to have carnal knowledge of him or her against the order of nature' (162 a and c), 'attempts to commit unnatural offenses' (163) and 'indecent practices between males' (165). Persons found guilty under (162 a and c) commits a felony and could face imprisonment for 14 years and (163/165) five years. These sections mainly affect male sex workers (MSWs), but police officers also use them to harass other LGBTQ sex workers.

The Public Health Act (1986, 2012), Sections 44

This section makes it mandatory for 'persons suffering from venereal disease to have themselves treated until cured' by a qualified medical practitioner and criminalises its noncompliance. Abdallah, Maina, Mtende & Mwangi (2017) reports that a Court in Kisii applied this provision in 2015 when a female sex worker (FSW) was found guilty and faced a fine of up to 30.000 KES (260 euros) and three years in prison.

Laws and policies addressing violence against sex workers

The Sexual Offences Act No. 3 (2006), Sections 3, 4, 10, 6, 15, 18, 19, 17, 26,

These sections address violence against sex workers as they recognise sexual harassment as a crime and offer victims, including sex workers, protection during the prosecution of sexual offenses (KESWA, 2018). The sexual crimes criminalised under this Act include 'rape' (3 and 4), 'gang rape' (10), 'indecent acts' (6), 'the procuring of, or permitting children under the age of 18 to be sexually abused, or to participate in any form of sexual activity, or any obscene or indecent exhibition or show' (15), 'trafficking for sexual exploitation' (18) and 'prostitution of persons with mental disabilities' (19). It also penalises third party activities such as 'to encourage one to be a sex worker or be in control of a sex worker' (17). It also criminalises 'deliberate transmission of HIV or any other life-threatening sexually transmitted disease.'

STUDY FINDINGS

Stigma and discrimination against sex workers

Stigma and discrimination against sex workers remain deeply rooted in the Kenyan society due to sex workers' illegal status, public values of immorality, cultural and religious influences. Anti-sex work views and anti-gay narratives ostracise people involved in sex work from society, including family and friends. MSWs experience additional (gender-based) violence and exclusion, including expulsion from learning institutions because of their homosexuality. MSWs who appear 'female' or 'feminine,' through body language and clothing, experience more social rejection than those who do not. Sex workers' rejection, stigma, and discrimination at the family level and in public relates to the disapproval of sex work or same-sex sexual relationships as life choices that do not conform to society and family expectations.

"Verbal abuse and hate. Some spit at us, gossip, and talk about us, and some even throw stones at us. Sometimes I'm even afraid of the people who are outside the house. How will I even go to work with such people around?" - Male Respondent, Mombasa

Stigma and discrimination in health facilities

The findings show rampant stigma and discrimination against sex workers, particularly in public health facilities. This manifest itself in the form of discriminatory treatment or no treatment at all, fueled by the patient's engagement in sex work or sexual orientation. In the past 12 months, almost half of the sex workers (41%) experienced one or more stigma and discrimination forms while seeking HIV and other health services. Forms of discriminatory experienced by sex workers include stigma and discrimination (30%), judgment by health workers (27%), verbal abuse (21%), humiliation through homophobic comments and behaviour (11%), and blackmail (5%), neglect, denial of care, verbal abuse and gossip.

*"One of our friends had anal warts, and we took him to a health centre. Instead of helping us, the nurses formed a group and started talking and looking at us. Now you feel stigmatised, isolated and even the other patients started talking about us and hurling insulting words. Others are just laughing."
- Male Respondent, Mombasa*

High levels of discriminatory treatment forced many sex workers to avoid or delay seeking health services in public health facilities. In the past 12 months, one in five sex workers (20%) did not reveal their involvement in sex work to healthcare workers in public facilities for fear of stigma and discrimination, sometimes leading to harmful effects on sex workers' health.

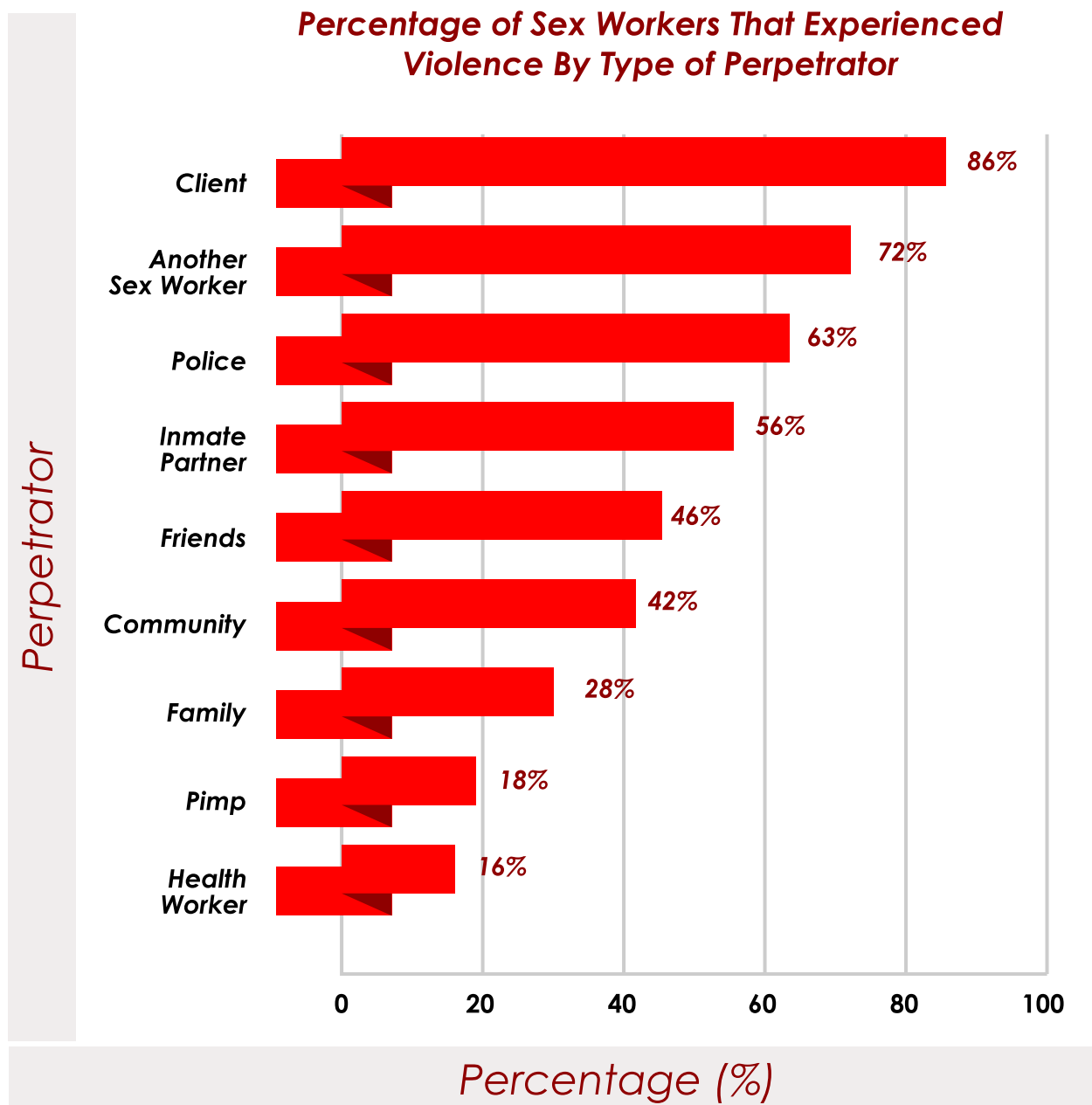
"We have lost so many MSW because of that. Especially in the rural areas where MSW lack transport to access services in the urban centers, they go to the local health facilities where they face stigma from the health care providers. That has led to four deaths: in Nyeri, Meru, Embu, and Kirinyaga counties. They were all below 21 years, and they suffered from sexually transmitted diseases, and it's due to stigma in health care."- Male Respondent, Nairobi

Levels of Violence Experienced By Sex Workers

The findings revealed rampant violence towards sex workers in Kenya. The majority of sex workers (97%) in this study experienced some type of violence, including emotional (90%), economic (86%), physical (75%), and sexual violence (33%). High levels of violence make it difficult for sex workers to access HIV services thus leading to increased risk of HIV/STI infections.

Perpetrators of Violence Against Sex Workers

Sex workers experience violence from a broad spectrum of perpetrators, including police (63%), clients (86%), intimate partners (56%), healthcare workers (16%), another sex worker, and third parties, among others (Aidsfonds- Soa Aids Nederland, 2020).



CLIENTS

Clients are the main perpetrators of violence against sex workers in Kenya. In the past 12 months, they inflicted violence among a majority (86%) of sex workers in this study. Sex workers experienced different types of violence by their clients, including economic (77%), sexual (54%), and physical (52%) violence. The majority of sex workers experienced more than one form of violence at the same time. For example, a sex worker can experience physical and sexual violence during an encounter with clients and get humiliated and denied their payment.

Economic violence by clients

Conflicts between sex workers and their clients often relate to money. In the past 12 months, more than three in every four (77%) of sex workers experienced economic violence involving clients refusing to pay the amount agreed upon or refusing to pay at all.

*"I had a client, and we had agreed on the amount he should pay, but when morning comes, he started claiming that he doesn't have the money." - **Female Respondent from Kisii***

Sex workers said that clients expect free sexual services in exchange for food and drinks bought for sex workers, demanding extra services without offering additional payments, stealing sex workers cash and items, and changing terms of the original agreement. Disagreements about payments (economic violence) remain the key catalyst for other forms of violence, including sexual and physical violence.

*"You negotiate with a client and leave to the room, but when you get there, he completely refuses and grabs you, having sex without a condom." - **Female Respondent From Mombasa***

Sexual violence by clients

In the past 12 months, more than half of respondents (54%) experienced sexual violence and abuse by clients. During interviews sex workers talked about being touched in body parts; they don't feel comfortable with and being forced into sexual acts without their consent.

*"Touching me on parts which I'm not comfortable with and you're forcing it, but I'm not comfortable. Even after explaining to you that I'm not comfortable." - **A Respondent From Mombasa***

Physical violence by clients

Sex workers frequently experience physical violence and other forms of mistreatment at work. In the year before the survey, more than half (52%) of sex workers experienced physical abuse by clients. Physical violence takes different forms, including clients: beating sex workers in their faces, kicking them in their stomach and breast area, attacking them with a knife or other weapon, and murder of sex workers. Some respondents in this study carry visible scars on their bodies as evidence of physical violence.

"You might hook up with someone thinking that he is a client, and once you're done, he removes a weapon, knife or even a gun and threatens you. You will have to leave so as to spare your life. It's such a loss for us after spending the whole night with the client."

Male Respondent, Mombasa

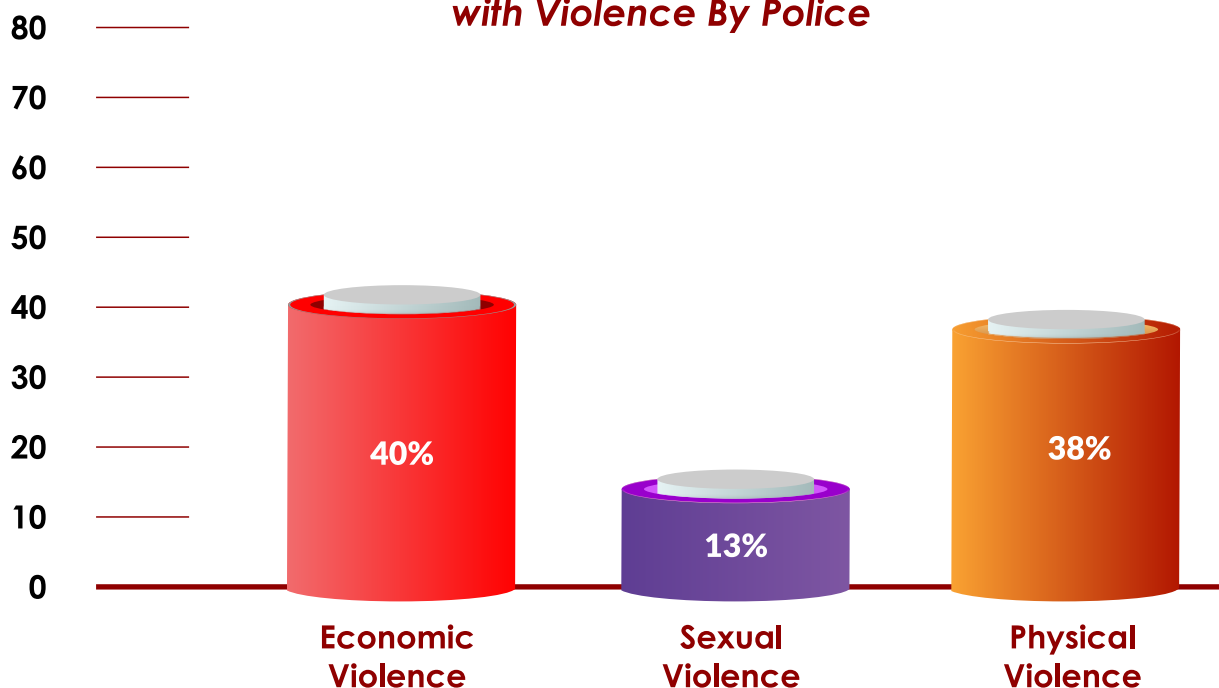
Emotional violence by clients

In the 12 months prior to this study, almost half (39%) of sex workers experienced emotional violence, including; blackmail (39%), humiliation, stigma and discrimination, and abuse by clients.

POLICE

Police officers because of their unique position as law enforcers are the second and most significant perpetrators of violence against sex workers in Kenya after clients. In the past 12 months, more than six out of ten (63%) sex workers experienced at least one form of violence by police. More MSWs than FSWs on average reporting having experienced violence by police. The forms of violence against sex workers by police included sexual (13%), physical (38%), economic (40%), and emotional violence, including blackmail (22%) and stigma and discrimination (22%) by police officers

Percentage of Sex Workers' Experience with Violence By Police



Emotional violence by police officers

Sex workers see police officers as their enemies due to their harassment, abuse, and humiliation in a manner that did not conform with the lawful expectation of protection of Kenyan citizens. In the past 12 months, half (50%) of respondents felt humiliated by police in incidents including verbal abuse and derogatory language.

"A police officer once arrested me and asked: "Who penetrates your arse, you are very beautiful. What are you doing here?" I told him that the reason I was on the streets was because of lack of money for upkeep and raising my children. He asked how much I was looking for. I told him that I charge 1000 for one shot and 3,000 for the whole night. He told me that he would pay. He arrested me and put me in a cell. I asked the police officer what he wanted so that he could release me. He said that he wanted sex. He took me to a store and after sex he said to me: "leave, you prostitute." I asked why he didn't want to pay. He said to me: "What am I paying you for? Leave now or I will take you back to the cell." I had to force myself to do it because I do not have anyone to rely on. I do not have parents, I am not married, and I have many children with different fathers. I had to have sex with the police officer so that he would release me."

- Female Respondent, Meru

Economic violence by police officers

In the past 12 months, sex workers experienced economic violence, including money stolen (33%), paying bribes in exchange for freedom (51%), belongings stolen (23%), and condoms stolen (33%) by police. Sex workers unanimously agreed that money is the number one factor that motivates police officers into committing economic violence and conducting police raids becomes their way of perpetuating it. In this study, most respondents (68%) experienced at least one police raid in the past 12 months.

"The police will come when you are at the hotspot. When the police arrive, they just take you in. They grab you and put you in their car. The first thing they do after that is say 'whoever has money will give me', So I am coerced by the police to give them money."

- Male Sex Worker From Mombasa.

Sexual violence by police officers

Police demands sex workers who cannot pay bribes to offer sexual services (13%) or forced them into sex (14%) in exchange for their freedom. Police sometimes refuses to wear condoms.

"You bribe them or have sex with them; that's what normally happens. You have no other option. Sometimes they are hurling insults at you. You have to humble yourself, listen to them, if you have money you give them and if they ask for sex you give it."

Female Respondent, Mombasa

Physical violence by police officers

In the past 12 months, sex workers experienced physical violence and aggression, including assault (with weapon or object) (23%), beatings (26%), and being thrown out of moving police vans by police officers.

Police arrest

In the past 12 months, more than half of sex workers (58%) in this study got arrested on average two times. The common grounds for arrests were: lack of ID card or passport (48%), being a sex worker (33%), public nuisance (24%), soliciting clients on a public place (22%) carrying a condom (19%), disobeying instructions of a police officer (18%) and stealing from a client (118%). Since most of these arrests usually are unlawful, police rarely charge sex workers with sex work but with other trumped-up charges, including loitering, mugging, toutting, or drug possession.

"I am a male sex worker, and obviously I carry lubricants and condoms. When the police arrest you, search your bag and find the products, they take you to the station and report a different version of the story like they caught you loitering, mugging and toutting."

Male Respondent, Nairobi

In an interview, a chief inspector of the Kenya police force confirmed that officers falsely charge sex workers to solicit money from them.

'it's Difficult For The Police To Say That We Are Working Closely With The Sex Workers Because The Constitution Does Not Allow [us To Do That].'- Chief Inspector With Kenya Police.

Sex workers difficulty in accessing police assistance and social justice

Repressive police behavior limits sex workers' access to police assistance and social justice. In the past 12 months, almost half (43%) of the study respondents experienced discrimination in accessing police assistance at least once. Sex workers' awareness of long-standing discriminatory police attitudes contributes to their decision not to report violence and police theft. Sex workers also fear being asked for a bribe, moral judgment, accusations for crimes not committed, arrest, and police detainment.

"I used to go to the police station to report some things, but they were like, why should we report your case and you are a sex worker? I felt like my right is being taken away. I have to go to the police station and report a case, but simply because of what I do people do not take it seriously." - Female Respondent, Nairobi

Risk factors of violence involving clients

Sex workers indicated several risk factors that increase violence, including being HIV positive, the use of alcohol and drug, a migrant status, gender inequality, working location, and lack of empowerment. In this study, on average, HIV positive sex workers reported most incidents of physical violence in the past 12 months.

"You know there are times you don't get clients like for a whole week...You have children who need food, a landlord who wants the rent paid, so we drink to ease the stress."- Female Respondent, Meru

This study revealed existing linkages between sex workers' migration status and police violence. In the past 12 months, migrant sex workers experienced high levels of sexual violence (35%) and blackmailing (39%) from a police officer, compared to Kenyan sex workers sexual violence (12%) and blackmailing (39%) from a police officer at least once. Sex worker respondents listed the riskiest working locations, including clubs, bars, marketplaces, and clients' homes being the most dangerous.

Homophobia and its experience on male sex workers

The pervasive homophobic societal attitudes and anti-gay narratives against LGBTQ people remain the most significant challenge for MSWs who face heightened risk of violence and additional (gender-based) violence. MSWs in all research sites reported that their vulnerability to violence stems from the societal hostility towards them due to their sexual orientation, gender identity, and expression (SOGIE) status.

"I almost died. I was attacked by a group of men. They shouted, 'You gay you must die' and wanted my money. I didn't have any money or anything else to give them and they stabbed me with a knife in my head." - Male Respondent, Nairobi.

On average, MSWs faced arrests more times than FSWs for the same alleged crimes, including public nuisance (34% vs. 16%), carrying a condom (28% vs. 12%), and disobeying police instructions (25% vs. 12%). MSWs face more barriers in accessing police assistance because most MSWs feel uncomfortable reporting to police as they may, in turn, get arrested because of their homosexuality or experience moral judgment and other forms of humiliation. The findings show that in the past 12 months, MSWs and TSWs experienced increased vulnerability to police violence (41%) compared to FSWs (14%), paid bribe to prevent arrest (58%) than FSWs (46%), and had sex more often with the police to avoid arrest (17%) than FSWs (10%). TSWs (32%) had sex with police to avoid arrest most often than other sex workers. The findings also show that police officers blackmailed MSWs but again approached them to collaborate in blackmailing their clients.

MSWs also experienced homophobic attitudes and discriminatory treatment by healthcare workers. MSWs talked about being laughed at, outed as 'gay men' to colleague healthcare workers, and refused treatment because of their sexual orientation. A man from Nairobi said:

"One of our friends had anal warts, and we took him to a health centre. Instead of helping us, the nurse formed a group and started talking and looking at us. Now you feel stigmatised, isolated and even the other patients started talking about us and hurling insulting words. Others are just laughing."
- Male Respondent, Mombasa

Mitigation strategies against risk factors of violence

Sex workers frequently employ numerous strategies to avoid and mitigate the risk of violence, thus proving their resilience and creativity around increasing their safety and security in the face of violence in all its forms. The research findings show that, on average, sex workers in Kenya employ up to 14 risk mitigation strategies to avoid violence and increase safety. The common mitigation strategies identified in this study include:

changing behaviour (96%), avoiding known dangerous places (99%), working from inside locations (93%), negotiating to receive payment before having sex with clients (99%), and hiding money to prevent theft (96%) to avoid violence and increase safety. The other strategies include: temporarily giving their money to another sex worker (45%) or another person (37%) to look after it, befriending people such as bar and club staff and security guards around their work location (93%), paying small amounts of money to security guards in exchange of protection (58%), making payments to third parties (44%) to enable them to work from safer locations. Sex workers also employ peer network strategies, including letting each other know where they go with a client (66%), writing down contact details of clients (84%), and transferring money through M-Pesa (mobile money transfer service) to another sex worker.

"Sex workers are very united; when something happens you realise how united we are. We are together and have this bond that in case I'm arrested, I find other sex workers coming for me." - Male Respondent, Mombasa

CONCLUSION

Violence against sex workers is not only prevalent, but also perpetrated, legitimised and accepted by many in Kenya. Numerous legal provisions that prohibit activities associated with sex work and law enforcement authorities have, in some cases, contributed to the high risk of violence against sex workers rather than protected them against it. Stigma and discrimination against sex workers', anti-sex work views, public values of immorality, cultural, and religious influences remain deeply rooted in society and contributes to legitimisation and acceptance of violence against sex workers. The perpetrators of violence are mainly clients and the police while other sex workers, intimate partners and family members are also responsible for lower levels of violence against sex workers.

Some aspects of violence undermine HIV prevention efforts and increases sex workers' vulnerability to HIV transmission. For example, stigmatising and discriminatory treatment of sex workers at public health facilities contributes to the violation of their rights while also causing a damaging impact on their physical and mental health. Discriminatory treatments also slow down the efforts to eliminate HIV in Kenya as it contributes to reduced use of prevention, treatment, and care services through avoiding or delaying accessing HIV related services. Criminalisation of sex work increases discrimination, stigma and violence against sex workers which impacts their health, safety, protection, and ability to secure police assistance and social justice. There is need to repeal and end discriminatory laws, policies, and practices against sex workers and enact those that facilitate enabling environment for sex workers, reduce violence against sex workers and eliminate HIV/AIDS. mobile and internet-based sex workers in urban and remote areas.

RECOMMENDATIONS

Kenyan's strong clinical focus on HIV/AIDS prevention fails to protect sex workers from violence by law enforcement, fails to provide access to health services, fails to address stigma and discrimination and neglects sex workers' human rights. This research provides several recommendations to fill these gaps by a more human approach, to reduce violence against sex workers, promote safe working environments, and eliminate HIV in Kenya.

Decriminalise activities associated with sex work and homosexuality: the decriminalisation of sex work and ending discriminatory laws, policies, and practices against sex workers functions to allow for a human centred approach and increase protection from violence by promoting more supportive environment for sex workers. It is essential to remove laws that target sex work and activities associated with it, resulting in improved protection of sex workers' rights and opportunities for sex workers to organise themselves to enhance safety and security. Support (un-earmarked) funding of the Kenyan sex worker movement is crucial to enable sex worker-led organisations to engage in strategic litigation. For similar reasons, the decriminalisation of same-sex sexual practices is a prerequisite to creating safer living- and working conditions for female, male, and transgender sex workers.

Promote and fund comprehensive HIV interventions for sex workers: concerted efforts can help ensure sex workers have complete access to HIV prevention, care, and treatment services as well as broader health services, particularly for STIs, mental health, and addictions. Increasing involvement of sex workers in public health policies and financing for sex workers HIV interventions enables them to reach all sex workers mobile and internet-based sex workers in urban and remote areas.

Support and empower sex workers to advocate for their rights: the empowerment of sex workers will enable them to protect and assist each other in violent situations and through networking sex workers will advocate for their rights. Supporting and funding sex worker-led initiatives empowers sex worker groups and communities to better advocate for their rights. Governmental organisations and NGOs should listen to sex workers and give them advocacy space to promote and support their interests.

Train and sensitise health care workers: shifting health workers' attitudes towards sex workers through sensitising and training them about the universal application of all-inclusive human rights and the Kenyan Constitutional human rights principles such as guaranteeing health to all Kenyan citizens, including sex workers and gay men will contribute to sex workers access to stigma and discrimination-free HIV services. Ensuring full implementation of existing guidelines and treating sex workers without stigma and discrimination and how to handle their cases with sensitivity, privacy, and confidentiality will increase their health outcomes.

Train and sensitise police and foster police accountability: Implementing continuous sensitisation and training of police officers will help shift their attitudes towards a more human approach to sex work. In this respect, guidelines should be developed, focusing on handling arrests related to violence against sex workers, registering complaints from stigmatised people, and handling cases with sensitivity and accountability. There is also the need for involvement of the police leadership in reinforcing changing attitudes, based on the application of Human Rights. The government's interventions to reduce violence should include; reforming the current police practices to improve accountability in reducing violence against sex workers and to avail access to ARV's during arrests in the prevention of HIV transmission; and scaling up salaries to police officers to remove the incentives for sex workers' arrests.

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This research brief describes outcomes of a participatory research project on violence against sex workers in Kenya. The research involved ten interviews with relevant stakeholders; 30 in-depth interviews and 20 focus groups with sex workers (n=170); and individual questionnaire interviews with a convenience sample of 599 sex workers in Nairobi (n=191), Mombasa (n=200), Meru (n=101), Kisii (n=101), and other areas (n=6) conducted by 14 sex worker's trained as assistant researchers. The research group consisted of 55% cisgender women, 41% cisgender men, and 4% were transgender women. Preliminary findings were presented to the project team members at HOYMAS and KESWA and their recommendations and feedback were incorporated in the final research report.

