

## Impacts of Colonial Legacies on the Rights and Security of Sex Workers in Southern Africa

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### Abstract

This article will explore the relationship between sex work and the law in four Southern African countries – Madagascar, Mozambique, Zambia and Zimbabwe – to shed light on the persistent barriers to promoting the rights and security of sex workers. In these countries, as across Southern Africa, criminal laws on sex work introduced by colonial powers have profoundly shaped contemporary societal attitudes towards sex work and women who sell sex. More recently, the question of sex work has often been linked to HIV and AIDS and decriminalisation has been promoted as part of a wider strategy to protect ‘key populations’, including sex workers, who are perceived as being at greater risk of HIV infection. Based on our research with young women engaged in selling sex, we found that repression continues in various forms within and outside of the law. Though sex work is no longer fully criminalised in most countries in the region, the relics of the colonial past permeate contemporary norms and attitudes to sex work thus locking the selling of sex within the grey areas of the law and contributing to situations of vulnerability for sex workers. Our four case studies demonstrate that transformations in dominant social norms and representations around sex work have been far slower and less far reaching than many assumed they would be, even in the countries which have adopted more progressive laws and policies. The situations of vulnerability experienced by sex workers also escalated during the COVID-19 crisis, highlighting the critical need for state intervention to improve their legal, economic and social position.

### Keywords

Violence; justice; sex work; colonialism; law; decriminalisation; Southern Africa.

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## **Introduction**

This article will explore the complex relationship between contemporary legal and societal frameworks and norms on sex work and the promotion of the rights and security of sex workers in four Southern African countries – Madagascar, Mozambique, Zambia and Zimbabwe – where criminal laws on sex work were first introduced by colonial powers. In a region where colonialities of power, knowledge and subjectivity are ever present (Ndlovu-Gatsheni, 2013), and impact heavily on the dominant framings of sexuality and sexual and gender relations, colonial regimes of regulation and control profoundly shaped societal attitudes towards sex work and women who sell sex (Stoler, 1995; Kozma, 2017). This can be noted in contemporary legal and societal frameworks and norms. The implementation of gendered and sexual segregation measures based on anxieties around female sexuality and sexual relations between colonisers and colonised has, we argue, created enduring stigmatising discourses around female sex workers in the region. The positioning of the sex worker - and not her sexual partners – as a risk to health and social stability, steadily infused local sexual and gender mores and were thus able to persist over time and following independence of African states (Mgbako, 2016; Kozma 2017). This is manifested in current forms at both national and international levels through health policies which target sex workers within the constraints of the legally regulated and punitive environment for sex workers with no resulting protections.

Pre-colonial descriptions of sex work in Africa exist (Akyeampong, 1997), but both its documentation and presence intensified (Kozma, 2017; Staples, 2006) during the period of colonial capitalist development on the continent (Kozma, 2017). The overhaul from a commodity to a monetized economy alongside a growing demand for male labour in colonial administrative centres, such as Lagos, Nairobi and Johannesburg, pushed the women and children who remained behind into poverty. At the same time, an influx of colonial soldiers, merchants and sailors created a demand for the commercial exchange of sex. The nascent sex industry became heavily regulated with the stated purpose of protecting the health of the colonisers and of curtailing miscegenation, and while regulative policies and practices differed between colonizers, a commonality was that the situation and needs of African women were of no concern (Kozma, 2017).

At the domestic level, the legal systems of the majority of countries in Africa reflect this colonial history through the explicit criminalisation of 'prostitution' and/or prostitution-related activities, such as facilitating and living off the proceeds of sex work. Often this legislation is rather vague in definitions of 'prostitution' and associated conducts such as solicitation, employs colonial language of 'immorality' and links sex work to non-marital sexual

relationships (Kozma 2017). Different African Presidents have reinforced the colonial discourse around sex work by proclaiming the threat of 'prostitution' to the moral order and cultural fabric of society and have quelled sex worker activism by positing sex work as 'un-African' (Mgbako, 2016).

On an international level, it can be argued that these colonialist views, which criminalized and stigmatized sex work, have been continued through HIV and AIDS interventions (Flint and Hewitt, 2015). One example is the rollout of the US President's Emergency Plan for AIDS Relief (PEPFAR) programme in the early 2000's, which emerged as a major funder of a region with insufficient domestic funds to respond to the unfolding HIV and AIDS crisis. The funding conditions, at the time had an 'anti-prostitution' clause which required those who accepted PEPFAR funds to provide written statement that all activities supported by PEPFAR would not encourage or sanction sex work (Ditmore and Allman, 2013). With no clear guidance on what this means in practice, many programmes ceased providing HIV-related care to sex workers for fear of losing their funding (Ibid). This type of positioning echoes colonial tropes on African sexuality and positions those, such as sex workers, who engaged in 'risky' sex as morally at fault for the spread of infection (Flint and Hewitt, 2015). As Merten and Haller (2007) argue, the messaging around 'risk behaviour', which is central to HIV prevention programmes, lead to the internalisation of these messages as moral norms which may also contribute to the unwillingness of many women involved in sexual economic exchange to self-identify or to be identified as sex workers. Rejection or 'invisibilisation' of sex work is also seen in some African research, notably that of African feminists and gender researchers (Richter, 2012), who reject sex work as a colonial import/construct (Hill, 2020), and oppose the importation of European feminist paradigms (Akin-Aina, 2011) such as that of the pro-sex work feminists. This means that, as Mgbako argues, 'African feminist scholars, with a few notable exceptions, have largely remained silent on the issue of sex work' (2016:11).

The harms of repressive and regulatory sex work laws and policies in Africa, and elsewhere in the world, on sex workers' rights and security have been widely documented (Decker et al., 2015; Krüsi et al., 2015; Lyons et al., 2020; Platt et al., 2018; Richardson & May, 1999; Scorgie et al, 2013; Shannon et al., 2015). They are a key driver of the vulnerable situations in which sex workers are located, as even in situations where selling sex is technically legal, related laws and policies reinforce the stigma that surrounds sex work and contribute to the characterisation of the sex worker as a danger to the health and moral well-being of a society, not as a citizen who has rights (Sanders, 2016; Sanders & Campbell, 2014). This renders sex workers highly vulnerable to abuse and violence, and with little recourse when they experience such violence (Amnesty, 2016; Deering et al., 2014; Mgbako & Smith, 2009).

This evidence has led to a louder call for the decriminalisation of all aspects of consensual adult sex work from sex worker rights activists and influential international organisations, as well as in scholarly work on sex work (Comte, 2014; Cruz, 2020; El Feki et al., 2014; Overs & Hawkins, 2011).

Efforts to promote law reforms and to shift the sex work narrative from a moral to a human rights framework have taken root in multiple African countries (Mgbako, 2016). However, ongoing contestation over the legitimacy of sex work and related rights for sex workers is seen to throw up significant barriers to the actual creation of a safe working environment for sex workers (Overs & Hawkins, 2011; Vanwesenbeeck, 2017). The observed reluctance, and sometimes outright dismissal, of African political leadership to embrace decriminalisation as a critical first step towards the promotion of the rights and security of sex workers in their respective countries has also provided space for anti-prostitution organisations and religious leaders to disrupt the sex work debate (Mgbako, 2016). Their associations between sex work and victimhood, and sex work as an immoral practice find an audience in the highly religious African societies, where feminine chastity often continues to be an important value (Pheterson, 1987), and is part of a desired social order where sex workers have no place. This paper explores how sex work laws and policies, and dominant social norms around gender, sexuality and sexual relationships impact on women who live and sell sex in Southern Africa. We draw on data from four separate country studies to show how colonial legacies continue to frame the legal and social position of sex workers and how, in the absence of bolder human rights approaches, this perpetuates vulnerabilities among sex workers living in different country contexts.

## **Methods**

This paper is based on empirical case studies in four countries, which were carried out between 2019 and 2021 (for country level analyses please see Aantjes et al., 2021; Freedman et al., 2021; Crankshaw et al., 2021; Chareka et al., 2021). The case studies involved a review of national sex work laws and policies, in-depth and semi-structured interviews as well as focus group discussions (FGDs) with young women aged between 18-24 years on issues related to their sexual and reproductive health and rights (SRHR)<sup>2</sup>. The overarching research was guided by the social determinants of health framework (WHO, 2010) and embedded in a larger project on the SRHR of young key populations in Southern Africa.

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<sup>2</sup> Our empirical research also included minors but for the purpose of this paper, and in line with the confines of sex work laws and policies in each of the countries, we only draw on the data of the adult age group.

In Madagascar, we carried out 20 FGDs and over 100 interviews with young women based in four different regions of the country (Antananarivo, Antsiranana, Toliara and Toamasina), from both urban and rural areas. Participants were recruited from within educational settings – schools and universities – and from amongst those out of education in locations frequented by young people. Recruitment targeted young women aged between 18 and 24 years old, and participants were selected in a variety of locations and social situations in order to gain data from a range of socio-economic and cultural situations. Many of the young women were not identified and did not self-identify as sex workers although they were engaging in sexual relations in exchange for money or other goods; others were self-identified sex workers. The FGDs and interviews explored the young women's attitudes and experiences with regard to sexual behaviors and relationships, particularly sexual-economic transactions. In the most recent FGDs and interviews, further questions were added to explore the impact of COVID-19 and subsequent restrictions on young women involved in sexual-economic transactions. All interviews and FGDs were carried out in Malgache and subsequently transcribed and translated into French for analysis by the research team.

In Mozambique, we conducted 85 semi-structured interviews and 30 biographical interviews with self-identified sex workers in three urban sites. Sites were located in the Southern, Central and Northern Province of Mozambique (Maputo, Quelimane and Nampula resp.). We had planned to carry out 1 FGD per site but due to COVID-19 restrictions, we could accomplish this for Nampula only. Data collection formed part of a larger country study which included semi-structured interviews on sex work with 16 national key informants and with 78 opinion leaders at community level (further sampling details can be found in Aantjes et al., 2021). The first participants of the study were identified and recruited by the research team, after which recruitment continued within the social network structures of each of these individuals. Semi-structured interviews were directed by an interview guide consisting of questions on their involvement in selling sex, interactions with family members, other social circles, within the neighbourhood, health providers and the police, language used to refer to sex work and sex workers, as well as their knowledge of the law and rights. In the biographical interviews, we used an initiating question only (could you tell me about your life and who you are?) and thereafter encouraged a deepening of themes that ran through the participant's life story via short probes. Additional interviews were conducted with a subset of participants, exploring the impacts of COVID-19 restrictions on sex workers. The focus groups and interviews were conducted in Portuguese by trained researchers and transcribed for analysis.

In Zimbabwe, we carried out 90 in depth interviews and 46 FGDs with young women who self-identified as selling sex in Harare and Bulawayo. Harare is the capital and most

populous city in north-eastern Zimbabwe in the country's Mashonaland region. Bulawayo is the second largest city in the western part of Zimbabwe and the largest city in the country's Matabeleland. In Harare, young women who self-identified as selling sex were recruited from 14 different locations both within and as far as 56km outside the city. In Bulawayo, participants were recruited from the city centre and the surrounding peri-urban areas up to 30km from the city centre. Young women were initially recruited from the street where they were soliciting for clients, from bars, and/or lodges. We followed a snowball sampling method. We asked participants who we had already recruited, who lived in one area but did not work there, to assist with recruitment of other young women who worked in these areas. In this way, we sought to avoid competition between participants and inclusion of friends as well as expanded our recruitment sites. Interviews were conducted in the local languages (Shona in Harare and Ndebele in Bulawayo) and translated and transcribed into English. The in-depth interviews were directed by an interview guide consisting of questions exploring life circumstances leading up to engagement in selling sex, SRH challenges, knowledge of and use of contraceptive methods, pregnancies and pregnancy outcomes, as well as access to SRH services. The FGDs were led following an interview guide which drew on a free listing and ranking approach. Free listing allowed the researcher to have as broad a discussion as possible over the SRH challenges experienced by young women who sell sex and ranking allowed the young women to vote on and prioritise their challenges (Belzile and Öberg, 2012). The FGDs began with the question: What do you understand by the term 'sexual and reproductive health?' This created a space to ensure that issues related to HIV, pregnancy, abortion, STIs, and gender-based violence were raised in some form in the discussion so that there was common understanding amongst the group. All challenges and rankings were then discussed sequentially.

In Zambia, we carried out 66 in depth interviews and 3 FGDs with young women who self-identified as selling sex in Lusaka and Chipata. Lusaka is the capital and largest city of Zambia and Chipata is the administrative centre of the Eastern Province of Zambia and borders Malawi. In Lusaka, sex workers were initially recruited via sex worker organisations, thereafter further sex workers were recruited through snowballing sampling techniques. In the first wave of recruitment, sex workers from 3 communities in Lusaka Province were initially recruited and in the second recruitment wave, sex workers living in 4 different communities were recruited. In Chipata, sex workers were recruited through sex worker organisations, thereafter snowballing sampling was used. In the second wave of recruitment in Chipata, sex workers were also recruited from the street-based venues or from bars. Interviews were conducted in English or, if preferred, a local language. The in-depth interviews and FGDs were the same as described above in Zimbabwe.

A thematic approach was taken to the analysis of the data, as laid out by Huberman and Miles (1994). Coding occurred manually or in Nvivo 12 software in order to systematically organise and analyse the transcripts that were generated from all the interviews and FGDs. A series of reflexive meetings between country research teams aided a further in-depth analysis on selected cross-cutting themes and subthemes. Ethical approval for the research was granted by the Biomedical Research Ethics Committee, University of KwaZulu-Natal, South Africa, the Medical Research Council, Zimbabwe, the Institutional Bioethics committee of the Eduardo Mondlane University's Faculty of Medicine and Maputo Central Hospital, Mozambique, the Comité d'Ethique de la recherche BioMédicale, Ministère de la Santé Publique, Madagascar and the ERES (Excellence in Research Ethics and Science) Converge and the National Health Research Authority in Zambia.

## **Results and Discussion**

### *Colonial Legacies*

Certain terminologies from former European penal codes continue to feature in contemporary national law on the continent, including in the countries in which our research was carried out. Though the act of selling sex between adults is no longer a criminal offence in most Southern African countries (except for South Africa and Mauritius), the facilitation of sex work and conducts associated with sex work, such as public soliciting or 'indecent', is proscribed (Meerkotter, 2012; Mgbako, 2016). In Madagascar, Mozambique, and in Zambia and Zimbabwe – former French, Portuguese and British colonies respectively – different articles across criminal and public order laws refer to and penalise sex work-related activities and conducts, and are used by law enforcement personnel to harass, fine or even arrest adults who exchange sex for money (Aantjes et al, 2021; Freedman et al, 2021; Meerkotter, 2012). In Zimbabwe, not less than eight sections in the Criminal Code associate 'prostitution' with immorality and unlawful sexual conduct (section 61, 81-87), including a definition of 'the prostitute' as 'someone who solicits other persons to have anal or extra-marital sexual intercourse or engage in other sexual conduct with him or her' (Criminal Codification and Reform Act [Chapter 9:23]).

The penal code of Zambia similarly invokes a moralising discourse where 'every common prostitute behaving in a disorderly or indecent manner in any public place' and a 'person who in any public place solicits for immoral purposes' is deemed idle and disorderly (Section 178(a and g) of the Penal Code, Zambia). The section stems directly from English law and repeat offenders can face up to one year in prison. In colonial Zambia, women's

movements and work opportunities were strictly regulated along gendered lines. Couples living in town were issued Marriage Certificates which women were required to show proof of to legitimise their presence and movement around the town centre. This was a way to identify and deal with 'unmarried' women who engaged in sex work<sup>3</sup>, even though there was indication that some married women also engaged in sex work to support their families (Mazala, 2013). An increase in female-headed households due to migrating males for work opportunities coupled with highly gendered divisions of labour resulted in women being marginalized economically and 'feminising poverty' (Kozma, 2017:737). Some scholars have attributed these circumstances to an increase in sex work (Hansen, 2018; Kozma, 2017). The 'othering' and discrimination against female sex workers during the colonial rule continued in the fight for independence where opposition against sex work was viewed to be an African Nationalist response to sexual relationships between African female sex workers and the European white male oppressor (Mazala, 2013).

Post-independence, Mozambique maintained a penal code with an article on prostitution from a Portuguese law enacted in 1886. The article set sex workers apart as a disruptive and disobedient group of citizens who stood to be corrected by the State. Close to a century later, in 1983, sex workers were among the citizens who were blamed by government for the uncontrolled rural exodus and subsequent chaos in urban Mozambique. Together with other 'undesirables', such as beggars and thieves, sex workers were expelled from cities with a view to transforming them into 'productive rural dwellers'. Between 2020-2021, we observed similar coercive action – albeit at a smaller scale – whereby sex workers were picked up and transported from the city centre to the outskirts in one of our study sites or had been deported back by the police to their countries of origin under the guise of national COVID-19 regulations. Article 71;5, which legitimised security measures against 'prostitutes who were causing a public scandal or continually disobeying police orders' was removed from the penal code in 2014. Its removal was interpreted as the decriminalisation of sex work in the country, but articles penalising the facilitation of prostitution as well as behaviours causing a 'public outrage against decency' (art. 225) or 'public outrage against morality' (art. 241) with a prison sentence remained untouched during the reform (Aantjes et al., 2021). As a result, sex workers and the organisations working with sex workers are concerned that the preservation of these relic terminologies will continue to be used to discredit sex work activities and block a further codification of rights and entitlements for sex workers in the country. This concern is further underpinned by the longstanding difficulties that individual sex worker-led organisations have

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<sup>3</sup> Northern Rhodesia Government: African Affairs Annual Report for 1953, (Lusaka: Government Printer, 1954), 8.

faced in registering as not-for-profit associations due to similarly relic language which considers their motive for collectivisation as an 'offense to the public good'<sup>4</sup>.

While adult sex work in itself is not criminalised in Madagascar<sup>5</sup>, it is still possible to see the legacies of colonial tropes in policies and attitudes to those who sell sex. French colonial authorities worried about the ways in which liaisons between French men and Malgache women would impact on French prestige (Cole, 2008). The concerns about health risks from sex work have been prolonged through the instigation of a registration system for sex workers, which required them to carry a registration card and have regular health visits (Kruse et al. 2003). In reality, very few of those who are engaged in selling sex register, and thus the card system has fallen into disuse, but the normative views of sex workers as a health risk persist. A local politician in Nosy Be, an area known for high levels of sexual-economic exchange, told us for example that "the main problem is health. There are so many sexually transmitted diseases here. Before the sex workers had a book, and they had to come and get controlled every month, but they don't do that anymore".

The ways in which colonial conceptions of immorality, unlawful conduct, and risk are reflected and entrenched in the legal systems of the four case study countries today effectively place sex workers in the grey areas of the law. As a representative from an international NGO working with sex workers in Mozambique aptly described, "sex work is not a crime; it is not legal but it is not illegal either. For example, in the labour law, it is not even defended [...] sex work is not conceived as work in a way that makes it appear in the law". As a consequence, sex workers are not only deprived of the protections other professions receive, but they also have little legal basis from which to exercise or defend their rights. As we argue in the following sections, this type of legal vacuum leaves space for continuing stigmatising and moralising policies and discourses which create situations in which sex workers are vulnerable to violence and where violence against sex workers is carried out with impunity both by agents of the law and by the population at large.

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<sup>4</sup> The Association Act of 1991 (post-independence) prohibits sex worker organisations to register under this name as their purpose as a not-for-profit association is perceived to be in violation with the principles of the constitution - which are grounded in a moral, economic and social order - and would offend the public good (8/1991). As a consequence, organisations have registered as associations of vulnerable women.

<sup>5</sup> Articles 334-335 of the Code Pénal criminalize the facilitation of and living on the proceeds of prostitution.

*Stigma and Moralising Discourses*

Our research pointed to persistently high levels of stigma linked with the moralising discourses against sex workers in all our study countries: “We are perceived as immoral people. That’s the way the community is” (participant, Zimbabwe). The naming and shaming of sex workers in Mozambique tended to centre around their perceived disruption of the social order (i.e. visibly selling sex on the street in indecent attire) and cohesion (i.e. destabilising marriages by luring married men) as well as their perceived role in transmitting disease, particularly HIV, in society. Community leaders, participating in the Mozambican case study, emphasized the sacredness of sexuality and the understanding that female sexuality should be exclusively reserved for the husband. The ‘distribution of sex’ (also vocalised by some through the title of saleswomen they awarded to sex workers) was considered a serious norm transgression for which women risked their health and social standing in the community. One community leader articulated this as follows: “each time a different person penetrates a woman, they leave some evil inside her”. The role of government in allowing sex work practices was seen to be in contradiction with the efforts of controlling the HIV pandemic in the country, and thus a majority of leaders saw themselves as the keeper of social order with ‘the rehabilitation of the female sex worker’ as the most commonly cited action: “if she [a sex worker] comes to pray, she will be admitted, but there are some requisites in order for her prayers, for her life to be protected in the hands of the Lord, then she must confess, and then we will pray for her, and her ways of survival will change”. Sex work and other ‘unruly’ behaviours, such as theft, alcohol and drug use, were often conflated as seen elsewhere in the literature (Benoit et al, 2018): “why is it [sex work] indiscipline? Because the State, our society I mean, has rules to be complied to”. Social and moral sanctioning of undisciplined behaviour could potentially cost sex workers their neighbourhood residence, expulsion from the church community or denial of a Muslim burial. Other people’s expressions of a sex worker’s inferiority typically involved the projection of shame on to these women: “once when she [a sex worker] went to the church, she was really isolated in a place all by herself, then from there, after that mass, the others started to murmur at her that’s the one, that’s the one! She did not react, she was ashamed.” Inferiority was also verbalised through the word ‘marginais’ (Portuguese for marginal), which a number of leaders used to refer directly to sex workers.

In Madagascar, women engaged in selling sex also reported stigma and discriminatory attitudes. For example, one participant explained: “They denigrate us and call us ‘prostitutes’, women who can’t provide for themselves any other way”. The stigma attached to the label of ‘prostitute’ means that the large majority of young women we interviewed in Madagascar did not identify as sex workers, even when they were engaged in regular sexual-economic

exchange as their main livelihood (Freedman et al., 2021). As another participant explained: “They’re ashamed to admit that they’re sex workers, but they are”. This shame leads young women to find elaborate ways to distinguish between themselves and ‘real prostitutes’, such as the fact that identified sex workers will approach clients in a bar, whilst they just buy a drink and wait for the clients to come to them.

Perhaps more harmful than the overt expressions of discrimination, were the high levels of internalised stigma found amongst young women, as one Zimbabwean participant shared: “I started (to use substances) when I joined sex work. I drink alcohol to remove the shame and embarrassment I feel because of my job”. A civil society representative involved in the support and care of sex workers in an area of Zimbabwe provided insight into the damaging effects of the experience of discrimination:

There is a lot of stress. The [sex workers] that come for counselling feel neglected, isolated, alone, because the families and communities they come from do not accept them. That leads to the development of self-stigma, this affects them mentally and they cannot work well anymore because these emotions can be overwhelming. Some of them fear to get support. They are emotionally stressed. Some do not even access services they require including health services because of the self-stigma. They feel that they are not worthy.

#### **Civil Society Representative**

Sex worker narratives from both Mozambique and Zimbabwe revealed how sex workers went to great length to conceal their activities from their family, steady partners, friends, neighbours, at school and in church. Once found out, some silently underwent the humiliation of neighbours and their actions to get rid of them: “I did nothing I had to shut up because the house is not mine, I’m renting, I’m not going to take it from here to here to be moving [houses], I really shut up I’ll play dumb” (participant, Mozambique), while others packed their belongings and moved to other neighbourhoods. The need to conceal their sex worker identity has far reaching implications for access to justice. One Zambian participant shared that she would not report incidents of violence against her to the police in order to prevent her family and people in her community finding out about her activities.

These moralising discourses eclipse the economic imperative underlying many young women’s engagement in selling sex in an economically constrained region, whether payment is in the form of material goods or money. The majority of participants from all our country

settings started selling sex due to livelihood needs. With less access to formal employment, based on a long history of the sexual division of labour which advantages men (Kozma, 2017), young women from all our country settings indicated they were financially responsible for themselves and a number of dependents, including children, younger siblings and aged female relatives:

I used to live with a man who had made me pregnant. When I got pregnant, the man used to leave me alone at home, he would go for 3 days with another woman without paying for any rentals. By that time my mother was not doing any sort of business, we were suffering. A friend of mine told me that for me to be able to provide for my child, it is better I start going to bars and start getting money from men in exchange for sex, and that was how I started.

**Participant, Zambia.**

In Mozambique, a large number of the participants we spoke to were enrolled in school/university and indicated they had started selling sex in the absence of family support: “My father does not work for that [and] as I am a woman, this I see as the way to support myself. I am a student, so my only way is this.” They saw their studies often as the promise and way out of sex work, but older participants who had finished their studies shared how the lack of job opportunities, apart from menial jobs, had kept them going, while still hoping for a “honest job” as they put it. Different studies have shown that women’s fears of being found out and ostracized for doing sex work were often overtaken by the urgency to take control over their own economic fate and that of their families (Rivers-Moore, 2010; Swendeman et al., 2015). In some instances, relatives were aware and condemned the origin of the income on which they depended, leading to socially constrained situations for these women:

There was no lack of anger at the beginning, when they knew [found out]. They wanted to send me away from home but later they realized that it was poverty that forced me to do that and as they now depend on me, they chased me and started to make it up with me.

**Participant, Mozambique.**

### *Violence with Impunity*

The fragility of the legal and social position of sex workers in each of the four countries starkly manifested itself in the women’s stories of discriminatory acts, harassment and violence

perpetrated against them on a regular basis, and the multiple constraints they experienced in receiving protection from and taking recourse against such acts, as this Zimbabwean participant told us:

We face particular treatment at clinics, the same applies at the police station. If you tell them that there's a client who doesn't want to pay my money or it's short or he wants to beat me up, the police don't take you seriously because all they see is a prostitute and they just tell you to go without assisting you because of the job that you do.

#### **Participant, Zimbabwe**

The knowledge that sex workers are seldomly taken seriously when filing a complaint places sex workers in a highly vulnerable and disadvantaged situation as a perpetrator does not fear the repercussions of violating their rights (Mgbako, 2016). In none of the four countries, sex workers are protected from discrimination, harassment or violence in their workplace since sex work is not regarded as work in ordinary law. Sex workers thus have to rely on broadly-defined constitutional rights for protection against such acts and for seeking justice. This is, as we will show, largely inadequate for individuals living in socially marginalised positions. In Mozambique, for example, sex worker led organisations and international organisations working with sex workers indicated that constitutional provisions alone failed to protect sex workers from structural violence and called for a separate anti-discrimination law, as it exists for Mozambicans living with HIV for example, and as it is being promoted in the legal literature around social inclusion (Collins, 2003; Fineman & Grear, 2016).

In all the countries, participants shared experiences with non-paying clients, who in some cases also stole their other earnings under the threat of physical force, or a weapon. Very few reported these incidents to the police and indicated that they would rather rely on peers or others, depending on country context, because they did not believe the police would make any effort to find the perpetrator or because they feared further rights violations at the hands of the police, such as humiliation, request for payment to handle their case, or potentially a night in jail for their involvement in indecent activities. The following discussion from a focus group with young women who sell sex is typical:

Participant 1: "What happens often is that the client doesn't pay us".

Participant 2: "You do what he wants, but then afterwards he doesn't want to pay. We can't do anything about it because if we insist or argue then they will beat us".

Researcher: "Have you already tried to go to the police when this happens"?

Participant 1: "The police say that they can't do anything as the client has already gone".

### **Participant discussion, Madagascar**

The research in Madagascar also revealed frequent violence of clients towards women selling sex, in the absence of any form of protection and fear of going to the police:

I have had problems with clients who forced me to do things that I didn't want to. I was obliged to do it because we were closed up in a room together. If I refused they made me do it by threatening me with a knife, or something like that. I never went to report it to the police because I was scared. And also, I don't really have the right administrative papers.

### **Participant, Madagascar**

In Mozambique, sex workers generally had a poor knowledge of the law, and some were of the understanding that their involvement in sex work was illegal. Also in Mozambique, in cases where sex workers shared with us very violent encounters with clients which had required their hospitalisation or had caused them mental trauma, most had not sought justice. These findings may in part be reflective of the young age and limited years of experience of the sex workers we interviewed. However, other studies from Mozambique including older sex workers have found a similar pattern of impunity (Hendriks & Rácz, 2016; Ngale et al., 2019), which was able to manifest at the conjunction of asymmetrical relationships, internalised stigma, and a deeply-felt lack of trust by sex workers in the country's police and judicial system as this Mozambican participant voiced: "I never lived these rights, because the type of woman we are today, in the world where we are, we are not considered [...] women walking on the street are not considered".

Like our other case study countries, in Zambia, the subjective application of the Penal Code by law enforcement officials creates a 'culture of impunity' (Southern Africa Litigation Centre 2016: i) and legitimises police harassment of sex workers:

Challenges are there and they are a lot. You find that you go for work at a bar, that's where we find our customers, but you find that while you are still there and time passed the police arrest us for loitering, so instead of taking us to the cells you find that they started demanding for sex. It mostly happens when it's passed the time of no loitering, as you know sex workers, we work

till 05:00, so when we meet the police after 22:00 hours they arrest us. And when they arrest us, we start begging that they shouldn't take us to the cells, so during that time of begging for them, that's when they demand for sex

**Participant, Zambia**

In both Zambia and Zimbabwe, women described accounts of police demanding money or sexual favours in return for 'reward'. The reward in most cases was opening a case file: "so like the police station we go to here in [name of community area], you cannot go without money" (participant, Zambia). A participant from Zimbabwe told us: "sometimes we go and report at the police station". When asked what the police would say, she started laughing and answered: "The policeman will tell me that he loves me!" Others indicated that they did not report sexual or physical violence to police because they had no confidence that they would be taken seriously or that their case would be pursued. However, this was not the case in every instance and there were signs, in Zimbabwe, of efforts to strengthen police response as well as the establishment of 'victim friendly' desks:

Aaah policemen in [impoverished area of Zimbabwe] used to ignore our reports. They would say: "Bitches, you are troublesome!" But later they changed their attitude. Some policemen came and held a meeting. They asked us to inform them of our challenges and we highlighted that issue of policemen who would say, bitches you are troublesome. They asked us to name the policemen who had uttered that statement and we submitted the names. From that time they don't ignore us

**Participant, Zimbabwe**

In Madagascar, the young women we spoke to reported that police regularly arrested young women who seemed to be sex workers under the age of eighteen (on the basis that sex work is prohibited for under eighteens under laws to fight against child sexual exploitation and trafficking). Even those women who were actually over eighteen could be arrested and detained if they did not have requisite identification to prove their age. Police were also reported to come and ask women selling sex for sexual relations without payment on the threat of arrest. Women spoke for example of the regular police raids in discothèques where they were waiting for clients: "The police often raid the discothèques. They ask us to buy them bottles of beer or for something else. I never refuse them if they ask me". The status of sex work as not formally illegal, but not accepted by society, means that those who sell sex remain liable to harassment by police. In particular, anyone selling sex who does not have papers to prove their identity and age is liable to arrest (Freedman et al, 2021).

The COVID-19 pandemic worsened the situation for sex workers in all four countries, who found it nearly impossible to find clients, and as a result lost their incomes. On the pretext of the police enforcing COVID-related curfews, actions of impunity seem to have escalated during the health emergency for both sex workers and ‘non-complying’ citizens. However, from many of the participants’ accounts we could deduce that the police exploited their power position and acted out against sex workers, anticipating a *carte blanche* under the newly established rules and regulations. Police action included physical violence against sex workers in Mozambique in the early months of COVID-19 restrictions: “Yes, they caught my friends and they caught me too. After I took a hundred meticaais I gave a policeman and saying that we have to sleep there [they] start hitting us, hitting us really well but not me because I took a hundred meticaais [out]”. In Zimbabwe, police and soldiers requested payment of money or sexual favours from young female sex workers in exchange for passage through a road block and in the Zambian and Zimbabwean case, in lieu of participants being arrested when caught transgressing the lockdown restrictions. The COVID-19 situation also made the conditions for selling sex riskier, as either sex was furtive and hurried with insufficient time to ensure clients were wearing condoms, or sex workers were forced to agree to go to clients’ homes and to stay all night there to avoid curfew restrictions and police harassment. As one woman in Madagascar explained:

They bring us to their houses and we have to stay till the next morning. They steal your money and then they threaten you. You don’t get any payment and in addition you lose what money you already had. Sometimes you risk death. All of that has happened to us.

**Participant, Madagascar**

Security mechanisms and peer support among sex workers came under pressure as sex workers dispersed across the city to avoid arrests and client numbers dropped significantly.

### *Mobilising the Collective for Justice*

In many countries, collectivisation has proved critical in the push to gain legal protections for sex workers and to ensure that these are enforced. Strong examples exist from India, the United States, New Zealand and several European countries in which sex workers successfully demanded reforms in legislation and within the police apparatus to guarantee protection and claim their rights (Biradavolu et al., 2009; Abel, 2014; Smith & Mac, 2018). Such agency is also observed in various African countries. However, while some efforts are underway, our

country studies found multiple obstacles in drawing on this collective strength. These included barriers to sex work groups registering as official associations, and to their inclusion in decision-making bodies in order to have a real impact on policy. These barriers can be seen to be linked to the national level normative and legal-political contexts around sex work, but also to the impacts of international programmes on the structuration of opportunities for sex workers to associate and mobilise. We return here to the influence of international HIV and AIDS programmes, and in targeting sex workers as a so-called 'key population'. The introduction of a 'key population' approach in HIV control programmes from 2014 onwards was intended to shift the narrative towards greater recognition of the harmful impacts of stigma, violence and criminal laws on sex workers and other groups identified as key populations (Wolf et al., 2018). However, in practice the continuing usage of the term in policy and programming masks this diversity and thus erases the impacts of varying social, economic and political inequalities on individual members of the groups (Freedman et al, 2020).

For sex workers, we have noted in our country case studies that the key population approach has often led to the creation of a group of 'gatekeepers' (Freedman et al., 2020), mainly older women sex workers or ex-sex workers, who have founded associations, which receive variable funding support from different sources and who may attempt to control or limit access to the field. This can result in lack of attention to power disparities between, for example, older and younger sex workers, or those from different social classes. Issues of seniority and age-related factors within sex worker hierarchies and how this impacts cohesion within the group are frequently overlooked in the literature. In a context of scarce resources and many young women selling sex, competition amongst young women who sell sex is high. Our Zimbabwean research highlighted how older sex workers (>20/21 years) refused to share information about abusive clients with younger peers and younger women (<18/19 years) were generally distrustful of adult and older peer educators, who were also sex workers themselves (Crankshaw et al, 2021).

While health constitutes the central focus in key population funding and programmes, the human rights imperative also translated into a programme component which helps link sex workers to the police and judicial system. While originally reactive by design (focusing on providing legal support to those who have experienced challenges to their rights), the preventive effects of legal outreach programmes on the rights and security of sex workers can be observed in our study countries. For example, in Zimbabwe, nine sex workers who were arrested on grounds of public solicitation were successfully supported in challenging their conviction at the Constitutional Court. This litigation made an important contribution to the lives of sex workers in the country, as it led to an observed reduction in police harassment and

arrests of sex workers after the court order (Busza et al, 2017). In Mozambique, financial support for movement building made it possible to unite sex workers of all genders and organisations working with key populations in one platform in 2017 with the aim of defending sex worker rights. The critical function of the platform in speaking out collectively against discrimination and violence became apparent during the first few months of the COVID-19 pandemic, and as reports of police violence against sex workers increased rapidly. A representative of the platform explained that at the time:

The government was concerned with containing [the pandemic] and ‘serious problems require extreme measures’ is what they said. This made an enormous impact and the violence was so much that we drafted a position letter because the policeman at the time had a misinterpretation [of the decree] so that is why the violence increased.

**Platform representative**

The effects were felt by the participants we interviewed who noted to us that the police had at least stopped extorting and beating them when they were found to congregate on the street or were not wearing a mask: “Now they don't hit you they just pick you up putting you in the Mahindra's car (brand of the police car) to go with you, they just don't hit”. The platform, though content with their successful intervention, acknowledges there is still a long way to go in creating a safe working environment for sex workers: “Violence against sex workers, in general, has always existed and will always exist. We're just trying to minimize things”.

**Conclusion**

The discourses on sex work in each of the case studies' countries are shaped by a strong normative stance on and control of female sexuality and affirmed in domestic laws through relic understandings of social order and gender roles. Century-old anxieties on female agency have and continue to produce deeply stigmatising and insecure environments for the female sex worker in Southern Africa, where violence against sex workers is carried out with impunity both by agents of the law and by the population at large. As witnessed also in other parts of the world, the shift from a moral to a human rights framework in the region has been slow in the face of increasingly conservative political ideologies and resistance against sex worker activism. The enduring global north-south tensions and complex colonial histories and more recent nationalist visions within the African continent interweave in complex ways. The only form of organised support for sex workers is channelled through HIV and AIDS programmes, which inevitably accentuate the disease stereotype and are reliant on external funder priorities

and resources. The COVID-19 crisis, and how it directly impacted on the rights and security of sex workers, demonstrates the critical need for governments to accelerate their actions and improve the legal and social position of one of the most vulnerable groups in society. Further advances in the decriminalisation of sex work are a necessity, but as Scoular (2010) argues, law is 'just' a single element in a myriad of control measures that regulate and police the life of sex workers. Actions need to thus include attention to shifting the tenets of contemporary moral and social forms of regulation within societies, as well as attend to the structural determinants that push young women into situations of vulnerability and risk by strengthening the economic and social arrangements for this group.

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