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Liberté Égalité Fraternité

A NATIONAL BASELINE STUDY FOR FINDINGS ON THE LEGAL AND POLICY ENVIRONMENT FOR ACCESS TO SRHR AND HIVE AIDS SERVICES FOR FEMALE SEX WORKERS (FSWs)

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Abbreviations and Acronyms

AAAQ Framework	Accountability, Availability, Accessibility, Acceptability and Quality Framework
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
FSWs	Female Sex Workers
FWCW	Fourth World Conference on Women
HIV/AIDS	Human Immunodeficiency Virus, Acquired Immunodeficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICPD	International Conference on Population and Development
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
KPs	Key Populations
MSM	Men who have Sex with Men
NDP	National Development Plan
OHCHR	United Nations Human Rights Office of the High Commissioner
PoA	Programme of Action
PfA	Platform for Action
PWIDs	People Who Inject Drugs
PWUIDs	People Who Use and Inject Drugs
SDG	Sustainable Development Goal
SRHRs	Sexual and Reproductive Health and Rights
STI	Sexually Transmitted Infection
SWs	Sex Workers
WHO	World Health Organization

Executive Summary



Sex workers are part of the key populations in Uganda engaged in sex work that is more prevalent in almost all the urban centers and some rural areas in Uganda. However, they often operate clandestinely for fear of arrest, prosecution, harassment and stigmatization. It is thus difficult to estimate their population and reach. This stigmatization and severe discrimination is attributed to the fact that sex work in Uganda is criminalized. Consequently, sex workers are regularly harassed by law enforcement officers under prevailing legislation.

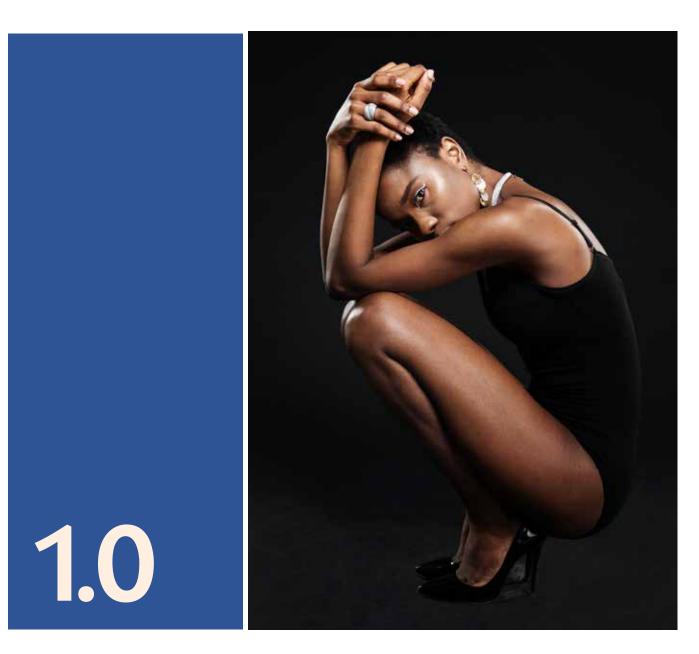
The criminalization of sex work and entrenched social stigma means sex workers often avoid accessing health services and conceal their occupation from healthcare providers. Indeed, many sex workers in Uganda consider social discrimination as a major barrier in their willingness or desire to test for HIV. The criminalization of sex workers' behaviors, identities and occupation has proven to be counter effective, and hinders access to HIV and SRHR services.

Although there is progress in programming for the key populations in Uganda through various policies, the implementation of these policies remains in question. Therefore, the purpose of this baseline study is to document the findings on the contemporary policy environment for access to SRHR and HIV/AIDS services for female sex workers in Uganda. In doing so, this research applies the qualitative SRHR indicators for the SDGs, as developed by the Guttmacher Institute, to assess the suitability of related policies in advancing SRHR and HIV/AIDS services, even for sex workers.

This study also takes a cross-sectional, descriptive approach in analyzing the effect of prevailing laws on access of SRHR and HIV/AIDS services for all, particularly female sex workers. This study is the result of desk research and gathering case studies within Uganda.

With the study finding weaknesses in Uganda's legal and policy environment in advancing SRHR and HIV/AIDS services for female sex workers, this study posits that well defined legal and policy frameworks play a role in entrenching accountability, through providing redress mechanisms and ensuring the participation of affected communities. Therefore, in developing laws and policies, governments should take into consideration a human rights-based approach to health which integrates government obligations in the fulfillment of the right to health. These obligations include adopting legislation or taking other measures to ensure equal access to health care and health-related services provided by third parties, as well as formally repealing or suspending legislation that is incompatible with pre-existing domestic or international legal obligations in relation to the right to health, and/or interferes with the right to health.

Counsel Betty Balisalamu Executive Director, WWM



Introduction

Key populations are those particular groups which are most vulnerable to HIV, while at the same time often lacking access to adequate HIV services¹. Generally, in all countries and settings worldwide, key populations are disproportionately affected by HIV. This disproportionate burden reflects both behavior common among members of these populations and specific legal and social barriers that increase their vulnerability yet HIV services for KPs remain largely inadequate.

Key Populations are considered to be 'key' because they constitute a demographic or section of the populace that is more vulnerable than others to harm.² Key populations are designated as such due to a combination of factors such as age, social mobility, education, gender and gender identity, poverty or the absence of vital social and economic services. Key populations enjoy little to no legal or policy protections.³ The term 'key populations' is ubiquitous in public health literature, specifically in discussions to control the spread of HIV/AIDS and the provision of much-needed social and health services.⁴ Key populations are a diverse population group comprised of people living with HIV, trans-diverse persons, women who have Sex with women, lesbian, bisexual and queer women, sex workers, people who use and inject drugs, gay men and men who have sex with other men, as well as people in prisons and other

¹ UNAIDS 'Key Populations' available at https://www.unaids.org/en/topic/key-populations

² 'Reaching Key and Priority Populations In Uganda with HIV Prevention And Treatment Services' accessed at https://msh.org/wp-content/uploads/2017/07/star-e outreach tech brief final to printer.pdf

³WHO 'Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations – 2016 Update' accessed at https://www.ncbi.nlm.nih.gov/books/NBK379694/pdf/Bookshelf NBK379694/pdf; African Key Populations Declaration accessed at https://www.undp-capacitydevelopment-health.org/files/legal/The-African-Key-Populations-Declaration.pdf

⁴ This assessment follows a scan of literature using a key-word search from online scholarly repositories such as Google Scholar.

closed settings.5

In Uganda, KP populations include: sex workers (SWs), people who use and inject drugs (PWUIDs), long-distance truck drivers, men who have sex with men (MSM), fisher folks, and uniformed forces.⁶ These are estimated at around 300,000, of whom 130,000 are female sex workers.⁷ This figure is most likely to be a gross underestimation owing to the legal, policy and socio-cultural restrictions that deter accurate data collection for this particular demographic. These particular groups are most vulnerable to HIV, while at the same time often lacking access to adequate health services. They are currently considered to be the main focus of the global HIV response.

The investments in Uganda and most countries have focused on the general population leaving behind the key populations yet they account for the large share of HIV prevalence and incidence. For instance, while the HIV prevalence in the Uganda general population is reported at 6.2%, the HIV prevalence has been reported to be 22% to 35% among fisher folks, 33% to 36% among SWs, 25% to 32% among truckers, 10% to 18% among the uniformed personnel, 15% among PWIDs and 13% among the MSM communities. The key populations also contribute to most of the new HIV infections that occur in Uganda. The Ministry of Health (MoH) 2014 Modes of Transmission Study (MOT) estimates that of the new HIV infections in 2014, fishing communities accounted for 32%; SWs, their clients and partners accounted for 16% while PWUIDs, MSMs, and female partners of MSM accounted for 16%. Moreover, key populations especially sex workers, have a high burden of other sexually transmitted infections including; bacterial vaginosis (48 - 55%), herpes simplex virus-2 (80%), gonorrhea (13%), candida (11%), active syphilis (10%, and chlamydia (9%).

Sex workers are part of the key populations in Uganda engaged in sex work that is more prevalent in almost all the urban centers and some rural areas in Uganda, and operate clandestinely for fear of arrest, prosecution, harassment and stigmatization. It is thus difficult to estimate their population and reach.¹³ This stigmatization and severe discrimination is attributed to the fact that sex work in Uganda is criminalized under section 138 and 139 of the Penal Code Act,¹⁴ with proposed legislation such as the Sexual Offences Bill, maintaining this criminalization. Consequently, sex workers are regularly harassed by law enforcement officers under the 'offences against morality' in the Penal Code Act.

The criminalisation of sex work and entrenched social stigma means sex workers often avoid accessing health services and conceal their occupation from healthcare providers. Indeed, many sex workers in Uganda consider social discrimination as a major barrier in their willingness or desire to test for HIV.¹⁵

The criminalisation of sex workers' behaviours, identities and occupation has proven to be counter effective, and hinders access to HIV and SRHR services. Although there is progress in programming for the key populations in Uganda through the Ministry of Health Strategic plan 2020/21 - 2024/25¹⁷, the implementation of this strategic plan remains in question. Therefore, the purpose of this baseline study is to document the findings on the Legal and Policy environment for access to SRHR and HIV and AIDS services for female sex workers in Uganda.

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⁵WHO 'Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations – 2016 Update' accessed at https://www.ncbi.nlm.nih.gov/books/NBK379694/pdf/Bookshelf NBK379694.pdf; African Key Populations Declaration accessed at https://www.undp-capacitydevelopment-health.org/files/legal/The-African-Key-Populations-Declaration.pdf

⁶ UNAIDS 'AIDSinfo' (accessed August 2019)

 $^{^7}$ Remarks by the Ambassador Natalie E Brown of the Uganda HIV/AIDS Legal Environment Assessment for Key Populations Report Launch accessed at https://ugusembassy.gov/uganda-hiv-aids-legal-environment-assessment-for-key-populations-report-launch-friday-september-2-2022/

⁸ Uganda population-based HIV impact assessment UPHIA 2016–2017

⁹ Opio, A. et al (2013) 'HIV Infection in Fishing Communities of Lake Victoria Basin of Uganda – A Cross-Sectional Sero Behavioral Survey' PLoS One. 2013; 8(8): e70770

 $^{^{\}rm 10}$ The Uganda HIV and AIDS country progress report July 2015-June 2016

¹¹ Hladik W et al (2017) 'Men Who Have Sex with Men in Kampala, Uganda: Results from a Bio-Behavioral Respondent Driven Sampling Survey' AIDS Behaviour, 21(5):1478-1490. doi: 10.1007/s10461-016-1535-2

¹² Modes of transmission studies ministry of Health Uganda (2014)

¹³ Uganda Ministry of Health 'CRANE Survey Report: High risk group surveys conducted in 2008/9, Kampala, Uganda' (2010) and MH Swahn et al 'Prevalence of HIV and associated risks of sex work among youth in slums of Kampala' (2016) AIDS Research and Treatment)

¹⁴ Chapter 120. [The Penal Code Act (1950) « https://ulii.org/akn/ug/act/ord/1950/12/eng%402014-05-09#chp_XIV» last accessed on 24th July 2023

¹⁵ African Sex Workers Alliance (2011) "I expect to be abused and I have fear": Sex workers' experiences of human rights violations and barriers to accessing health-care in four African countries'

¹⁶ Leddy, A.M et al. (2019). DOI: 10.1186/s12889-019-7192-4

¹⁷ https://www.health.go.ug/cause/ministry-of-health-strategic-plan-2020-21-2024-25/



2.0

Problem Statement

Uganda is a signatory to numerous international and regional human rights instruments which proclaim fundamental rights for all including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural and Rights (ICESCR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples Rights, the Maputo Protocol, and the East African Community HIV and AIDS Prevention and Management Act of 2012. Some of these obligations are embedded in the 1995 Constitution of the Republic Uganda stipulating the fundamental human rights and freedoms including: freedom from discrimination; freedom from torture, equality before and under the law; inhuman and degrading treatment; the right to dignity and the right to work, ¹⁸ which are most applicable to sex workers.

However, translating these constitutional pronouncements and international human rights obligations into reality presents numerous challenges. Among these challenges is the incompatibility of the texts and implementation of domestic laws with principles of human rights embedded in both the Constitution and international instruments. This mismatch has, among others, given rise to the predicament of sex workers.

A number of legislations remain in place with others being enacted which directly or indirectly prohibit sex work and negatively impact upon the rights of female sex workers including the Penal Code Act, the Anti-Pornography Act 2014, the HIV/AIDS Prevention and

¹⁸ Fundamental rights and freedoms are entrenched in Chapter 4 of the Constitution.

Control Act 2014, and the Employment Act 2006 among others. The Acts' provisions either directly or indirectly curtail access to much-needed HIV/AIDS and SRHR services. Even though the Sexual Offences Bill, which includes provisions that further criminalizes sex workers and people living with HIV does not yet have presidential assent, it proposes to extend criminalization of sex work and imposes mandatory testing for HIV and harsher sentences on people living with HIV than the general population. There is a disconnect between the country's international, regional and constitutional obligations and its treatment of vulnerable and key populations such as female sex workers.

Female sex workers are affected by structural vulnerabilities, especially in low-and-middle-income countries where sex work continues to be illegal, and supported by discriminatory policies. ¹⁹ ²⁰ These vulnerabilities further exacerbate the health and human rights risks faced by sex workers, as they increase stigma; impede access to health care services for sex workers; and limit sex workers from relying on available redress mechanisms to enforce their rights. ²¹ This limitation has dire consequences especially given the fact that 'about 45%-75% of adult female sex workers are assaulted or abused, at least once in their lifetimes'. ²² Moreover, the criminalization of sex work further contributes to HIV infection and spread 'decrease engagement in HIV prevention and treatment services' by both sex workers and their clients. ²³ In fact, one study finds that in countries in which sex work is criminalized, sex workers are 7.17 times more likely to live with HIV. ²⁴ Currently, sex work and related practices are deemed to be such harmful conduct deserving of criminal sanctions and social stigma. The Penal Code Act Cap 120 under a general heading 'offences against morality' outlaws various activities related to sex work including prostitution²⁵, living on the earnings of prostitution²⁶, aiding and abetting prostitution²⁷ and operating brothels. ²⁸ It is clear from these provisions that they target not only those engaged in sex work but also their dependents, family members and business managers and associates. The highlighted provisions are used by the law enforcement agencies to arrest, harass, abuse, rape and extort money and sexual favors from sex workers.

Consequently, the national laws and their implementation disregard the fact that sex work is work from which many women derive their livelihood. World over, no evidence has been documented linking reduction in HIV prevalence to criminalisation of sex work.²⁹ In spite of sex workers having protection of their rights guaranteed by human rights standards enshrined in both international instruments and the Ugandan Constitution, there is a need to uphold and protect them.

¹⁹ Mbonye, M. et al (2013) "It is like a tomato stall where someone can pick what he likes": structure and practices of female sex work in Kampala, Uganda' BMC Public Health 13(741), 1-9

²⁰ Joint United Nations Programme on HIV/AIDS (UNAIDS) (2009-2012) 'UNAIDS Guidance Note on HIV and Sex Work' https://www.unaids.org/sites/default/files/sub-landing/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf accessed on 27th October 2022

²¹ UNAIDS (2021) 'HIV and Sex Work: Human Rights Fact Sheet Series https://www.unaids.org/sites/default/files/media asset/05-hiv-human-rights-factsheet-sex-work en.pdf accessed on 26th October 2022

²³ Lyons, C.E., et al (2020) 'The role of sex work laws and stigmas in increasing HIV risks among sex workers' nature communications 11(773), 1-10

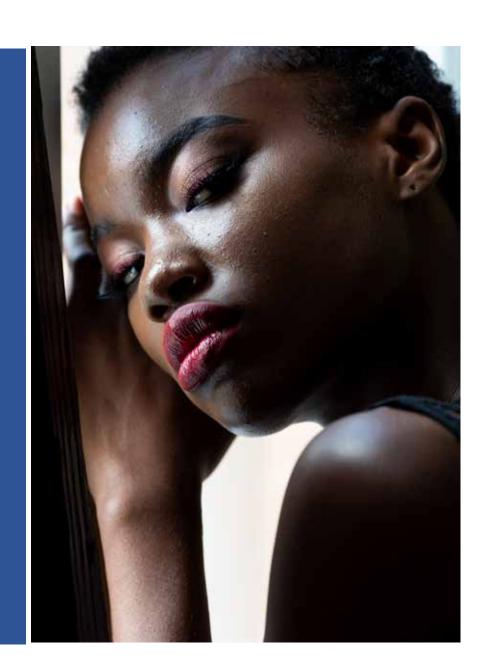
²⁴ Ibid. ²⁵ Section 138 e₇ 139.

²⁶ Section 136(1).

²⁷ Section 136(2).

²⁸ Section 137

²⁹ Unpublished: B Kyokunzire 'Is criminalisation of commercial sex work an answer? A case study of commercial sex workers in Kampala district, Uganda' Unpublished LLM dissertation, University of Zimbabwe, 2006.



3.0

Study Objectives

3.1. Main Objective

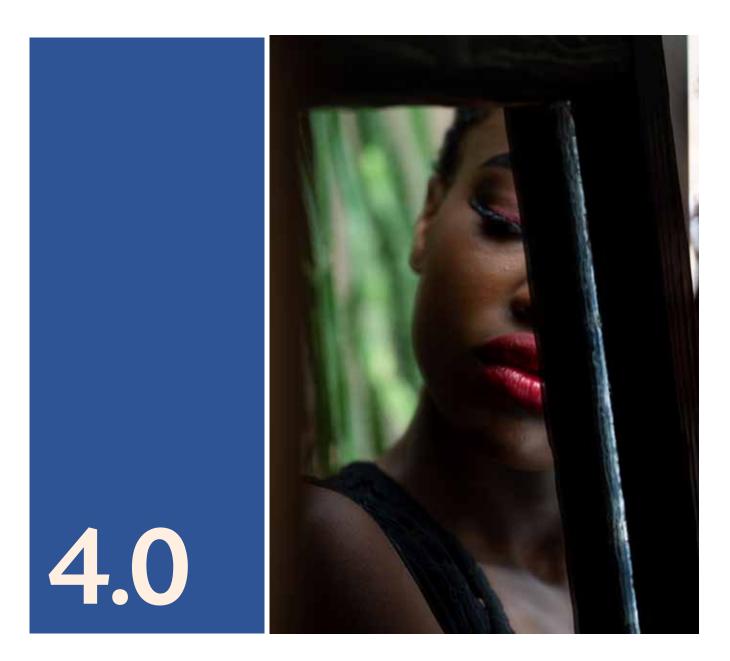
To determine whether Uganda's legal and policy environments affect the access of SRHR and HIV/AIDS services by female sex workers.

3.2. Sub Objectives

- a) To assess Uganda's legal and policy position on sex work
- b) To assess whether Uganda's position hinders or facilitates access to SRHR services for female sex workers
- c) To make recommendations on how the rights of female sex workers can be preserved under Uganda's policy and legislative environment.

3.3 Study rationale

In the last decade a number of laws have been enacted in Uganda which contain provisions impacting upon the rights of sex workers including: The Anti-Pornography Act 2014; the NGO Act 2016 and the HIV/AIDS Prevention and Control Act 2014, with proposed legislation such as the Sexual Offences Bill. These developments have created the need to critically assess the legal framework in which female sex workers operate, and how the legal and policy environment affects their rights.



Methodology

4.1. Study Design

This study takes a cross-sectional, descriptive approach. It utilizes the Human Rights-Based Approach to Health to study the legal and policy environment related to sex work in Uganda. In assessing Uganda's legal and policy environment in relation to access to SRHR and HIV&AIDS services for FSWs, this study utilizes the qualitative SRHR indicators for the SDGs, as developed by the Guttmacher Institute.³⁰ This study is the result of desk research and gathering case studies within Uganda.

4.2. Limitations to the study

For the purposes of this paper, child sexual exploitation is outside the remit of this paper. This position is consistent with the fact that in relation to children, sex work is illegal and a crime, as compared to adult sex work for which regulation is permitted.

³⁰ Guttmacher Institute (2015) 'Sexual and Reproductive Health and Rights Indicators for the SDGs: Recommendations for inclusion in the Sustainable Development Goals and the post-2015 development process'





Applying a Human Rights-Based Approach to Health in the development of Laws and Policies

The World Health Organization recognizes the role that legal and/or regulatory frameworks, as well as policy frameworks play in entrenching accountability, through providing redress mechanisms.^{31 32} Laws and policies are a key structural determinant of HIV and SRHR risk for sex workers.³³ Moreover, laws and policies are also key to ensuring another key human rights principle; that of participation of affected communities.³⁴

For the purposes of this study, a human rights-based approach to health entails the realization of the right to health and other health-related human rights, as well as the integration of obligations of governments in the fulfillment of those rights.³⁵ The core obligations of governments include the right to respect, protect and fulfil the right to health at all levels, such as the local, regional/federal (where applicable), and national levels.³⁶ The core obligations may entail, among others, the duties of states to:

- i. 'Adopt legislation or take other measures ensuring equal access to health care and health-related services provided by third parties'³⁷
- ii. Formally 'repeal or suspend legislation that is incompatible with pre-existing domestic or international legal obligations in relation to the right to health, and interferes with the right to health'38

Therefore, in developing laws and policies, governments should take into consideration a human rights-based approach to health which integrates government obligations in the fulfillment of the right to health.

The right to health is propounded in a number of instruments, notable among them being the Universal Declaration of Human Rights,³⁹ the International Covenant on Economic, Social and Cultural Rights,⁴⁰ International Convention on the Elimination of All

³¹ World Health Organization (2015) 'Sexual health, human rights and the law' human reduction programme: UNDP, UNFPA, UNICEF, WHO, WORLD BANK ³² Ibid, Page 4.

³³ Lyons, C.E. et al (2020) 'The role of sex work laws and stigmas in increasing HIV risks among sex workers' nature communications 11(773), 1-10 ³⁴ Ibid, Page 5.

³⁵ WHO, OHCHR (n.d) 'A Human rights-based approach to health' « https://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/Health/HRBA_Health-InformationSheet.pdf? accessed on 17th November 2022

³⁷ Paragraph 35 of CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)

³⁸ Paragraphs 48 and 50 of CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)

³⁹ Article 25(1) of the UDHR states that 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'.

⁴⁰ Article 12(1) states that 'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.

Forms of Racial Discrimination,⁴¹ articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women,⁴²⁴³ the Convention on the Rights of the Child of 1989,⁴⁴ the African Charter on Human and Peoples' Rights,⁴⁵ and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, also referred to as the Maputo Protocol on Women's Rights. ⁴⁶ Through a consideration of these legal instruments, it is apt to conclude that right to health is comprehensively provided for in the international human rights regime, with the right to health of the African woman being particularly provided for under the Maputo Protocol on Women's Rights.

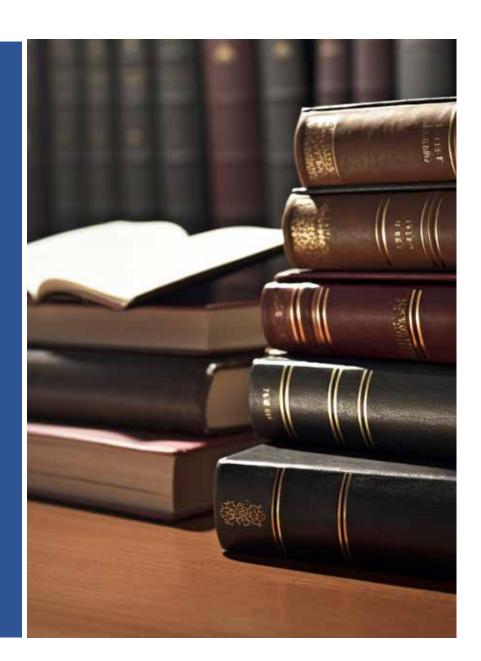
Reference should also be made to General Comment 14 on the right to the highest attainable standard of health, ⁴⁷ developed by the then Committee on Economic, Social and Cultural Rights. General Comment 14 provides a comprehensive understanding of the right to health under the International Covenant on Economic, Social and Cultural Rights, by drawing parallels between it and the broader human rights framework. It does this through means, which for the purpose of the discussion at hand include;

- i. Emphasizing that the right to health contains both freedoms and entitlements i.e., the right to control one's health and body, including sexual and reproductive freedom being freedoms, and entitlements including the right to a system of health protection;⁴⁸
- ii. Recognizing that health is majorly influenced by both timely and appropriate health care, as well as the underlying determinants of health such as healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health;⁴⁹
- iii. Recognizing that the right to health consists of the elements of availability, accessibility, acceptability, and quality of the health facilities, goods and services⁵¹
- iv. Reiterating that the right to maternal, child and reproductive health requires measures to improve sexual and reproductive health services, including access to family planning, pre-and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information,⁵²

The preceding paragraph demonstrates that for the right to health of women, including those of female sex workers to be respected, protected and fulfilled, the considerations of bodily autonomy and dignity, underlying determinants of health, right to information, right to a healthy environment, equality and non-discrimination and by extension, inclusion, and the right to safe and healthy working conditions, must be taken into account. General Comment 14 goes further to impute legal obligations of states to respect, protect and fulfill the right to health through a reliance on the AAAQ framework i.e, the availability, accessibility, acceptability and quality of health facilities, goods and services.

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- ⁴¹ Under Article 5(e)(iv), states are enjoined to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to public health, medical care, social security and social services:
- ⁴² Under Article 11(1)(f), states parties are enjoined to take appropriate measures to eliminate discrimination against women in the field of employment, in particular, the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- ⁴³ Under Article 12, states are enjoined to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning
- ⁴⁴ Under Article 24, States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
- ⁴⁵ Under Article 16, every individual shall have the right to enjoy the best attainable state of physical and mental health, with State Parties enjoined to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.
- ⁴⁶ Article XIV quoted verbatim,
- 1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted.
- This includes:
- a) The right to control their fertility;
- b) The right to decide whether to have children, the number of children and the spacing of children;
- c) The right to choose any method of contraception;
- d) The right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- e) The right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;
- f) The right to have family planning education.
- 2. States Parties shall take all appropriate measures to:
- a) Provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas.
- b) Establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding; c) Protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.
- 47 CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)
- 48 Ibid, Operating Paragraph 8
- ⁴⁹ Ibid, Operating Paragraph 11
- ⁵⁰ The element of 'Accessibility' is further categorized into the sub-elements of non-discrimination, physical accessibility, economic accessibility/affordability and information accessibility on health facilities, goods and services.
- ⁵¹ Ibid, Operating Paragraph 12
- 52 30 Supra, Operating Paragraph 14



6.0

The Legal Framework governing access to HIV/AIDS and SRHR services by sex workers in Uganda

Uganda has a history of criminalizing sexual relations.⁵³ This persistent criminalization is evident not only in enduring historical laws like the Penal Code Act,⁵⁴ but also in the legislature's continued efforts within the last two decades, to pass laws that reinforce the criminalization of certain forms of sexuality. Uganda's laws have often reinforced a homogenous understanding of sexuality within religious and 'moral' beliefs, while attempting to 'control and sanction 'dangerous' or 'abnormal' forms of sexual behavior which define and target specific 'sexual subjects'.⁵⁵ Below is an assessment of related legislation, how it affects the rights of female sex workers and their access to SRHR services.

The 1995 Constitution of the Republic of Uganda

The Constitution is the country's supreme law and all persons and entities are required to adhere to its provisions. ⁵⁶ The Constitution's provisions provide a sound basis for ensuring that female sex workers have all the necessary access to SRHR services as well as HIV/AIDS services. First, the Constitution guarantees that the rights and freedoms of groups and individuals are inherent and must be 'respected, upheld and promoted by all organs and agencies of Government. ⁵⁷ Crucially, the Constitution also guarantees equality and

⁵³ Human Rights Watch (2021) 'Uganda: Reject Sexual Offences Bill

⁵⁴ Chapter XIV titled 'Offences against morality'

⁵⁵ Vorhölter, Julia (2017) 'Homosexuality, pornography, and other 'modern threats' – The deployment of sexuality in recent laws and public discourses in Uganda' Critique of Anthropology 37(1), 93–111.

⁵⁶ See article 3 of the 1995 Constitution

⁵⁷ Article 20(2) of the 1995 Constitution

freedom from discrimination which are to be enjoyed by all persons including female sex workers. The Constitution further guarantees the rights of women under article 33 part of which requires the state to 'provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.' This provision cannot be realized if Ugandan female sex workers are unable to access requisite SRHR and HIV/AIDS services that they need. Discrimination and an unsupportive health clinic environment, including inconvenient hours and discriminatory service providers have been cited as major barriers towards access to SRHR services for female sex workers in Uganda.⁵⁸ Another study revealed that female sex workers had major concerns with the quality of services 'especially discrimination and rude remarks' from service providers as well as the denial or delay of services in addition to potential for breach of confidentiality.⁵⁹ These practices are counter to the Constitution which prohibits 'laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or which undermine their status.'⁶⁰

The HIV/AIDS Prevention and Control Act, 2014

In 2014, Uganda enacted the HIV/AIDS Prevention and Control Act for the purpose of preventing and control the spread of HIV and AIDS. The law seeks to achieve this through promoting the use of protection, scaling up counselling, testing and care of persons living with and affected by HIV/AIDS among other critical interventions. The law imposes several obligations on the state that are critical to female sex workers. The state is required to ensure access to equitable distribution of facilities, goods and services including essential medicines on a non-discriminatory basis and to provide 'universal HIV treatment to all persons on a non-discriminatory basis." [Emphasis added] Further, government has the obligation to promote and ensure non-discriminatory participation of people living with HIV and AIDS in government programmes; to mainstream HIV and AIDS programmes in all government sectors; to provide care and support to persons living with HIV/AIDS as appropriate; to provide adequate funding for HIV and AIDS programmes and crucially, to give priority to most at-risk populations. The law further provides that a person shall not be denied access to healthcare services in any health institution, or be charged a higher fee for such services, on the grounds of their actual, perceived or suspected HIV status.

The implications of these provisions for sex workers and their access to SRHR and HIV services is immense. Formally, the law does not discriminate against female sex workers and their rights to access HIV/AIDS services. In fact, it requires that the government not only provides these services to female sex workers but that they, being members of an at-risk group, be prioritized. These services must be mainstreamed in all government sectors including the police and other law enforcement agencies who are sadly often responsible for limiting access to SRHR and HIV/AIDS services by female sex workers. In sum, these provisions, on their own are progressive. Unfortunately, the law seems to 'give with one hand and take with the other.'

Despite its noble intentions, the law is controversial and some have questioned its ability to reduce the incidence of HIV/AIDS prevalence in the country. In fact, the Uganda AIDS Commission had advised its partners to ignore the provisions of the HIV/AIDS Prevention and Control Act and instead adhere to the East African Community HIV/AIDS Prevention and Management Act. It criminalizes the attempted and intentional transmission of HIV/AIDS and imposes harsh penalties of up to 10 years in prison if one is found guilty. It requires mandatory testing for pregnant women and their partners, and allows medical providers to disclose a patient's HIV status to others including persons with whom an HIV infected person is in 'close or continuous' contact including a sexual partner as well as persons that have been exposed to the blood or body fluid of a person tested.⁶⁴ These provisions will compound the stigma and discrimination that female sex workers already face.⁶⁵

These provisions will also alienate female sex workers from accessing much-needed HIV/AIDS treatment and services for a number of reasons. Mandatory testing for pregnant women, including female sex workers, who need to access other antenatal care is likely to deter many from accessing these services because of the likely stigma that accompanies an HIV-positive test result from the community and the patient's own family. Sex workers have been deterred from testing for their HIV status because 'the only way one can be accused of having intentionally transmitted the disease is by knowing their status.'66 Secondly, the provision that permits medical workers to share a patient's results regardless of the reason undermines the safe spaces required to encourage female sex workers to test for HIV/AIDS and access treatment if they need to. The nature of sex work is clandestine and enabling medical workers to disclose their status likely puts female sex workers at risk of identification and the attendant consequences such as ostracization, discrimination and stigmatization by their families and communities. The law is being challenged in the Constitutional Court by a coalition of HIV, human rights, and LGBTQ organizations.

The Penal Code Act

 $Uganda's \, approach \, to \, public \, health \, crises \, including \, the \, incidence \, of \, HIV/AIDS \, among \, female \, sex \, workers, \, often \, involves \, the \, imposition \, involves \, the \, incidence \, of \, HIV/AIDS \, among \, female \, sex \, workers, \, often \, involves \, the \, imposition \, involves \, the \, invo$

⁵⁸ AJ Hakim et.al. 'At the intersection of sexual and reproductive health and HIV services, use of moderately effective family planning among female sex workers in Kampala, Uganda' *BMC Pregnancy and Childbirth* 646(2022) DOI: 10.1186/s12884-022-04977-5

⁵⁹ R.K.Wanyeze et.al. (2017) "When they know that you are a sex worker, you will be the last person to be treated": Perceptions and experiences of female sex workers in accessing HIV services in Uganda." BMC International Health, Human Rights 17:11 DOI: 10.1186/s12914-017-0119-1

⁶⁰ Article 33(6) of the 1995 Constitution.

⁶¹ Section 24 of the HIV/AIDS Prevention and Control Act, 2014.

⁶² Ibio

 $^{^{63}}$ Section 37 of the HIV/AIDS Prevention and Control Act, 2014

⁶⁴ Section 18 of the HIV/AIDS Prevention and Control Act, 2014.

⁶⁵ S Devi 'Uganda takes "another step backward" with HIV Bill' *The Lancet* 383(9933) 2014 DOI: 10.1016/S0140-6736(14)609

⁶⁶ D. Asiimwe 'Uganda's HIV law at odds with EAC Act' accessed at «https://reliefweb.int/report/uganda/uganda-s-hiv-law-odds-eac-act»

of criminal sanctions. The Penal Code Act criminalizes activities related to sex work such as prostitution; living on the proceeds from prostitution; aiding and abetting prostitution and operating brothels.⁶⁷ Several other provisions in the Penal Code are also used to clamp down on sex work particularly those related to vagrancy. Law enforcement often arrests and detains female sex workers for being 'rogues and vagabonds' or being 'idle and disorderly.'⁶⁸ The continued targeting of female sex workers using these colonial provisions undermines attempts to control and stop the spread of HIV/AIDS among female sex workers. Law enforcement often arrests, detains and extorts female sex workers under the guise of breaching Penal Code Act provisions even though they are rarely charged in court.⁶⁹ Read together with the provisions of the HIV/AIDS Prevention and Control Act, the Penal Code Act deters female sex workers from freely accessing HIV/AIDS because they do not want to be identified, they do not want to be arrested or forcibly tested for HIV/AIDS. These laws entrench more stigma and discrimination against female sex workers.

The Anti-Pornography Act, 2014

In 2014, Uganda passed the Anti-Pornography Act that is designed to 'define and create the offence of pornography; to provide for the prohibition of pornography and to establish the Pornography Control Committee' among other matters. The Anti-Pornography Act has a direct bearing on sex work in Uganda and creates a restrictive environment within which female sex workers in Uganda operate. The law prohibits pornography although it defines it in an overly broad and vague sense. Under the Anti-Pornography Act, pornography is 'any representation through publication, exhibition, cinematography, indecent show, information technology' or other means 'of a person engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual excitement. In essence, this provision and the entire law could be used to curtail the activities of female sex workers in Uganda by utilizing that broad definition. Fortunately, parts of the law including the definition has been annulled by Uganda's Constitutional Court.

The Human Rights (Enforcement) Act, 2019

The Human Rights Enforcement Act, 2019 provides a general framework for enforcement of human rights including; sex workers and the LGBTIQ community members. The Act operationalizes Article 50 of the Constitution, which provides for the enforcement of fundamental human rights where these have been violated. The Act creates personal liability for state agents that commit human rights violations, (Section 10 of the Act) and the adjudication of both constitutionally and internationally guaranteed rights that are to be progressively realized by the state, including the right to health (Section 13 of the Act). This means that sex workers whose rights have been violated by law enforcement officers during the criminal justice process can make use of this Act to hold the specific officers personally liable.

National HIV Priority Action Plan for Key and Priority Populations and the Multisectoral HIV framework for Key and Priority Populations.

The government of Uganda through Uganda AIDS Commission (UAC) in partnership with national PWUDs, SW and LGBTI CSOs renewed the National HIV Priority Action Plan for Key and Priority Populations and the Multi-sectoral HIV framework for Key and Priority Populations 2020/21–2022/23. These are good policy documents that guarantee key population programming including provision of health services to sex workers in Uganda. There is willingness from both the political and technical team at Uganda Aids Commission and the Ministry of Health to streamline Key population service provision including collaboration with law enforcement to ensure service provision remains uninterrupted despite the obtaining prohibitive legal framework.

6.1 Findings and Discussion on relevant regional and national Legislation

Table 1: A summary of the analyses of key regional and national and regional laws that impact on the health and rights of sex workers.

This section lists some of the relevant regional legal instruments that are relevant to sexual and reproductive health and rights, particularly for female sex workers. The relevance of regional instruments is pertinent given that these instruments affirm state commitments

⁶⁷ See sections 136-139 of the Penal Code Act. Also see HRAPF 'Legal Regulation of Sex Work in Uganda: Exploring the Current Trends and their Impact on the Human Rights of Sex Workers' https://hrapf.org/images/researchpapers/161228legalregulationofsexworkersinugandastudy_updated-1.pdf

⁶⁸ Sections 167-168 of the Penal Code Act.

⁶⁹ HRAPF 'Legal Regulation of Sex Work in Uganda: Exploring the Current Trends and their Impact on the Human Rights of Sex Workers' at p.5.

⁷⁰ See Long title of the Anti-Pornography Act, No 1 of 2014

⁷¹ The Human Rights Promotion and Awareness Forum states that female sex workers are more cautious about how they dress in public as a result of the law. HRAPF 'Legal Regulation of Sex Work in Uganda: Exploring the Current Trends and their Impact on the Human Rights of Sex Workers' at xi.

⁷² See section 2 of the Anti-Pornography Act, 2014.

⁷³ K Judith & E Kasozi 'Constitutional Court annuls sections of Anti-Pornography Law' accessed at https://acme-ug.org/2021/08/26/constitutional-court-annuls-sections-of-anti-pornography-law/

⁷⁴ Refer to section 5.0 of this paper titled 'Applying a Human Rights-Based Approach to Health in the development of Laws and Policies A discussion of relevant international human rights instruments' for a discussion on relevant international human rights instruments.

and obligations towards fulfilling human rights, with regard to SRHR.⁷⁵ This section particularly highlights the instruments' positions on access to SRHR services. The section also analyzes national legislation while drawing parallels with the rights of female sex workers, with specific reference to case law, where possible.

Lav	v and specific description	lmp	olications on the Rights of Female Sex Workers
1.	Protocol to the African Charter on Human and Peoples' Rights (Maputo Protocol)		Under Article 2(1) of the Maputo Protocol, states are enjoined to 'enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women'; to 'integrate a gender perspective in their policy decisions'; and 'to take corrective and positive action in those against discrimination' of women.
			Article 13 also enjoins states to guarantee women 'the freedom to choose their occupation, and protect them from exploitation and violation of their fundamental rights as recognised and guaranteed by conventions, laws and regulations in force', and 'to create conditions to promote and support the occupations and economic activities of women'.
			The reproductive health and rights of women are also guaranteed under Article 14, with the specific obligations of member states to fulfill these rights also propounded.
2.	The East African Community HIV and AIDS Prevention and Management Act, 2012: An Act to provide for the prevention and management of HIV and AIDS and for the protection and promotion of the human rights of persons living with or affected by HIV and AIDS and for related matters		Section 3 (1) lists the objects and purposes of the Act. Among these is the promotion of a rights-based approach to dealing with all matters relating to HIV and AIDS. Under the Act, EAC governments are expected to adopt and implement a national HIV prevention, treatment and management strategy; ⁷⁸ and create an institutional framework for an integrated and multi-sectoral approach to the prevention and management of HIV and AIDS; ⁷⁹ ensure that recognized protective methods and devices, including quality female condoms are available, accessible and affordable, in particular to members of vulnerable groups and most at risk populations; ⁸⁰ and ensure access to effective and proven harm reduction programmes for drug users to minimize HIV infection. ⁸¹
3.	The 1995 Constitution of the Republic of Uganda: Chapter four of the 1995 Constitution of the Republic of Uganda entails the bill of rights, wherein the individual and group rights of the citizenry are espoused.		The 1995 Constitution protects rights of sex workers as it provides, under Article 21, for the right to freedom from discrimination on the grounds of sex, and social status. It provides a rights-based framework for challenging the perpetuation of sexual gender-based violence that is often suffered by sex workers, as well as advocacy for promotion and fulfillment of all other constitutionally guaranteed rights for sex workers.
4.	Penal Code Act Cap 120: The Uganda Penal Code Act Chapter 120 was enacted to establish a code of criminal law		Criminalisation of sex work and related matters such as earning from it, as well as keeping a brothel, under Sections 136-139 of the Penal Code Act makes sex workers susceptible to Sexual Gender Based Violence, as it lends credence to the patriarchal gender norms that control women's bodies and sexuality. The violence is meted out by both state and nonstate actors

⁷⁵ Cottingham, J, Kismodi, E, Hilber, AM. et al (2010) 'Using human rights for sexual and reproductive health: improving legal and regulatory frameworks' *Bulletin World Health Organization* 88, 551-555

 $^{^{76}}$ Article 13 (d) of the Maputo Protocol

 $^{^{77}\,\}mathrm{Article}\,13$ (e) of the Maputo Protocol

⁷⁸ Section 4(b)

⁷⁹ Section 4 (h)

⁸⁰ Section 12 (b)

⁸¹ Section 12 (d)

Law and specific description	Implications on the Rights of Female Sex Workers
	Section 167 creates the offence of being idle and disorderly. It stipulates, among others, that any person, who, being a prostitute, behaves in a disorderly or indecent manner in any public place, without lawful excuse, publicly does any indecent act, or solicits or loiters for immoral purposes in any public place, shall be deemed an idle and disorderly person, and is on conviction liable to imprisonment for seven years. Section 168 also creates the offence of being rogue and vagabond, and stipulates that a person who is convicted of an offence under section 167, after having been convicted as an idle and disorderly person, a suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself or herself; a person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose; that person shall be deemed to be a rogue and vagabond, and commits a misdemeanour and is liable for the first offence to imprisonment for one year. These provisions of the law are used to wantonly arrest sex workers arbitrarily. This is because most law enforcement officers consider them easier to prosecute than the offence of 'prostitution' created by Section 167 of the Penal Code Act. This is owing to the fact that the provisions are broad and vague, and give the law enforcement officers unfettered discretion to determine what amounts to prohibited conduct. In particular, it gives the law enforcement officers the power to determine: what amounts to disorderly and indecent conduct in public, what amounts to a proper account of oneself; as well as the time and circumstances that determine that a person is in a public place for an illegal or disorderly purpose.
5. The Sexual Offences Bill: Intended to revise the law on sexual offences for the effectual prevention of sexual violence; to provide for enhanced punishment for sexual offenders; to provide for the protection of victims during trial of sexual offences; to provide for extraterritorial application of the law on sexual offences, and consequently, repeal some provisions of the Penal Code Act	Section 6 of the Bill criminalizes publication of material of a sexual nature to another person, with or without their consent. This section violates the privacy of individuals who, with each other's consent, share material of a sexual nature amongst themselves. In this regard, the provision also reinforces patriarchal notions about sexual modesty, especially of women. Among those affected by this provision are sex workers that use online platforms to do their work. This makes them susceptible to arrests, and is a violation of their right to privacy and freedom of expression
	Section 9 prohibits an officer or employee of a detention facility from performing a sexual act with a person in custody, or from compelling, facilitating, inducing or authorizing another person to perform a sexual act with a person in custody. This gives protection to inmates in detention facilities such as police stations and cells, as well as prisons, including sex workers, who are susceptible to sexual gender-based violence, by law enforcement officers, who coerce them into having sex with them, in exchange for their freedom, especially when arrested on tramped up charges of being 'idle and disorderly' or 'being rogue and vagabond'
	☐ The continued criminalisation of adult consensual commercial sex work and matters incidental to it, under Section 12,13 and 14 of the Bill shall promote the violation and abuse of rights of sex workers by both state and non-state actors, as is the case with Sections 136, 137 and 139 of the Penal Code Act.

Law and specific description	Implications on the Rights of Female Sex Workers
	Section 28 of the Bill provides for establishment of a sex offenders register for persons convicted under the Act, while Section 33 requires a person that is registered in the sexual offenders register to inform the local authorities, upon arrival in any district where they are not ordinarily resident, about their presence, and makes failure to give such notification an offence that is punishable up to five years. This puts sex workers, in a new form of predicament, wherein they will become susceptible to morality driven attacks, stigma and discrimination, once they disclose that they were convicted on charges related to 'prostitution.'
6. The Anti-Pornography Act: The Anti Pornography Act, 2014. An Act to define and create the offence of pornography; to provide for the prohibition of pornography; to establish the Pornography Control Committee and prescribe its functions; and	Section 13 of the Act prohibits pornography and makes it an offence, that is upon conviction, punishable up to ten years' imprisonment and/or a fine of Ten Million Uganda Shillings (Approximately USD 2,800); for a person to produce, traffic, publish, broadcast, procure, import or export pornography.
for other related matters	Section 2 of the Act defines pornography as any representation, through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual excitement. This provision of the law gravely affects sex workers as it makes them susceptible to arrest, given the fact that their work is primarily about giving sexual gratification. The law is also a violation of sex workers' right to freedom of expression through dress, and is a form of discrimination against them as women, as it polices their dressing, by defining pornography as, among others, 'the representation of the sexual parts of a person for primarily sexual gratification.' Indeed, the Act was dubbed 'the mini-skirt law,' and shortly after its passing by parliament, there were numerous incidents of women being undressed publicly on account of 'indecent dressing.'
7. The HIV Prevention and Control Act: The HIV Prevention and Control Act, 2014. An Act to provide for the prevention and control of HIV and AIDS, including protection, counselling, testing, care of persons living with and affected by HIV and AIDS, rights and obligations of persons living with and affected by HIV/AIDS, rights and obligations of persons living with and affected by HIV and AIDS; to establish the HIV and AIDS Trust Fund; and for other related matters	Section 41 creates the offence of attempted transmission of HIV, while Section 43 of the Act creates the offence of intentional transmission of HIV to another person. The Act, under Section 18 (2) (e) permits a medical practitioner or other officer to disclose the HIV test results an individual to any other person with whom an HIV infected person is in close or continuous contact, including a sexual partner, if the nature of contact, in the opinion of the medical practitioner or other qualified officer, poses a clear and present danger of HIV transmission to that person. Given the high level of vulnerability of sex workers to contracting HIV, these provisions promote stigma against them, which compels them to resort to a poor health seeking behaviour, as they will shy away from HIV testing, so as not be held culpable for intentional transmission of HIV; as well as seeking HIV prevention and treatment commodities and medicines. The provisions are also a violation of their right to privacy, as well as the right to freedom from cruel, inhuman and degrading treatment, guaranteed under the bill of rights.

Section 28 of the Bill provides for establishment of a sex offenders register for persons convicted under the Act, while Section 33 requires a person that is registered in the sexual offenders register to inform the local authorities, upon arrival in any district where they are not ordinarily resident, about their presence, and makes failure to give such notification an offence that is punishable up to five years. This puts sex workers, in a new form of predicament, wherein they will become susceptible to morality driven attacks, stigma and discrimination, once they disclose that they were convicted on charges related to 'prostitution.' The Non-Government Organizations Act 2016: Section 30 (1) (a) of the Act stipulates that an organization An Act to repeal and replace the Non Governmental shall not be registered, where its objectives, as stated in its Organisations Act Cap 113; to provide a conducive and constitution, are in contravention of the laws of Uganda. an enabling environment for the Non Governmental This provision is a violation of sex workers' right to Organisations sector; to strengthen and promote the freedom of association, as any objective related to working capacity of Non Governmental Organisations and towards promotion of rights of sex workers, can easily be their mutual partnership with Government; to make misinterpreted by the officials working with the NGO provision for the corporate status of the National Bureau, as being in contravention of laws criminalizing sex Bureau for Non-Government Organisations, and to work. This is apparent from the rationale that was given provide for its capacity to register, regulate, coordinate by officials from the Uganda Registration Services Bureau and monitor Non-Governmental Organisations' (URSB) for refusing to register Sexual Minorities Uganda activities; to provide for establishment of branch offices of the bureau, NGO monitoring committees (SMUG), an organization that categorically indicated in its and special obligations for NGOs, and provide for objectives that it sought to serve members of the LGBT other related matters community (See Frank Mugisha and Others Vs Uganda Registration Services Bureau)82. Most organisations working with sex workers circumvent this by making their objectives broad and not specific to sex workers. Section 44 (a) stipulates that an organization shall not carry out any activities in any area without approval of the District NGO Monitoring Committee, and Local Government, as well as a Memorandum of Understanding (MOU) with the Local Government. Given the misinterpretation of objects of organisations working with sex workers to be tantamount to promoting commission of the offence of 'prostitution' under the Penal Code Act, this provision limits organizations working with sex workers reaching those districts besides those where they may have been able to get operational licenses, thus excluding them from accessing the services that the organisations have available for them, which often include SRHR services and commodities, as well as information.

This section below discusses the consequences of discriminatory laws to the rights of female sex workers. The aim of this section is to highlight discriminatory provisions of Uganda's legislation against the rights of sex workers.

6.2 Discussion on laws that frustrate the rights of female sex workers

This section discusses the effect of laws which criminalize sex work in Uganda, as well as the effect of the laws' implementation on the health and SRHR of FSWs in Uganda.

⁸² In 2012, Sexual Minorities Uganda (SMUG) took steps to be registered as a company limited by guarantee so as to fully enjoy the benefits and obligations of a registered organization as stipulated in the Ugandan law. However, the Uganda Registration Service Bureau, which is the office of the government in charge of name reservation and registration of companies, denied the reservation of their name on grounds that same sexual relations are criminalized under the section 145 of the penal code act.

In the filed case, SMUG challenged the refusal to reserve its name and by extension the registration of the organization which is a violation of its rights including; the right to freedom of association, expression, right to equal protection of the law, and the right to participate in peaceful activities to influence the policies or government through civic organization among others. For more information, read Human Rights Watch (2022) 'Uganda Bans Prominent LGBTQ Rights Group' https://www.hrw.org/news/2022/08/12/uganda-bans-prominent-lgbtq-rights-group last accessed on 24th July 2023

6.2.1. Perpetration of gender discrimination and its impact on Female Sex Workers and their dependents

It is important to reiterate that sex work is criminalized under the Penal Code Act. However, an in-depth analysis further reveals gender discriminatory lenses, under which female sex workers may be majorly targeted. For example, section 138 states that,

In this Code, "prostitute" means a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain, and "prostitution" shall be construed accordingly.⁸³

Section 139 goes on to prohibit prostitution, further condemning the offender to seven-year imprisonment. In specifically referring to section 138, Tamale points out that this section may be taken to particularly target a sex worker, who in the Ugandan context, is most usually a woman, while the client, usually the man, may be able to avoid any legal culpability. Moreover, section 136 of the Penal Code Act also imposes a legal liability on the dependents of a prostitute 'for living 'wholly or in part on the earnings of prostitution'. Therefore, with the law potentially having more negative repercussions on females as compared to men, this 'clearly demonstrates the double standards that are employed in sexuality morals for men and women'. One study finds that since allegations and/or charges are difficult to prove in court, their imposition is a means of 'subjecting sex workers to a constant cycle of detention and release without prosecution', with the process being used to extort money from FSWs.

6.2.2. Limitation of access to health and SHRH services.

Since the law criminalizes female sex workers and their dependents from relying on income attained from sex work, there are dire consequences on the health of sex workers, given that they may fail to meet healthcare costs of both themselves and their dependents.⁸⁸ This inability to meet healthcare affects their access to sexual and reproductive health care services, further exposing them to health risks.⁸⁹ The constraints on access to SRHR services is especially dire given that as of 2021, the HIV prevalence among sex workers in Uganda is estimated at 31.3%.⁹⁰ Moreover, the requirement of mandatory HIV testing inherent in section 12 of the HIV and AIDS Prevention and Control Act, 2014, as earlier discussed hinders the prevention of HIV.⁹¹

The difficulties faced by FSWs in accessing health services were further exacerbated by the Covid-19 pandemic. The pandemic highlighted that health considerations are a reality for all, and affect everyone, especially the most vulnerable in society.

Recent efforts to enact the Sexual Offences Act of 2021 are indicative of the enduring negative social and cultural attitudes within Uganda, towards FSWs. The Act which is yet to be assented to by the President of Uganda further entrenches criminalization of FSWs, contrary to earlier calls for decriminalization.⁹⁴ Presumptive sections 14, 15 and 16 of the Act, are reminiscent of the Penal Code Act, by continuing to criminalize sex work.⁹⁵

6.2.3. Weaponization of laws

Over the years, a number of laws have been passed by local governments, which focus on idleness and related unscrupulous charges. These laws usually contain obtuse provisions which can arbitrarily be applied by the relevant authority against any subjects of the law of their choosing. Take, for example the Urban Authority Rules.

- 83 Section 138, Penal Code Act (Cap 120)
- ⁸⁴ Tamale, S. (2010) 'Law, sexual morality and subversion' in 'Routledge Handbook of Sexuality, Health and Rights', eds. Aggleton, P., Parker, R.: London and New York Page 413. See also, Consortium for Street Children (2019) 'Uganda' « https://www.streetchildren.org/legal-atlas/map/uganda/status-offences/can-the-law-cause-commercially-sexually-exploited-children-to-be-criminalised/» accessed on 24th October 2022
- ⁸⁶ Tamale, S. (2010) 'Law, sexual morality and subversion' in 'Routledge Handbook of Sexuality, Health and Rights', in 'Routledge Handbook of Sexuality, Health and Rights', in 'Routledge Handbook of Sexuality, Health and Rights' eds. Aggleton, P., Parker, R.: London and New York Page 413
- ⁸⁷ Women's Organization Network for Human Rights Advocacy (WONETHA), Crested Crane Lighters, the Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice (2016) 'Human Rights Violations of Sex Workers in Uganda Submission to the United Nations Universal Periodic Review of The Republic of Uganda'.
- 88 Ibia
- ⁸⁹ The Independent (2021) 'Criminalization of sex work will increase violence' https://www.independent.co.ug/criminalization-of-sex-work-will-increase-violence/ accessed on 24th October 2022
- 90 UNAIDS (2021) 'Country: Uganda' https://www.unaids.org/en/regionscountries/countries/uganda accessed on 24th October 2022
- ⁹¹ Platt, L, et al (2018) 'Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies' *PLOS Medicine* 15(2),
- 92 Adebisi, Y.A., et al (2020) 'Sex Workers Should not Be Forgotten in Africa's COVID-19 Response' The American Journal of Tropical Medicine and Hygiene 103(5), 1780–1782
- 93 UNAIDS (2020) 'COVID-19 responses must uphold and protect the human rights of sex workers' Feature Story « $\frac{\text{https://www.unaids.org/en/resources/press-centre/featurestories/2020/april/20200424}$ sex-work» accessed on 26th October 2022
- 94 Human Rights Awareness and Promotion Forum (HRAPF) (2021) 'Analysis of The Sexual Offences Act, 2021 and Its Implications on The Human Rights of Criminalised Minorities' « https://www.hrapf.org/index.php/resources/legal-policy-analyses/190-hrapf-legal-analysis-of-the-sexual-offences-act-2021/file accessed on 28th October 2022
- 95 Ibid. According to HRAPF, the presumptive sections reintroduce and redefine provisions of the Penal Code criminalising sex work
- ⁹⁶ Tamale, S. (2010) 'Law, sexual morality and subversion' in 'Routledge Handbook of Sexuality, Health and Rights', in 'Routledge Handbook of Sexuality, Health and Rights' eds. Aggleton, P., Parker, R.: London and New York Page 415

The case of 'Uganda v. Nabakoza and 9 Others' further amplifies the concern that laws can be used to arbitrarily dictate the bodies of women. Although the defendants were not sex workers, with six of them being female, it was the prosecution's case that they were dressed skimpily aboard a truck along Entebbe road, on the day that delegates for the COMESA meeting were arriving in the country. The defendants were charged with being 'idle and disorderly' under Section 167 (d) of the Penal Code Act. The defendants were given a 'deterrent sentence' by the Chief Magistrate which included shaving of the women's heads. On appeal, the High Court judge, Okumu Wengi pointed out the discriminatory nature with which the women were treated as their heads were shaved and stripped, as compared to their charged male counterparts who were not treated in such a discriminatory manner. In his words,

This smacked of discriminatory treatment that also demeaned the girls and assailed their dignity as women amounting to them suffering cruel, degrading treatment and punishment. Article 24 of the constitution 101 provides- "No person shall be subjected to any form of torture, cruel inhuman or degrading treatment or punishment." 102

By invoking Article 24, Judge Okumu drew parallels of the need of state apparatus to preserve the dignity of women, even in the implementation of existing laws. Moreover, he further affirmed that since there were other less severe modes of punishment as provided under the law like fines and community service, the treatment meted out against the girls including imprisonment most especially given the overcrowding in Ugandan prisons, was excessive and harsh.

Repressive Policing, work place and human rights violations

Since sex work is criminalized in Uganda, sex workers are faced with challenges in accessing redress mechanisms, when they face violence in work settings. On Under Article 212 of the Constitution of the republic of Uganda, the function of the police includes to 'protect life and property'. However, studies reflect that often, the threat of police presence not only hinders the ability of sex workers to negotiate prices and condom use with their clients, but also face continued threats of detention, which is often carried out violently. According to Decker et al, this mélange of threats of physical and sexual violence from both state and non-state actors, 'prevent workers from working together or in known locations with safety features, pose an obstacle to hiring security personnel, and make it more difficult to gather evidence against those who coerce or exploit sex workers'. The criminalization of sex work also makes it difficult for sex workers to report instances of intimate partner violence. In this way, repression and discrimination against sex workers has become institutionalized, with the aid of the law.

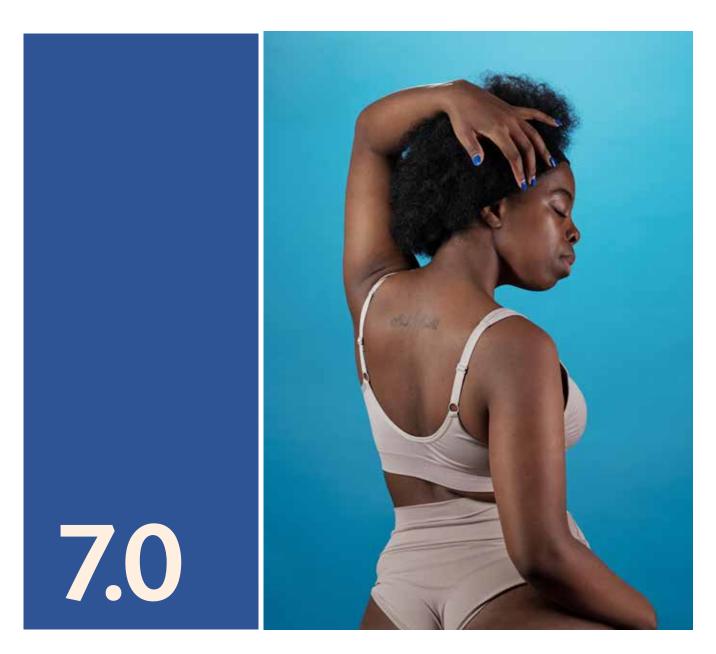
Some reports indicate that in carrying out investigations, police personnel confiscate condoms, and lubricants, as well as resorting to public humiliation of female sex workers, or those suspected of engaging in sex work. Following the Covid-19 pandemic, there were reports of arbitrary arrests carried out by police against FSWs, especially since they were known contacts of truck drivers who were said to spread Covid-19 across borders These arrests were also often justified under the guise of enforcing Covid-19 regulations and lockdowns.

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- ⁹⁷ Uganda v Nabakoza Jackline and Ors (Criminal Revision 8 of 2004) [2004] UGHC 24 https://ulii.org/ug/judgment/high-court-uganda/2004/24 accessed on 24th October 2022
- 98 Tamale, S. (2016) 'Nudity, Protest and the Law in Uganda: Inaugural Professorial Lecture'
- 99 29, Supra
- 100 Section 167. Idle and disorderly persons

Any person who-

- (a) being a prostitute, behaves in a disorderly or indecent manner in any public place;
- (b) wanders or places himself or herself in any public place to beg or gather alms, or causes or procures or encourages any child to do so;
- (c) plays at any game of chance for money or money's worth in any public place;
- (d) publicly conducts himself or herself in a manner likely to cause a breach of the peace;
- (e) without lawful excuse, publicly does any indecent act;
- (f) in any public place solicits or loiters for immoral purposes;
- (g) wanders about and endeavours by the exposure of wounds or deformation to obtain or gather alms, shall be deemed an idle and disorderly person, and is liable on conviction to imprisonment for three months or to a fine not exceeding three thousand shillings or to both such fine and imprisonment, but in the case of an offence contrary to paragraph (a), (e) or (f) that person is liable to imprisonment for seven years.
- 101 Constitution of the Republic of Uganda. Article 24 is titled 'Respect for human dignity and protection from inhuman treatment'.
- 102 Per Hon. Mr. Justice R.O.Okumu Wengi in the case 'Uganda v Nabakoza Jackline & 9 Others'
- 103 Muldoon, K.A., Akello, M. et al (2015) 'Policing the epidemic: High burden of workplace violence among female sex workers in conflict affected northern Uganda' Global Public Health
- ¹⁰⁴ Article 212 (a) of the Constitution.
- ¹⁰⁵ Ibid.
- 106 Decker, R.M., et al (2015) 'Human rights violations against sex workers: burden and effect on HIV' Lancet, 385 Page 193
- 107 Decker, R.M. et al (2016) 'The Lancet Series on HIV In Sex Workers; Paper 4 Burden and HIV Impact of Human Rights Violations Against Sex Workers' Lancet 385(9963): 186–199
- 108 Ibid.
- ¹⁰⁹ Women's Organization Network for Human Rights Advocacy (WONETHA), Crested Crane Lighters, the Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice (2016) 'Human Rights Violations of Sex Workers in Uganda Submission to the United Nations Universal Periodic Review of The Republic of Uganda'.
- ¹¹⁰ Health Gap Global Access Project (2020) 'Uganda's COVID-19 Response is Terrorizing Women with Arbitrary Detention, Blackmail, and Violence' «https://healthgap.org/press/ugandas-covid19-response-is-terrorizing-women-with-arbitrary-detention-blackmail-and-violence/» accessed on 25th October 2022
- 111 HRAPF (2021) 'The Impact Of Covid-19 Related Restrictions On Access To Justice For Key Populations In Uganda: A Case Study of LGBT Persons and Sex Workers in Kampala and Wakiso Districts' « https://www.hrapf.org/index.php/resources/research-reports/202-report-on-the-impact-of-covid-19-restrictions-on-access-to-justice-for-key-populations-in-uganda-a-case-study-of-lgbt-persons-and-sex-workers-in-kampala-and-wakiso-districts/file accessed on 26th October 2022



The Policy Framework governing sexual relations in Uganda

7.1. Background

This section makes particular reference to policy guidelines which have been specifically developed to address SRHR and HIVØAIDS issues. A more comprehensive discussion and assessment of the policy environment on general policies, and their relation to SRHR and HIVØAIDS, is provided for in consequent discussions. The purpose of this section is to assess and illustrate government's efforts in developing policies which specifically address SRHR and HIV/AIDS policies, through which the rights of FSWs can reasonably be inferred to be protected, and preserved.

7.2. Uganda's SRHR and HIV/AIDS-specific policy landscape: A brief timeline of Highs and Lows in the SRHR and HIV/AIDS arena

In 1999 the Ministry of Health developed a minimum Sexual and Reproductive Health Package adopted from the 1994 International Conference on Population and Development (ICPD) in Cairo. From this conference, 'sexual and reproductive health was affirmed as a human right, with an emphasis on empowering women and girls'. This conference marked a landmark global consensus on the place of individual dignity and human rights, and their role in sustainable development. Consequently, governments committed to not just setting

 $^{^{\}rm 112}$ The ICPD Programme of Action

¹¹³ United Nations Population Fund (n.d) 'International Conference on Population and Development' « https://www.unfpa.org/icpd» accessed on 28th October 2022

targets, but the realization of reproductive rights and reproductive health of women and girls, thereby specifically addressing elements of family planning; sexually transmitted diseases and prevention of human immunodeficiency virus (HIV); and human sexuality and gender relations.¹¹⁴

In 2006, Uganda developed the 'National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights'. The Guidelines list components of sexual and reproductive health as being, 'safe motherhood; family planning; adolescent health; prevention and management of adolescent ill-health; prevention and management of unsafe abortion, reproductive tract infections including STIs/HIV/AIDS, infertility, reproductive organ cancers; menopause and andropause, obstetric fistulae, gender issues (gender-based violence and female genital mutilation).

Since then, the government in 2010, inaugurated the 2010 addendum to Uganda's National Policy Guidelines and Service Standards for Sexual and Reproductive Health.¹¹⁵ This addendum ably integrates village health teams in health care service provision, by mandating them to administer injectable contraception within communities.¹¹⁶

In 2018, the government made efforts towards reversing a prior ban on sexuality education by developing the National Sexuality Education Framework, whose purpose is to streamline sexuality education within formal education in Uganda. However, the framework was deeply rooted in religious, familial upbringing, cultural and societal values. The reliance on these values creates a potential avenue for framing of SRHR within a narrow prism of morality, and the potential demonization of sex work. Such a conclusion is not far-fetched, given the fact that the framework included a topic on 'deviant sexual behavior', and the role of family and societal families in combating this behavior. Despite these weaknesses, the framework would have been an initial step towards the integration of comprehensive sexuality education in formal institutions of learning, a factor that is a key SRHR-specific indicator. However, the policy was met with opposition from religious and thought-leaders within the country. In 2021, in the case 'CEHURD vs. Attorney General & Family Life Network', the High Court ordered the government of Uganda, through the Ministry of Education and Sports, to develop a Comprehensive Sexuality Education Policy within two years.

7.3. Findings on policies affecting sex workers

This section utilizes the Guttmacher Institute's list of SRHR-specific indicators to measure the suitability of relevant policies in advancing SRHR and HIV/AIDS services. However, there is a slight modification with this table in column one, as it makes reference to the explicit recognition of FSWs, as a key population group. The purpose of the table is to first assess whether the indicators are provided for in the policy, and also assess whether the indicators are female sex work-specific.

¹¹⁴ The ICPD Programme of Action

¹¹⁵ Policy Guidelines and Service Delivery Standards for Community-Based Provision of Injectable Contraception in Uganda « https://toolkits.knowledgesuccess.org/toolkits/community-basedfp/policy-guidelines-and-service-delivery-standards-community-based-provision» accessed on 28th October 2022
¹¹⁶ Ibid

 $^{^{117}}$ Monitor (2017) 'Time to lift ban on sex education in schools' « $\frac{\text{https://www.monitor.co.ug/uganda/news/education/time-to-lift-ban-on-sex-education-in-schools-1709858}}{\text{schools-1709858}}$ » accessed on 28th October 2022

The National Sexuality Education Framework (2018) « https://scorecard.prb.org/wp-content/uploads/2019/06/Uganda-NATIONAL-SEXUALITY-EDUCA-TION-FRAMEWORK.pdf accessed on 28th October 2022

¹¹⁹ The indicator utilized by this study was initially developed by the Guttmacher institute. Refer to [Guttmacher Institute (2015) 'Sexual and Reproductive Health and Rights Indicators for the SDGs: Recommendations for inclusion in the Sustainable Development Goals and the post-2015 development process']

 $^{^{120} \} The \ Independent \ (2021) \ 'Education \ ministry \ given \ two \ years \ to \ develop \ comprehensive \ sexuality \ education \ policy/\ what \ policy/\ policy/\ what \ policy/\ policy/\$

¹²¹ [Miscellaneous Cause No. 309 of 2016]

¹²² Guttmacher Institute (2015) 'Sexual and Reproductive Health and Rights Indicators for the SDGs: Recommendations for inclusion in the Sustainable Development Goals and the post-2015 development process'

Table 2: A summary of the findings on specific policies that affect female sex workers

Gender Equality in SRHR	Yes. Over the next 30 years therefore, effort will be made to ensure gender responsive policies, programmes and actions. The total elimination of harmful and non-progressive socio-cultural practices that affect the health, wellbeing and progress of both men and women will be tackled during the 30-year period to allow and give opportunity to every Ugandan to fulfill their desired potential and line a life of dignity. These include among other, the elimination of practices such as female genital mutilation (FGM), Gender based violence, early marriages, child sacrifice, denial of the right to education and participation in employment. 25
Gende	Ves. Over thereis made responsible to the following the fo
Comprehensive Sexuality Education	2
Abortion	2
Prevention of STIs	2
Quality of care, including respect for rights	Party (Does not explicitly mention human rights) During the Vision period, there will be a paradigm shift from facility-based to a household based health delivery system. This shift will be anchored on preventive over curative health service delivery approaches. The preventive health system is considerably cheaper to run and hence by far more sustainable. Similarly, it is built on readily available primary health care providers as opposed to highly skilled professionals.
Knowledge about SRHR	2
SRH Service Availability	Yes. Uganda will focus on creating a more sustainable age structure by reducing the high fertility rate through increased access to quality reproductive health services. Government will focus on building an efficient health services gelivery system. 23
Contraception	2
FSWS explicitly recognized as a key population	<u>8</u>
Policy	Vision 2040

ři Fi	its degen- og the leover- trand ervices ervices arable sr-prone trand ervices arable sr-prone ortion oren- ortion of
Gender Equality in SRHR	Yes Includes as one of its objectives, the reduction of vulnerability and gen- lifecycle. Far Under this objective, the strategies include: Expand scope and cover- age of care, support and social protection services of the most vulnerable groups and disaster-prone communities. Scale up Gender Based Vi- olence (GBV) prevention and response interven- tions at all levels. Implement a National Male Involvement Strategies in promotion of gender equality. Implement the Uganda Gender Policy Action Plan. BS
Comprehensive C Sexuality S Education	Implied Includes as one of its strategies the complementation of a National Strategy against Child Mariage and Teenage Pregnancy. In the complement of the
Abortion	Implied Improve maternal, adolescent and child health services at all levels of care a Invest in appropriate guide- lines, health care package, infrastruc- ture, technologies and human resource capacity for neonatal services at all levels of health care; b. Devel- op and implement a comprehensive set of interventions to reduce teenage pregnancies, with a special focus on hot spot districts; c. Incrasse investment in child and maternal health services at all levels of care
Prevention of STIs	Yes Health services will be restructured to focus more on disease prevention using a multi-sectoral approach as op- posed to the current curative focused model. ¹³ Includes as one of its strategies, the reduc- tion of the burden of communicable diseases with focus on high burden diseases and malnu- trition across all age groups emphasizing Primany Health Care Approach. ¹³²
Quality of care, including respect for rights	Partly (Does not explicitly mention human rights) Government has adopted a raft of measures to accelerate economic recovery and these include both shortand medium-tern interventions of scaling up health and social protection emergency funds to contain the spread of COVID-19, availing an economic stimulus for corporations and SMEs, supporting import substitution and export promotion. These strategic objectives will provide the framework for streamlining and directing government, private sector, civil society and development partners' investments towards: (iii) Increased generation of more skilled, better motivated and healthier workforce for all sectors of the economy but particularly for industrial sector; 200 ecovernment will address issues relating to tele-medicine in health in order to deliver services more efficiently and effectively and in a transparent and accountable manner! Page 50] Equip referral hospitals and increase functionality from the current 55%
Knowledge about SRHR	Implied Promote health research, innovation and technology uptake. 28
SRH Service Availability	Yes Includes as one of its strategies, the increase access to Sexual Reproductive Health (SRH) and Rights with special focus on family planning services and harmonised information. Increase access to Sexual Reproductive Health (SRH) and Rights with special focus on family planning services and harmonised informa- tion. ¹²⁷
Contraception	Implied Improve maternal, adolescent and child health services at all levels of care a Invest in appropriate guidelines, health care package, infrastructure, technologies and human resource capacity for neonatal services at all levels of health care; b. Develop and implement a comprehensive set of interventions to reduce teenage pregnancies, with a special focus on hot spot districts, c. Increase investment in child and maternal health arment in child and maternal health services at all levels of care. 26
FSWS explicitly recognized as a key population	<u>8</u>
Policy	National Development Plan III, 2020/21-2024/25

²⁶ Page 175
²⁷ Page 175
²⁸ Ibid.
²⁹ Page 35
³⁰ Page 58
³¹ Page 47
³² Page 175
³³ Page 175
³⁴ Page 176

Gender Equality in SRHR		Implied. Support women and girls' access to humanitarian assistance that is tailored to their distinct needs
	ies in	Implied Support access to assistant to their
Comprehensive Sexuality Education	Yes. One of its strategies is to engage men and young people in HIV prevention.	o Z
Abortion	2	Implied Promote cross-sectoral support for survivors, including access to justice, medical and psychosocial support, and economic opportunity.
Prevention of STIs	2	Implied Promote cross-sectoral support for survivors, including access to justice, medical and psychosocial support, and economic opportunity.
Quality of care, including respect for rights	Yes. Incorporates the 90-90-90 Targets. ¹³⁹ Its strategy is to accelerate implemen- tation of Test and Treat.	Explicitly mentions human rights. One of the Plan's outcomes is listed as 'Good governance enhanced at all levels. This outcome lists as one of its strategies, 'social cultural and religious norms, values, practices, and perceptions aligned to human rights standards. "42 Includes as one of its strategies, the strengthening of legal reform and accountability for conflict related sexual violence, including best practice: as part of traditional justice processes while preventing violence advocating for women's participation in such processes ¹⁴⁸
Knowledge about SRHR	Partly (does not explicitly mention human rights) One of the pillars is to 'ensure institutional effectiveness for a well-coordinated multi-sectoral response'.	Implied. Includes as one of its strategies, the investment in the next generation of women leaders by scaling up young women and girls' expertise, skills, and engagement in scientific fields relevant to security. He
SRH Service Availability	Yes. Advises leaders to provide clear and accurate information on how to prevent HIV. ¹⁸	Implied. Promote cross-sectoral support for access to justice, medical and psychosocial support, and economic opportunity. ¹⁴⁰
Contraception	Yes. One of its strategies includes strengthening the capacity of District Local Governments to implement and monitor HIV programs, as well as hiring and motivating health workers for quality service delivery.	S Z
FSWS explicitly recognized as a key population	No. ¹⁵⁶	Š
Policy	Presidential Fast Track Initiative to End HIV as a Public Threat by 2030	National Action Plan III On Women, Peace and Security 2021-2025

137 Page 17

138 Page 2. However, the Initiative advises leaders to 'mobilize communities against negative social and cultural practices such as early marriage and gender-based violence that expose people to the risk of HIV. Given this study's finding, often sex work may be implicitly discouraged under the policy.
139 Page 2. The 90-90-90 Targets are that 'at least 90% of all HIV positive persons identified through responsive HIV testing services; at least 90% of all identified on Antiretroviral Therapy, and at least 90% of all persons on HIV treatment adhering to treatment in order to attain and sustain viral suppression.
140 Page 2.
141 Page 2.
142 Page 2.
143 Page 2.
144 Page 2.
145 Page 2.
146 Page 2.
147 Page 2.
148 Page 2.

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Gender Equality in SRHR	Yes It ably includes the role of body women and men in body when and men in strategies like information education and commu- nication. Also aims to guide gen- der-sensitive and rights- based RH services.	Yes Intends to address gender and equity barriers to HIV prevention, care and treatment by ensuring respect, protection and promotion of human rights and providing health for all population groups in their diversity. ⁵⁶
Comprehensive Sexuality Education	yes	Yes Lists Comprehensive sexuality education as one of its inter- vention areas. ¹⁵⁵
Abortion	Yes. Post-abortion care is expressly provided for:50 Includes comprehensive abortion care services.51	Implied Intends to develop linkages with SRH, TR and maternal, newborn and child health and nutrition (MNCHN) services and other health programmes,
Prevention of STIs	Yes Includes strategies like condom use.	Yes Intends to focus on HIV prevention among adult men and most-at- risk populations (including key and priority populations and PWD) to impact more directly on the
Quality of care, including respect for rights	Partly (does not explicitly mention human rights) Deems it necessary to orient health care providers to implement the Minimum Reproductive Health Care Package while at the same time maintaining quality. ¹⁴⁹	Yes Mainstreams gender and human rights programming into the HIV and AIDS response to address and remove barriers to access. ¹⁵⁴ Intends to create a comprehensive and robust policy and legal framework, working closely with the Uganda Human Rights Commission to address
Knowledge about SRHR	t aims at increasing everyone's understanding of family planning and contraception so as to increase the utilization of the FP services. 147 Also includes community outreach reproductive health activities. 148	Yes Includes training for health care providers and law enforcement officers, as an intervention area. ¹⁵ Also includes community
SRH Service Availability	Yes Includes as one of its objectives, the promotion of strong integrated family planning information and services in the health sector at all levels and within various ministries. ***	Yes. Intends to use differentiated service delivery models in HIV testing services and care, and accelerate the implementation of test-and-treat for HIV care and prevention of new HIV
Contraception	Yes Includes as one of its goals, the increase of access to quality, affordable, acceptable and sustainable family planning services to everyone who needs contraception. ¹⁴⁵	Implied Implied Intends to develop Inkages with SRH, TB and maternal, newborn and child health and nutrition (MNCHN) services and other health proprammes,
FSWS explicitly recognized as a key population	Yes Explicitly recognizes 'people in difficult circumstances such as com- mercial sex and those in conflict areas' as target groups for contracep- tive service delivery, ¹⁴⁴	Yes In its Theory of Change' includes, doc- umentation of specific population groups most
Policy	National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights	National HIV and AIDS Strategic Plan 2020/21- 2024/25

¹⁴⁴ Page 19

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¹⁴⁷ Page 21
¹⁴⁸ Page 45
¹⁵⁰ Page 38
¹⁵¹ Page 45
¹⁵² Page 13
¹⁵³ Page 20

154 Page xvii

FSWS explicitly recognized as a key population	Contraception	SRH Service Availability	Knowledge about SRHR	Quality of care, including respect for rights	Prevention of STIs	Abortion	Comprehensive Sexuality Education	Gender Equality in SRHR
affected. ¹⁵⁷ Includes FSWs as one of its key populations. ¹³⁸	address comorbidities, transfer lessons learned and implement people-centred programmes.	infections. ¹⁶⁰	outreaches, as a way to reduce stigma. ^{Foi}	human rights barriers in HIV programming ¹⁶²	sources of new HIV infections. ¹⁶³	address comorbidi- ties, transfer lessons learned and imple- ment people-cen- tred programmes		
	Unclear Whereas the framework provides for education on the effectiveness of various approaches one may use to avoid indulging in premar- ital sex, reference is also made to the referral to services related to SRHR.	Yes Provides knowledge on seeking help from a health facility in the event of an STD.	Yes The framework is heavily influenced by the prevention of sexually transmitted diseases.	Yes Includes human rights as a major consideration in the inclusive and equitable quality education! Page 46 J Aso makes explicit reference to the Programme of Action of the ICPD, and the outcome documents of the Beijing Patform for Action! Ibid J Frequently makes reference to appropriate health care services	Yes Includes prevention and support for young people and peers against STI/Ds.	Partly However, greatly discourages abortion while encouraging 'commitment to a life view that upholds the dignity of every form of human life'. Also provides for education on post-abortion care services that are available in Uganda's reproductive health package.	Yes This is the ethos of the framework	Yes Focuses on gender-based violence and sexual abuse

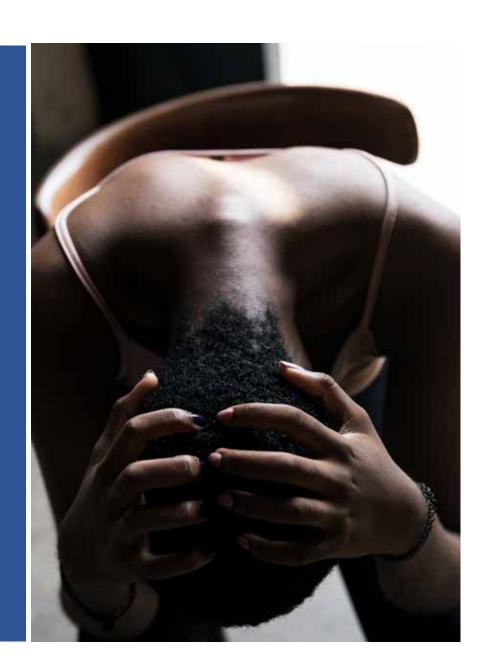
The table above reflects that in general policies developed by government, specific consideration on unique programming for female sex workers, is not provided for. It is only of recent when the government has specifically provided or such programming in SRHR specific policy. Further to this, the specific recognition of human rights is largely absent in a majority of the policies developed by the government.

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¹⁶¹ Page 21 ¹⁶² Page 17 ¹⁶³ Page 16

¹³⁸ Page 19

¹⁵⁷ Page 17



8.0

Conclusion and Recommendations

The legal and policy environment is not all that conducive for female sex workers organizing in Uganda. The laws and policies are restrictive and prohibitive towards sex work practice and behaviors. The laws criminalising sex work are not enforced because they are difficult to prove, and instead those that are wide and unclear being rogue and vagabond are used. Laws like the Anti-Pornography Act and the HIV Prevention and Control Act have also largely not been used. Sex workers and their clients get arrested by police officers in swoops and detained usually in violation of the guarantees of the right to liberty. They are charged and taken before courts, where usually the cases end up either being dismissed for want of prosecution, accused persons skipping bail and convictions usually arising out of pleas of guilt. This enforcement of the laws has led to the violation of basic rights of sex workers including the right to equality and non-discrimination, the right to liberty and the right to freedom from inhuman and degrading treatment among others.

8.1. Recommendations

- 1) Decriminalization of sex work and elimination of unjust laws: The decriminalization of sex work is an essential aspect of prevention of spread of HIV and other sexually transmitted infections, while ensuring that discrimination and violence generally experienced by sex workers is greatly reduced. This would aid the FSWs ability to access SRHR services, as well as justice mechanisms, without fear of retribution.
- 2) Community Engagement: The government should incorporate community participation in the development of both laws and
- World Health Organization (2012) 'Prevention and Treatment of HIV and other Sexually Transmitted Infections for Sex Workers in Low- and Middle-income Countries: Recommendations for a public health approach'

policies. This community participation should be accompanied by iterative means such as training of community members, peer educators, health care service providers including village health teams, policie and security personnel, legislators and policy officials, and sex workers in community outreach workshops, as well as their sensitization on proposed laws and policies on sex work. This would develop an understanding of sex work-friendly relations, laws and policies, rooted in the adage, human rights for all'. 166167

- 3) The Non-Government Organisations Act, 2016 should be reviewed so as to bring it in line with human rights standards by repealing section 30 thereof which seemingly denies sex workers the right to form and register NGOs owing to the supposed illegal nature of their activities.
- 4) Develop a roadmap for the rolling out of the comprehensive sexuality education framework: The government should develop a detailed roadmap for the rolling out of a comprehensive sexuality framework, which incorporates the roles of different duty-bearers. This would be in line with the High Court's orders that the Attorney General to compile and submit a report to this Court every six months showing progress and implementation of the orders. 168
- 5) Adopt a policy in which Health Policies are developed in line with SRHR and HIV/AIDS-specific indicators; The government of Uganda, through the Ministry of Health, should develop strategic guidelines which incorporate SRHR and HIV/AIDS-specific indicators, in the development of health policy.
- 6) The Uganda Law Reform Commission should review sections 136, 137, 138 and 139 of the Penal Code Act and carefully reconsider the current inclusion of these provisions in the Sexual Offences Bill, 2015.
- 7) The legislative assembly should repeal the redundant sections 136, 137, 138, 139, 167 and 168 of the Penal Code Act as these provisions have resulted into more arrests of sex workers and other innocent people.
- 8) The Anti-Pornography Act should also be reviewed especially sections 2 and 13 in their definition of pornography which have been criticised for being unclear and subjective and thus unconstitutional.
- 9) There is also need to review certain provisions of the HIV/AIDS (Prevention and Control) Act 2014 such as section 41 on attempted transmission of HIV and section 43(1) which criminalises willful and intentional transmission of HIV which places sex workers at the risk of criminalisation. Align the HIV Prevention and Control Act with the HIV/AIDS Prevention and Management Act 2012. This can be done by abolishing the criminalisation clauses and adopting a more human rights-based approach.
- 10) The Courts are also encouraged to dismiss cases brought under section 167 and 168 of the Penal Code Act which are clear attempts to use these provisions to harass, expose or extort money from sex workers, especially where the accused is unrepresented. In cases where sex workers are accused under Penal Code offences, courts are recommended to consider carefully whether all the elements of the crime had been proven, prior to making a conviction.
- 11) Civil Society Organisations and relevant stakeholders with similar vision adopt unique advocacy approaches including; litigation and petitioning the Constitutional Court, the High Court and other competent courts to make judicial pronouncements on the constitutionality and human rights implications of these laws.
- 12) Sex workers should embrace positive and proactive engagement with the Police and other law enforcement agencies and also seek to study, understand and enforce their rights as guaranteed under the Constitution and the various human rights instruments and legislations
- 13) In cases where the courts are minded to convict sex workers under criminal provisions, it is recommended that they opt for non-custodial sentences and small fines, taking into account that sex workers are often the breadwinners of their homes and that their prolonged absence from home has a profound impact on their families.

¹⁶⁵ Refer to the 'Policy Guidelines and Service Delivery Standards for Community Based Provision of Injectable Contraception in Uganda'.

Marlow, H.M., Shellenberg, K., Yegon, E. (2014) Abortion services for sex workers in Uganda: successful strategies in an urban clinic) Cult Health Sex 16(8):931-943

Muldoon, K.A., Akello, M. et al (2015) 'Policing the epidemic: High burden of workplace violence among female sex workers in conflict affected northern Uganda' Global Public Health

¹⁶⁸ CEHURD vs. Attorney General & Family Life Network [Miscellaneous Cause No. 309 of 2016] aka The Comprehensive Sexuality Education Case

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WHO, Health and Human rights, Factsheet No. 323, available at http://www.who.int/mediacentre/factsheets/fs323/en/

APPENDIX A: Key Documents Reviewed

No	Document	Reason
1	1995 Constitution of Uganda	It's the guiding law from where all other laws are drawn. This was reviewed to interrogate the rights of sex workers
2	The Non-Government Organizations Act 2016	Being the law that regulates the CSOs and NGOs in Uganda, this was accessed to see how it affects the organizing of Key populations particularly sex workers and their Organisations
3	Sexual Offences Act 2021	Was reviewed because it is the newly passed law that criminalizes, sex workers in Uganda. It awaits presidential signing to become fully operational and enforceable
4	Penal Code Act Chapter 120	The Uganda Penal Code Act Chapter 120 was enacted to establish a code of criminal law. This was reviewed to put in perspective the criminal liability of SWs and minority persons
5	The Anti-pornography Act 2014	Was reviewed to define and understand the Offence of pornography, prohibition of Pornography, the Pornography Control Committee and its functions
6	HIV Prevention and Control Act 2014	To appreciate and understand the prevention and control of HIV and AIDS, including protection, counselling, testing, care of persons sex workers living with and affected by HIV and AIDS, rights and obligations of persons living with and affected by HIV/AIDS

