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Drug Use, Gender-Based Violence, Sex Work and (II)Legality: Intersecting Vulnerabilities among Women who use Drugs

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Abstract

The legal ambiguity surrounding sex work in Kenya makes it an operational grey area, more so for women who use drugs (WWUD) who are a “hidden population”. While the law does not criminalize prostitution, living off the proceeds of prostitution, loitering in public spaces and soliciting or importuning for immoral purposes attract legal sanction. This ambiguity encourages violations among WWUD doing sex work on streets, alleys or in drug dens (maeneo). The objectives were to assess the prevalence and lived experiences of gender-based violence among WWUD; and factors that protect and perpetuate gender-based violence among WWUD. This was a qualitative phenomenological study using focus group discussions (FGD) and in-depth interviews (IDI) was conducted in Mombasa and Kilifi counties among a convenient sample of 43 respondents (36 WWUD and seven key informants). Findings show that 75% of WWUD engaged in sex work in alleys, empty grounds and bushes at night to finance drug use, meet basic needs and as a way to keep intimate partners away from petty crime to finance drug use. Sexual violence was majorly perpetrated by non-drug users and included unwanted touch, deliberate tearing of condoms during sex, forced sex, uncomfortable sexual positions and demands for anal sex and getting paid less money or nothing for sex work. Sex workers also suffered physical, psychological and verbal abuse from clients, law enforcement officers and intimate partners. These include taunts/guilt tripping, stigma, strangulation, threats and robbery. Violations were rarely reported due to self- and societal stigma, economic vulnerability, fear of and perceptions of police as unhelpful and uninterested and lack of witnesses. WWUD in sex work also suffer discrimination in other “formal” work. Findings show that WWUD doing sex work have neither legitimate nor illegitimate means to survive. For resolution of resultant anomie, we recommend legal advocacy and law enforcement protections for WWUD in sex work; economic empowerment through training and seed funds for small and medium sized enterprises; and social support for WWUD to deal with stigma, and social and self-rejection.

Keywords: *Anomie, gender-based violence, law, sex work, vulnerability, women who use drugs*

Introduction

Kenya's Penal Code (Section 151, 154, 155) criminalizes aspects of sex work including living off the earnings of prostitution and residing in a house wholly or partly on the earnings of prostitution (Hendriks & Woensdregt, 2020). Further, municipal bye-laws sanction loitering and importuning for the purpose of prostitution (FIDA, 2008; Kenya Law Reports, 2022) therefore providing justification for arrest and harassment of sex workers by denying them credibility to bring charges against offenders (Okal et al., 2011). This is mostly true for WWUD in sex work who ply their trade on streets, bars and clubs and who are arrested on grounds of their dress, “loitering” or being “drunk and disorderly” (FIDA, 2008). Criminalization of sex work contravenes provisions of

the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which reaffirm individuals' right to work, choice of employment and just and favourable conditions of work (GNSW, 2017).

Much of sex work is part of the informal economy and its criminalization and stigmatization exposes sex workers to exploitation and violations as it removes the likelihood of sex work being viewed as work. These conflicting realities mirror social meanings ascribed to sex work both as a means of livelihood and derogatory (Mutiso, 2020); and painful and difficult (Wanjiru et al., 2022). For many, sex work enables them pay for basic needs as heads of households (Hassan et al., 2021). Beyond providing for material needs, research shows an overlap between sex work and drug dependence. Some WWUD sell sex to buy drugs while others trade sex for drugs (Ditmore, 2013). However, stigmatization and criminalization of sex work deals WWUD a double blow (including criminalization of drug possession) and increases exposure to physical, sexual and psychological violence. This seems to confirm studies that estimate gender-based violence (GBV) against WWUD at 2-5 times higher than that of women in the general population (El-Bassel et al., 2011; Gilbert et al., 2015). In addition to the pre-existing barriers, WWUD in sex work must deal with stigma that results from loss of child custody and hence are the targets of victim blaming and shaming. In instances where they retain their children, they too suffer stigmatization. In summary, WWUD in sex work suffer twice the stigma, harassment, degradation, discrimination and social exclusion that non-drug dependent sex workers do.

Whereas sex work can potentially provide pathways to meet basic needs including rent, school fees and upkeep, for WWUD, it is mostly at the level of survival sex. This is because, selling sex while under the influence of psychoactive drugs increases the likelihood of experiencing violence especially in street-based settings, decreases street savviness and increases vulnerability (Ditmore, 2013) including the ability to negotiate safe sex or compensation. Furthermore, disinhibition due to drug use predisposes WWUD to risky behavior and may justify sexual violations because they are viewed by their partners as "available" (Okal et al., 2011). Therefore, they are likely not to be paid for services offered, may accept poor rates, exchange sex for drugs or use the proceeds to buy drugs.

Whereas WWUD in sex work engage in survival sex, some non-drug dependent sex workers report owning property from the proceeds of sex work including rental buildings and bank accounts with savings (FIDA, 2008). This evidence seems to suggest that WWUD in sex work are less likely to accumulate capital compared to non-drug dependent sex workers.

Studies show that sex workers face a variety of structural challenges including stigma and harassment (Mutiso, 2020); physical assault and various forms of exploitation from the police such as bribery and extortion and/or asking for sex without pay in exchange for release when arrested (Hassan et al., 2021; Kuria et al., 2020; Wanjiru et al., 2022). Sex workers also report rough treatment from clients, emotional abuse through humiliation and refusal by clients to use condoms (Wanjiru et al., 2022); verbal assault or taunting, unprotected sex in exchange for promises of more

money or forced sexual encounters (FIDA, 2008); stigma (Hampana, 2013); anal sex, gang rape, underpayment or no payment for services, threats (including using a weapon) and physical assault (Okal et al., 2011) among others. Oftentimes, stigma precedes other forms of violence and aggression towards sex workers (Hendriks & Woensdregt, 2020). Violence and the lack of support systems, such as counselling services and social support is related to poor mental health among sex workers (Wanjiru et al., 2022). Put together, it is evident that the various forms of violence are majorly perpetrated by law enforcement agents, intimate partners and clients.

One school of thought suggests the need to frame sex workers as workers to decrease both personal and societal stigma. In that way, sex work will be accepted as work and enable sex workers deal with the lack of access to justice that is fundamentally responsible for violations. Such studies suggest that reframing sex work will transform relationships with the police (GNSW, 2017). Another approach seeks to “replace” sex work with formal work by extending capital to sex workers to start income generating activities (Mutiso, 2020). To better deal with the condition of sex workers, broader approaches advocate for multifaceted interventions focusing on law reform, economic and social empowerment and norm changes at societal level to deal with stigma (Kuria et al., 2020).

Objectives

Many studies focus entirely on non-drug dependent sex workers leaving out a segment of WWUD in sex work. Therefore, this study sought to answer two specific questions: What is the nature of violence reported by WWUD in sex work? To what extent is this violence a barrier to sex work? In broad terms, this will help to locate the contribution of criminalization and stigmatization of sex work to the feminization of poverty. For the achievement of SGDs (Goal 1 – No poverty; Goal 3 – good health and well-being; and Goal 5 – gender equality), it is important to put in place protections for sex workers in the informal economy.

Methodology

The study employed a qualitative phenomenological approach using a sample of 43 participants. 36 WWUD were conveniently selected from the population of 694 WWUD receiving harm reduction and other services from the Muslim Education and Welfare Association (MEWA). The sample of WWUD were recruited from Bamburi, Magodoroni, Shanzu, Mtwapa and Bombolulu. A group of People Living with HIV (PLWHIV) was also selected from among the population of WWUD. Seven key informants from government departments that interact with WWUD and local administrative and religious leadership were also included. Focus group discussions (FGD) and in-depth interviews (IDI) were carried out among WWUD and individual interviews with key informants. The study was approved by the Kenya Medical Research Institute (KEMRI/RES/7/3/1) and NACOSTI (NACOSTI/P/20/8087).

Findings

The findings presented in this study are part of a larger study undertaken on lived experiences of GBV among WWUD in Mombasa and Kilifi counties, Coast, Kenya.

Demographic information

Almost two-thirds of the sample were aged between 25-35 years (64%); almost half (47%) reported primary education as highest educational level while 47% had between 1-4 children; 58% had partners dependent on heroin who mostly engaged in touting (36%) and drug peddling (17%). Up to 17% lived on the streets. More than a third reported either living with boyfriends or married and 75% were engaged in sex work as a means of livelihood. Respondents reported engaging in sex work due to lack of other means of livelihood to finance drug use; to help family meet their basic needs; because current partners did not provide basic needs for sustenance; and as protective behaviour to ensure that their partners did not steal to purchase drugs.

There was also the suggestion that some intimate partners depended on WWUD for sustenance. For instance, FGD 2, Shanzu's husband actively encouraged her to go find sex work to provide for them; while FGD 1, Mtwapa's boyfriend encouraged her to do sex work. Refusal often resulted in physical abuse. WWUD interpreted being sent out by the partner to find money by whatever means to mean either stealing or sex work because "when a man tells you to go find work, he has already accepted that you are going for sex work...going to steal...". This often ends in physical assault by clients (FGD 4, Magadoroni).

Sexual violence against WWUD in sex work

Sexual abuse by clients

The majority of women interviewed reported getting paid less money or nothing for sex work as the most common violation (IDI, PLWHIV; FGD 5, PLWHIV; FGD 3 & 5 Bombolulu; FGD 4, Mtwapa). This was usually accompanied by physical violence including strangulation and beatings, being thrown out of the room at night (FGD 4, Bamburi; FGD 4, Mtwapa), and death threats (FGD 1, Shanzu). Demands for forced sex also end up in physical violence (FGD 2, Bombolulu) because of ensuing arguments. WWUD reported experiencing sexual violence during the act of sex and after (mostly physical) (FGD 5, Mtwapa); and rape on the streets (IDI, Bombolulu) sometimes accompanied by threats with weapons (IDI, PLWHIV).

The devaluation of WWUD engaged in sex work was partly responsible for sexual violence. Most sex work was done out of the public eye in locations such as empty alleys, football pitches and bushes at night with no agreement in advance on how much would be paid (FGD 3, PLWHIV) and where the likelihood of perpetration was increased (FGD 1, Shanzu). As a consequence, clients' sexual fantasies were reported to be one of the motivations for sexual violence. A number of WWUD reported that some clients strangled them in the act of sex and then whispered "give me my money"! Their money was then stolen (FGD 3, PLWHIV; IDI, Bombolulu). In other cases, sexual partners demanded sexual acts that women thought were unacceptable; or men took longer than previously negotiated and refused to pay for the extra time (FGD 4, Magadoroni). Women reported being beaten with objects such as metal bars after receiving demands for particular sexual acts; and demands for anal sex with bundles of monetary notes being waved before them (FGD 1 & 4, Mtwapa). Other men deliberately tore condoms (IDI, Bombolulu). Other sex acts included unwanted touching from drunk men and physical assault (IDI, Magadoroni).

Further, strangers would forcibly drag WWUD into alleys at night with the justification that “are you not just looking for heroin? Are you not a common prostitute?” (IDI, PLWHIV). As well as being the victim of serious sexual assault, women's partners would also physically and verbally abuse them for not making money from the episode.

Other physical violence in the context of sex work was related to WWUD stealing money and phones from their clients (FGD 3, PLWHIV). Sometimes a client would claim that a WWUD had stolen from him when they were not keen on paying for sex. In other cases, WWUD were threatened using weapons and robbed of all their money after negotiating for and offering sex (FGD 3, PLWHIV; FGD 5, Bamburi; FGD 4, Mtwapa; IDI, Magodoroni). This was also done in conspiracy with guesthouses' security guards who do not stop the perpetrators even when notified by the victim. Sometimes, weapons were also used in rape attempts (IDI, Bombolulu). WWUD who were physically abused for stealing from clients in sex work (FGD 4, Shanzu) mentioned that stealing was their response to the injustice of not getting paid for sex work, and for an immediate need for drugs (FGD 3, Bamburi). Other WWUD reported suffering beatings and verbal abuse from their partners for going out for sex work and not coming home with money (FGD 2, Bombolulu) because “you gave out yourself for free the entire night” (IDI, PLWHIV).

WWUD reported the likelihood of increased sexual risk when they encounter a client who wanted unprotected sex for a supposedly higher rate, especially in moments of drug withdrawal (*arosto*) and/or needing money for drugs or other provisions. (FGD 4, Bombolulu; FGD 5, Mtwapa).

Sexual abuse by law enforcement officers

A small number of WWUD considered law enforcement personnel as perpetrators of sexual violence. For instance, a FGD respondent from Mtwapa reported that she offered sex in exchange for her freedom when arrested by the Police, and another (IDI, Bombolulu) exchanged sex for her freedom when arrested by a County Government enforcement officer. However, violations by law enforcement officers go beyond individuals and include reporting structures. For instance, the P3 form (reporting form) is issued for free at the police station but a small fee is charged at the hospital (free if escorted by a police officer). Some key informants (Community Health Officer; Mzee Wa Mtaa; Police Officer) reported that WWUD who had suffered violence may not afford the Ksh. 40 (\$0.4) required for photocopying the P3 form at the police station while others feared the police and did not report incidents at all, or lacked witnesses. Others did not have bus fare to the referral hospital because in the coronavirus period “do you look for money for food or fare to court?” (Mzee Wa Mtaa).

Low reporting rates were also attributed to perceptions of police as being unhelpful and uninterested in follow up because they attach no value to WWUD (through labelling as *'mteja/mateja'*). When a WWUD goes to the reception desk to report a case, they are more likely to hear a police officer say loudly “This is just a *mteja*....” or telling another officer: “Don't bother with a *mteja*” within earshot of the women reporting and everyone else in the vicinity (FGD 4, Magodoroni; FGD 1, Shanzu; FGD 1, Mtwapa); or that “this is the *mteja* from Shanzu” in the presence of everyone at the reporting desk (FGD 5, Mtwapa). This was cited as a reason for not

going back to report or follow up. Another respondent (FGD 5, Bamburi) concurred, adding that it is the norm for the police not to be concerned about WWUD. They were more likely to be disregarded because the police think that "*mateja* are used to stealing from men" (FGD 1, Shanzu). Instead, police asked them to apprehend perpetrators and take them to the station themselves, but will act swiftly if the arrest leads to extortion of WWUD's foreign sex clients (i.e. through received bribes). In one such case, a respondent (FGD 5, Shanzu) did not report a case of sexual assault because she did not know the identity of the perpetrator that she had met on the streets.

Normalization of abuse

Normalisation of abuse was related to WWUD's limited social support systems in the form of friends or family to share the experiences; and that because of self-stigma, some would not want to expose themselves. For instance, one respondent (FGD 4, Magodoroni) never shared her experiences with anyone because she felt "shy"; and another (IDI, Magodoroni) felt that "I will be embarrassing myself" - and that she had not found someone to "push her to report". Neither the partners' families nor friends provided a safe haven for WWUD because families feared retribution from their violent sons (IDI, Magodoroni), supported their behaviour (IDI, Shanzu); and friends made it public (IDI, PLWHIV). In fact, friends were thought to be out of the question because "they make it a song!" (IDI, Shanzu). Importantly, real concerns about welfare were considered in decisions of reporting, with money earning partners less likely to be reported (IDI, Mtwapa). One respondent (FGD 4, Magodoroni) suggested that their own families were "tired"; while another (FGD 2, Bamburi) did not raise the alarm during a savage assault because of her fear that people would not help and would instead think that the man who assaulted her was her partner. Finally, one respondent suggested that it was difficult to report incidents to family members because they "hated" them because of their use of drugs (IDI, Magodoroni).

Discussion

The study sought to understand experiences of violence towards WWUD in sex work and the extent to which it was a barrier to their work. Findings show that WWUD suffer physical, verbal and psychological violence from intimate partners, clients and law enforcement officers. Sexual violence in the context of sex work was perpetrated by people who didn't use drugs and included unwanted touch, deliberate tearing of condoms during sex, forced sex, demands for types of sexual activity that made the woman feel uncomfortable, and getting paid less than agreed or nothing for sex work.

Findings underline the need to empower WWUD to report violations and not to suffer in silence. This can be achieved through the establishment of reporting centres; resource centres; and/or having a gender-based violence department in health facilities with its own reporting tools and human resources; and decentralisation of P3 forms issuance and processing. The need for independent departments arises from the fact that violations and accompanying stigma make it difficult for such women to be open about what happened especially if they were under drugs. Therefore, the need for spaces and opportunities to explain and receive psychological help is important.

Training of police in securing and preserving evidence and proper investigations is important to sustain prosecution of cases. For instance, in cases of assault where blood is found on clothes and police do not take that piece of evidence seriously, when the matter gets to court, the perpetrator poses the question: "Is the dress you were wearing when I assaulted you presented as evidence in this court?" (Magistrate, Shanzu). The absence of that piece of information weakens the victim's case because such details are pertinent in prosecution. According to the Magistrate, police need training to know that it is not enough to have the victim taken to a health facility to be treated but also the condition they were found including bleeding or injuries must be preserved by taking a photo and if possible taking a piece of the cloth worn.

Lack of knowledge about protocol often makes reporting difficult. The requirement that victims must be checked in a public health facility leads some WWUD not to follow up on cases of assault because they visited private clinics. This lack of knowledge also applies to the range of violations WWUD can report – for instance, a number of WWUD did not know that forced anal sex was a violation.

Findings show that WWUD in sex work face the double tragedy of not being able to achieve their goals legitimately, and are also denied the opportunity to achieve the goals using illegitimate means. For instance, on the one hand, they reported discrimination in the government-funded Kazi Mtaani project and missed out on the County Food Relief project (organised by the County Government of Mombasa during COVID-19). On the other hand, it is impossible for WWUD to get odd jobs including laundry work or child care because of stigma accompanying the "mteja/mateja" stereotype. Therefore, WWUD are made to perceive themselves as "double failures" which has implications for self-worth and mental health, poverty and the cycle of drug dependence.

Recommendations

From the findings, we recommend more work towards eliminating bottlenecks in the reporting process at police stations and public health facilities. It is also important to work with the National Police Service to eliminate inefficiency and report police brutality and corruption to deal with perceptions of police as unhelpful and uninterested in WWUD cases. This requires training in work operations, ethics, awareness of the needs of WWUD, etc. Similarly, it is recommended that round-the-clock gender desks and other reporting centres be manned by trained female officers and ensure functional toll free hotlines from focal persons in *maeneo*. Additionally, it is important to put in place resources for peer social support to help WWUD share experiences and provide mentorship to each other.

Secondly, there's need for broader conceptualization of sex work as work. This may involve advocacy towards changing law and cultural frames of reference that make it illegal to live off the proceeds of sex work while accepting other hustles in the informal economy. Therefore, one of the first steps is to define sex work as work and consider WWUD doing sex work as workers. Furthermore, advocacy for the integration of WWUD in paid public work programs and access to

micro-finance after skills training is recommended. Putting in place macro-level measures to tackle poverty will go a long way in ensuring dignity for WWUD in sex work.

Third, for successful harm reduction interventions, it is important to understand that drug dependency may be a psychological defense mechanism to prove personal worth in the absence of access to legitimate or illegitimate opportunities and the struggle to avoid being seen as “double failures”. The resultant anomie is a neurosis that requires multifaceted interventions. The need to achieve valued societal goals like economic independence should be at the centre of harm reduction approaches.

This study contributes to the discourse on the feminization of poverty and women empowerment amongst the most vulnerable womenfolk in Africa. A relook at multiple structures that impoverish and increase the deprivation of this vulnerable stratum of women requires thorough review.

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