

**UNIVERSAL PERIODIC REVIEW OF UGANDA**

**JOINT SUBMISSION BY CIVIL SOCIETY ORGANISATIONS WORKING WITH SEX  
WORKERS IN UGANDA**

**TO: THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

15<sup>th</sup> July 2021

<b>List of Contributing Organisations</b>	
1. Uganda Network of Sex-Work Led Organisations (UNESO)	2. Human Rights Awareness and Promotion Forum (HRAPF)
3. Lady Mermaids Empowerment Centre	4. Alliance of Women Advocating for Change (AWAC)
5. Empowered at Dusk Women's Association	6. Justice and Economic Empowerment for Women and Girls Foundation- JEEWAG
7. Organisation for Gender Empowerment and Rights Advocacy (OGERA)	8. Men Of the Night Uganda
9. Serving Lives Under Marginalisation	10. Golden Centre for Women's Rights (GCWR)
11. Malukhu Women's Association to Prevent HIV/AIDS	12. Voices for Community Empowerment
13. Sista Mbarara	14. Women's Positive Empowerment Initiative
15. Women's Organisation Network for Human Rights Advocacy (WONETHA)	16. Dream Centre for Women's Rights

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## 1. Introduction

- 1.1. This report is a joint submission of organisations working on the rights of sex workers in Uganda. Uganda Network of Sex-Work Led Organisations (UNESO), an umbrella body for organizations led by sex workers for sex workers whose mandate is to bring together sex worker led organizations/groups across Uganda, to form a collective voice that will enable sex workers to advocate for their rights. It also exists to create safe spaces where sex workers can convene, discuss and find solutions to the unending challenges that they face within the communities in which they live and work, to uphold the voices of sex workers in Uganda, and to coordinate and connect organizations that advocate for the rights of sex workers living and working in Uganda, together with organisations advocating for the rights of sex worker lead organisations have for the last four years been documenting violations of the human rights of sex workers, published annually in the 'Protection and Violation of the Human Rights of Sex Workers Report(s).
- 1.2. The Contributing Organisations serve sex workers in Uganda under different mandates and focus areas, including economic empowerment, HIV/ ART counselling, condom literacy and use, STI prevention and treatment and other healthcare services and parenting and childcare for children of sex workers while others provide legal aid to sex workers. These Organisations in carrying out their different mandates capture information concerning sex workers, representing a fairly comprehensive image of the human rights situation for sex workers in Uganda.
- 1.3. During Uganda's review in the previous cycle of the UPR (2011-2016), there were no recommendations made concerning sex workers' rights. However, Uganda committed in the first review in 2011 to increase education and awareness on all sets of human rights; strengthen human rights and democratic institutions, including the Uganda Human Rights Commission; protect human rights defenders from harassment and intimidation and train security forces to respect freedom of assembly and expression.<sup>1</sup> This commitment extends protection to sex workers and sex worker human rights defenders as well. Despite there being no specific commitments with regards to sex workers' rights, Uganda is still bound to respect, fulfil and protect all human rights enshrined in international instruments for sex workers.

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<sup>1</sup> Office of the United Nations High Commissioner for Human Rights [http://www.uprinfo.org/database/index.php?limit=0&f\\_SUR=182&f\\_SMR=All&order=&orderDir=ASC&orderP=true&f\\_Issue=All&searchReco=&resultMax=300&response=&action\\_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly](http://www.uprinfo.org/database/index.php?limit=0&f_SUR=182&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly)

- 1.4. This submission covers the incidences of protection of the rights of sex workers in Uganda since the last UPR review in 2016, as well as the incidences of violations as documented by the contributing organisations. Information for this report was gathered through extensive consultation with members of the sex worker community. These consultations were conducted through four meetings held in four regions, reaching out to 31 sex workers associating under 17 different CSOs working with sex workers. The meetings were conducted in the Eastern Region (in Mbale City), the Northern Region (in Gulu City), the Western Region (in Mbarara City), and the Central Region (in Kampala City) between February and April 2021. The information provided by the individuals and organisations consulted was then cross-referenced with available data from research studies on sex workers' rights, and only that information that was verifiable through cross-referencing with available evidence-based research data was included in this report. In addition, reference was made to secondary information such as media reports and reports by civil society organisations on the human rights situation for sex workers during the period from 2016 to 2021, and national, regional, and international human rights instruments were also analysed to inform the discussion on Uganda's human rights obligations to sex workers. Reference is also made to the outcome reports from Uganda's previous UPR reviews to ascertain the commitments made therein to effectively comment on the progress thus far.

## **2. Executive Summary**

- 2.1. There have been instances where the state has fulfilled its obligations as regards the human rights of sex workers. From the legislative perspective, Uganda enacted the Human Enforcement Act, 2019 which gives citizens the ability to hold individual police officers responsible for human rights violations. HRAPF and its partners have also recorded instances in the past four years where the state has come in to specifically protect sex workers from abuse. In 2019, for instance, the Uganda Police Force offered protection to sex workers in 8 recorded and verified cases, six cases in 2018, 4 cases in 2017, and five cases in 2016.
- 2.2. However, generally, sex workers in Uganda have continued to face discrimination and marginalisation, primarily influenced by the penal laws of Uganda which criminalise sex work. These laws have continued to exist on the books because of the social, religious, and cultural attitudes in the country and are used as a justification for the continued discrimination and violation of the human rights of sex workers. The Penal Code Act criminalises sex work as prostitution, living on the earnings of prostitution and keeping of brothels, and all these are punished with up to seven years imprisonment. The Penal Code also creates the offences of being idle and disorderly, being rogue and vagabond and being a common nuisance, which are all routinely used against sex workers. In May 2021, Parliament passed the Sexual

Offences Bill, 2019 which seeks to maintain the criminalisation of sex work and extend it to the clients of sex workers. This is in addition to the Anti-Pornography Act, enacted in 2014, which sought to, among other things, control the dressing of women by describing as pornography “any representation of the sexual parts of a person for primarily sexual excitement”. This law was challenged before the Constitution Court of Uganda in the case of Domestic Violence Prevention (CEDOVIP) and 7 others v Attorney General,<sup>2</sup> which case has not been disposed of to date, despite a court directive to the Attorney General in this regard.<sup>3</sup>

- 2.3. HRAPF and partners have over the four year period from 2016 to 2020 documented incidences of human rights violations against sex workers. In 2019, there were a total of 139 human rights violations committed against sex workers. Out of these, 120 were committed by state actors and 19 were committed by non-state actors, which the state failed to redress. In 2018, there were 94 human rights violations committed against sex workers, 68 of which were committed by state actors, while 26 were committed by non-state actors without due redress from the state. In 2017, there were 186 violations, 153 of which were perpetrated by state actors, while 33 were perpetrated by non-state actors. 2016 saw the highest number of violations, with 597 violations of the rights of sex workers documented, of which 576 were perpetrated by state actors while 21 were violations by non-state actors without redress from the state.
- 2.4. Sex workers have also suffered the brunt of the COVID-19 pandemic with the restrictions put in place to control the pandemic directly affecting sex workers far more than most groups. Sex workers were accused of being the main transmitters for the COVID-19 due to their connections with truck drivers, and to deal with this supposed challenge, lodges and bars were closed. The 7pm curfew ensured that they could not go on with their work at night, which severely curtailed their livelihood, forcing them to make the difficult choice to either disobey the law or starve, in the absence of the means to earn a livelihood or any coherent government effort to offer food relief to the sex workers community. Many were subjected to violence by law enforcement authorities who acted under the guise of enforcing the COVID-19 regulations.
- 2.5. As such, there is more need for Uganda to effectively protect the rights of sex workers in Uganda.<sup>4</sup>

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<sup>2</sup> Constitutional Petition No. 13 of 2014.

<sup>3</sup> <https://www.cedovip.org/constitutional-court-ordersto-set-date-for-the-hearing-of-the-petition-challenging-the-anti-pornography-act-2014/>

<sup>4</sup> n 5 above accepted recommendation 115.110

### 3. Legal and constitutional provisions affecting the human rights of sex workers in Uganda between 2016 and 2020

- 3.1. Despite Uganda's demonstrated reluctance to recognise sex worker rights, Uganda has committed to revise and harmonise its laws to meet international human rights instruments and ensure that they comply with international human rights standards while ensuring that the enforcement and implementation of laws is in line with the state's obligation to protect and promote the human rights of all. Just as important, Uganda's Constitution guarantees human rights for all persons without discrimination and imposes upon all persons and all organs of state the duty to protect, promote and fulfil human rights.<sup>5</sup>
- 3.2. Perhaps the most significant development in human rights law in Uganda during the period 2016-2020 is the enactment of the Human Rights (Enforcement) Act 2019 (HREA). The most important part of the Act is section 10 which provides for personal liability of state officials who violate human rights.<sup>6</sup> Although quite a few cases have already been brought before the courts under this Act, the fact remains that the Act is yet to be tested with respect to sex workers' rights.
- 3.3. In addition to this, the Constitutional Court of Uganda in November of 2016 delivered its decision in the case of *Adrian Jjuuko v Attorney General*<sup>7</sup> declaring section 15(6)(d) of the Equal Opportunities Act 2007, which prohibited the Equal Opportunities Commission from investigating and hearing matters considered socially unacceptable by a majority of social and cultural groupings in Uganda, to be inconsistent with the constitutional provisions on freedom from discrimination and the right to a fair hearing, and therefore null and void. The case makes a firm statement against discrimination against minorities, including sex workers in Uganda and reaffirming equality of all persons under the law.<sup>8</sup>
- 3.4. Although article 21 of the 1995 Constitution of Uganda provides for equality and freedom from discrimination and specifically states that no person shall be discriminated against on the ground of 'sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability', there are laws that criminalise sex work and related aspects, and these laws directly discriminate against sex workers on the grounds of their choice of occupation.

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<sup>5</sup> Article 20(1) of the 1995 Constitution of the Republic of Uganda

<sup>6</sup> For a detailed discussion of the Act, see Human Rights Awareness and Promotion Forum (HRAPF) 'The Human Rights (Enforcement) Act, 2019:

A new dawn for the enforcement of human rights of marginalised groups in Uganda?' 2021 <https://www.hrapf.org/index.php/resources/human-rights-advocate-magazine/183-seventh-issue-of-the-human-rights-advocate/file> (accessed 27 June 2021 (accessed 27 June 2021).

<sup>8</sup> Constitutional Petition No.001 of 2009

- 3.5. Section 139 of the Penal Code Act prohibits prostitution, which is defined under section 138 as the habitual holding of oneself as available for sexual intercourse or other sexual gratification for monetary or other material gains. The punishment is seven years imprisonment. Section 136 criminalises living on the earnings of prostitution, and section 137 criminalises keeping of brothels, both of which are punished with seven years imprisonment. These provisions limit the right to work for persons engaged in sex work, and the law is generally used more for persecution rather than prosecution of sex workers as these offences are victimless and therefore often difficult to prove.<sup>9</sup>
- 3.6. The Penal Code also creates the offences of being idle and disorderly in section 167 (defined to include gathering alms, playing at games of chance, conducting oneself “in a manner likely to cause a breach of the peace “ and other similarly vaguely defined conduct); being a rogue and vagabond in section 168 (defined to include “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 [one] is there for an illegal or disorderly purpose), and being a common nuisance, defined in section 160 of the Penal Code Act to simply mean behaving in a public place in such manner as to constitute an annoyance to a part of the public. These provisions are routinely used to harass and arrest sex workers, often purely for purposes of extorting them for money.<sup>10</sup>
- 3.7. Another law that is used against sex workers is the Narcotic Drugs and Psychotropic Substances (Control) Act, 2015 which criminalises among others, possession of drugs.<sup>11</sup> Given the close proximity of most sex worker hotspots in the busier cities and towns in Uganda to drug use hotspots, and the vulnerability of sex workers to drug use and/ or abuse, the laws on drug use have also come in handy in controlling sex workers’ lives and movements, with sex workers often being targeted for arrests and, in the absence of evidence that they have engaged in sex work, being charged with “frequenting a place used for smoking opium”, which ceased to be an offence in 2016, or possessing opium.

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<sup>9</sup> Human Rights Watch ‘A Step Towards Better Addressing Discrimination in Uganda: Court Ruling Allows Equal Opportunities Commission to Hear Broader Range of Cases’. 11 November 2016 <https://www.hrw.org/news/2016/11/11/step-towards-better-addressing-discrimination-uganda> (accessed 29 April 2021.)

<sup>10</sup> Human Rights Awareness and Promotion Forum (HRAPF) ‘Legal Regulation of Sex Work in Uganda: Exploring the Current Trends and their Impact on the Human Rights of Sex Workers’ <https://www.hrapf.org/index.php/resources/research-reports/35-161228legalregulationofsexworkersinugandastudy-updated-1/file>

<sup>11</sup> For details on how these provisions are used in Uganda, see generally Human Rights Awareness and Promotion Forum ‘The implications of the enforcement of ‘idle and disorderly’ laws on the human rights of marginalised persons in Uganda’ (2016) <https://www.hrapf.org/index.php/resources/research-reports/32-160929idleanddisorderlyresearchfinalreport/file> (accessed 27 June 2021).

- 3.8. The Anti-Pornography Act, 2014, defining pornography widely 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*’ [emphasis added], has exposed sex workers to further harassment because the wide definition has been interpreted to cover the dressing code of women, especially sex workers. The petition challenging the Act, brought by a sex worker-led organisation and 6 others, is still pending before the Constitutional Court.<sup>12</sup>
- 3.9. This is all in addition to the HIV/AIDS Prevention and Control Act, also enacted in 2014, which provides for mandatory HIV testing in some circumstances,<sup>13</sup> criminalises attempted transmission of HIV/AIDS<sup>14</sup> and intentional transmission of HIV.<sup>15</sup> These provisions promote discrimination against PLHIV, and sex workers in particular, who, as a key population group, are assumed to be the ones spreading HIV.<sup>16</sup>
- 3.10. In terms of civil society engagement for sex workers, the operating environment has remained difficult, as it is for all CSOs working on contentious matters. The Non-Governmental Organisations Act 2016 (NGO Act) imposes special obligations on organisations not to engage in acts that are ‘prejudicial to the interests of Uganda and the dignity of the people of Uganda,’<sup>17</sup> a vaguely worded provision with serious consequences that has forced significant self-censorship among civil society organisations as its vagueness can be used to target CSOs focusing on unpopular issues, such as the rights of sex workers. In addition, state institutions in health service delivery, law enforcement, civil society regulation, and even the courts of law tend to exhibit an inherent bias against serving sex workers, often targeting them for arrest and prosecution for petty offences, denying them access to essential health services and restricting them to certain “friendly” facilities and community drop-in-centres, which generally focus only on HIV and STI prevention and management.
- 3.11. In addition to the already existing laws criminalising sex work, the government of Uganda is in the process of enacting the Sexual Offences Bill, which shall widen criminalisation for sex workers. This Bill, passed by Parliament on 3<sup>rd</sup> May 2021, is currently awaiting presidential assent. If it becomes law in the state in which it is currently, the bill will in effect criminalise engaging in sex work, having sexual

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<sup>12</sup> Section 4 of the Narcotic Drugs and Psychotropic Substances (Control) Act, 2015.

<sup>13</sup> Centre for Domestic Violence Prevention & Others v the Attorney General, Constitutional Petition No. 13 of 2014,

<sup>14</sup> Section 11(a).

<sup>15</sup> Provided for under Section 41 and punishable by a fine of not more than twelve currency points or imprisonment for not more than five years or both.

<sup>16</sup> Provided for under Section 43 and punishable by a fine of not more than 120 currency points or imprisonment for not more than ten years or both.

<sup>17</sup> 32-33.



contact of any kind with a sex worker and operating a brothel.<sup>18</sup> If signed into law by the president, this Bill will expand criminalisation for sex workers and greatly undermine efforts towards full recognition of the rights of sex workers.<sup>19</sup>

- 3.12. Sex workers' rights are not expressly provided for under international human rights instruments ratified by Uganda, as such, sex workers are marginalised and discriminated against mainly because of the criminalisation of their work. However, Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to work, which includes the right to an opportunity to earn a living by work which one freely chooses or accepts, without limitation as to the type of work. The right to work under Article 6 of the ICESCR encompasses all forms of work, whether independent work or dependent wage-paid work.<sup>20</sup> In addition, provisions against discrimination of persons apply to sex workers as well, protecting sex workers against discrimination based on economic, social, or other status.<sup>21</sup>
- 3.13. Furthermore, the International Guidelines on HIV/AIDS and Human Rights 2006<sup>22</sup> recognise adult sex work that involves no victimization and urges that criminal laws should be reviewed with the aim to decriminalise, then legally regulate occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work to ensure that criminal law does not impede the provision of HIV/AIDS prevention and care services to sex workers and their clients.
- 3.14. Although there have been some few positive developments, the legal framework concerning sex workers overwhelmingly follows the criminalisation approach, and thus fails to meet the human rights standards enshrined in international human rights instruments.

#### **4. Violations of the rights of sex workers between 2016 and 2020**

- 4.1. Besides the laws, the human rights of sex workers have continued to be violated during the period 2016-2020. HRAPF and partners have been documenting these violations and publicizing them in reports produced annually. This part documents violations during this period

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<sup>18</sup> Non-Governmental Organisations Act, 2016 sections 30 and 44.

<sup>19</sup> Although an authoritative text for this Bill has not yet been availed by the Office of the Clerk to Parliament, the presumptive section 14 criminalises operation of brothels, section 15 criminalises prostitution and section 16 criminalises “sexual acts with a prostitute” as per the Report of the Sectoral Committee on Legal and Parliamentary Affairs on the Sexual Offences Bill, 2019, which the parliament based on in passing this Bill

<sup>20</sup> Human Rights Awareness and Promotion Forum (HRAPF) ‘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 15th May 2021).

<sup>21</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, available at: <https://www.refworld.org/docid/4415453b4.html>

<sup>22</sup> n 13 above

## A. The right to liberty

- 4.2. This right is protected in Article 9 of the ICCPR and Article 6 of the African Charter on Human and Peoples' Rights (African Charter) to which Uganda is a state party. This is the most commonly violated right for sex workers in Uganda.
- 4.3. In 2019, HRAPF and partners recorded a total of 109 violations of this right. Of these, 99 were cases of arbitrary arrests, and 10 were cases of detention beyond 48 hours.<sup>23</sup> In 2018, there were 63 incidences involving the violation of the right to liberty of sex workers.<sup>24</sup> In 2017, there were 43 instances of violation of the right to liberty,<sup>25</sup> while in 2016, there were 373 incidents of arbitrary arrests of sex workers.<sup>26</sup> When arrested, many spend more than the constitutionally mandated 48 hours in police detention.
- 4.4. The violation of the right is mainly due to arbitrary arrests as the authorities target sex workers for arrest in swoops, without having any evidence that they are involved in selling sex at the moment. A case that stands out is the mass arrest of sex workers On September 16<sup>th</sup> 2019. 87 sex workers were arrested in Mabiito, a collection of brothels in Nateete, Kampala district on allegations that they were in possession of narcotics. The arrest followed a documentary aired on 16<sup>th</sup> September 2019 on NBS TV titled 'NBS investigates: Brothel Owners Making A Killing Off Sex Trade' where the area was extensively filmed and fully identified. The arrest was thus for purposes of showing that the police was doing something about the sex trade, rather than a legitimate desire to prosecute sex workers for any alleged crimes.<sup>27</sup>
- 4.5. COVID-19 has added to the already precarious situation. Since March 2020, when Uganda reported its first case of COVID-19, the police has been actively arresting sex workers en masse for the offences of "disobeying lawful orders" and "doing a negligent act likely to spread infection of disease (sections 117 and 171 of the Penal Code Act) as a tool to enforce the restrictions imposed by the state to curb the spread of COVID-19. Despite the understandable rationale of trying to enforce the COVID-19 directives, this enforcement has intentionally or unintentionally targeted the vulnerable, particularly sex workers that earn a living by moving from one point to another.<sup>28</sup> In border districts, sex workers were targeted as conduits of the COVID-19 virus and were arrested, detained, and quarantined without due

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<sup>23</sup> Office of the High Commissioner for Human Rights 'International Guidelines on HIV/AIDS and Human Rights' 2006 <https://www.ohchr.org%2Fdocuments%2Fpublications%2Fhivaidsguidelinesen.pdf> .

<sup>24</sup> Human Rights Awareness and Promotion Forum '2019 report on the protection and violation of the human rights of sex workers in Uganda' 2020 <https://www.hrapf.org/index.php/resources/violation-reports/169-sex-workers-violations-report-2019/file> (accessed 27th June 2021).

<sup>26</sup> Human Rights Awareness and Promotion Forum '2018 report on the protection and violation of the human rights of sex workers in Uganda' 2019. .

<sup>28</sup> Human Rights Awareness and Promotion Forum '2017 report on the protection and violation of the human

consideration to sex workers and their families' need for survival.<sup>29</sup>

- 4.6. With the enforcement of the COVID-19 regulations, arbitrary arrests and detentions have continued to spike, with several incidences of targeted arrests and arbitrary detentions of sex workers under the guise of enforcing these regulations being reported.<sup>30</sup> Owing to the difficulty of proving prostitution, the Police often resort to charging sex workers with petty offences such as being idle and disorderly,<sup>31</sup> being a rogue and vagabond,<sup>32</sup> being a common nuisance<sup>33</sup>, and, in the context of COVID-19, disobeying lawful orders<sup>34</sup> and doing a negligent act likely to spread infection of disease<sup>35</sup>.
- 4.7. In addition to the arbitrary deprivation of the right to liberty, sex workers are subjected to undignified treatment, including beatings, verbal abuse, and, in some cases, rape at the hands of Police officers and members of the general community, which violations often go unaddressed.<sup>36</sup>

#### **B. The Right to freedom from torture or cruel, inhuman, and degrading treatment**

- 4.8. Articles 7 and 10 of the ICCPR provide for the right to freedom from torture, cruel, inhumane, and degrading treatment, and this same right is guaranteed at the regional level under Article 5 of the African Charter on Human and Peoples Rights.
- 4.9. Cruel, inhumane, and degrading treatment against sex workers in Uganda manifests in several forms, including public parading of sex workers whenever they are arrested, exposing them to public ridicule,<sup>37</sup> sexual abuse against workers by police officers when they are arrested<sup>38</sup> as well as physical violence against sex workers by arresting and detaining officers in both police stations and prisons.<sup>39</sup>

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rights of sex workers in Uganda' 2018 .<https://www.hrapf.org/index.php/resources/violation-reports/101-report-the-protection-and-violation-of-the-human-rights-of-sex-workers-in-uganda-2018-final/file> (accessed 27<sup>th</sup> June 2021).

<sup>30</sup> Human Rights Awareness and Promotion Forum 'The protection and violation of the human rights of sex workers in Uganda in 2016' 2017 <https://www.hrapf.org/index.php/resources/violation-reports/103-protection-and-violation-of-the-rights-of-female-sex-workers-in-uganda-2016/file> (accessed 27<sup>th</sup> June 2021).

<sup>32</sup> Human Rights Awareness and Promotion Forum 'Report on the Protection and Violation of the Human Rights of sex workers in Uganda, 2019' April 2020.

<sup>33</sup> Alliance for Women Advocating for Change (AWAC) 'Rapid assessment on the impact of covid-19 among FSWS, AGYW and women living with HIV & AIDS in Uganda' 2020 <https://www.google.com/url/SSEMAKULASbb0a7a2ea4d90543400023042d1aa7fca2177e6a.pdf>

<sup>34</sup> 'COVID-19: Sex workers arrested' UGANET 1 May 2021. <https://uganet.org/old/index.php/2020/05/01/covid-19-sex-workers-arrested/>

<sup>35</sup> Health Gap 'Uganda's COVID-19 Response is Terrorizing Women with Arbitrary Detention, Blackmail, and Violence.' 30 April 2020 <https://healthgap.org/press/ugandas-covid19-response-is-terrorizing-women-with-arbitrary-detention-blackmail-and-violence/> (accessed 29 April 2021).

<sup>36</sup> Section 167 of the Penal Code Act, Cap 120, Laws of Uganda

<sup>37</sup> Section 168 of the PCA

<sup>38</sup> Section 160 of the PCA. See for instance Buganda Road Court Criminal cases KLA-00-CR-CO-1262/2019 (Uganda vs Ntale Farida and Others)

<sup>39</sup> Section 117 of the Penal Code Act

4.10. HRAPF has documented cases of violation of this right for the period 2016-2020. In 2019, HRAPF and partners recorded a total of 11 violations of this right.<sup>40</sup> In 2018, there were 2 incidences involving the violation of the right to liberty of sex workers.<sup>41</sup> In 2017, there were 52 instances of violation of the right,<sup>42</sup> while in 2016, there were 86 violations of this rights, 28 of which involved infliction of physical pain and sexual abuse, and 58 involved parading of sex workers before the media both during and after arrest.<sup>43</sup>

### **C. The right to life**

4.11. Article 6 of the ICCPR, Article 4 of the ACHPR, and Article 22 of the 1995 Constitution of Uganda guarantee the right to life, which goes beyond the mere aspect of living and breathing but concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.<sup>44</sup> Therefore, all acts of indignity, cruel, inhuman, and degrading treatment are all an affront to the right to life. Thus, the criminalisation of sex work and the subsequent brutal arrests coupled with unnecessary media exposure, subject sex workers to undignified lives as they remain unable to access the basics of life such as additional gainful employment, food, and health services.

4.12. Furthermore, the state is under obligation to ensure that the human rights of all persons are protected. The right to life is one such right that the state ought to take more active steps to protect. In 2017, several sex workers were murdered and in the wake of these murders, 45 sex workers were arrested as they organised a crisis meeting to discuss their security.<sup>45</sup> This particular arrest of the sex workers portrays a failure by the State in their obligation to protect the right to life of the sex workers.

### **D. The right to health**

4.13. Article 12 of the ICESCR and Article 16 of the ACHPR provide for the right to health. Unfortunately, the right to health for sex workers is often denied due to the social and cultural misconceptions and exclusions that sex workers experience based on their choice of work.

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<sup>40</sup> Section 171 of the Penal Code Act

<sup>41</sup> Information from consultative meetings held with sex workers in the Eastern Region on 18 February 2021 at the Shine on Hotel Mbale and the Western Region on 6 April 2021 at Generation Suites.

<sup>42</sup> 'Police burst Kireka 'sex party', 21 suspects arrested' The Observer 11 October 2020.

<https://observer.ug/news/headlines/66929-police-burst-sex-party-21-suspects-arrested>

<sup>44</sup> 'Phones Protect Uganda's Sex Workers from Police Harassment' VOA News 6 September 2016. <https://www.voanews.com/africa/phones-protect-ugandas-sex-workers-police-harassment>

<sup>45</sup> See n 32 above

- 4.14. Sex workers encounter discrimination, stigmatisation, and hostility in accessing the health care system in Uganda, and this discrimination is based on the criminalisation of sex work under the Penal Code Act. This also informs the negative attitudes of health workers towards sex workers,<sup>46</sup> even though they remain classified as key populations and as a group most at risk of acquiring HIV.<sup>47</sup> In addition, there is no robust system to track universal healthcare coverage in place in relation to HIV services for sex workers.<sup>48</sup>
- 4.15. The right to health further deteriorated during the COVID-19 lockdown period between March and June 2020. In particular, sex workers were unable to adhere to their ART treatment during the COVID-19 lockdown due to the inability to access health services.<sup>49</sup> In one case, sex workers in Amuria and Kitgum districts were assaulted by Local Defence Unit personnel on their way to health facilities, thus scaring away several other sex workers who wanted to access treatment in fear of being assaulted.<sup>50</sup> Additionally, there are no specialised healthcare services tailored towards the special needs of sex workers and there is documented evidence of healthcare service providers refusing to serve sex workers, claiming not to have the requisite skills.<sup>51</sup> Non-Governmental Organisations such as the Most at Risk Populations Initiative and sex worker-led organisations are the primary source of health care services for sex workers.<sup>52</sup> These have replaced the State as the state has abandoned its role and obligation to ensure that all persons have access to the highest attainable standard of health.

## 5. Conclusion

- 5.1. International human rights instruments and national law protect all persons equally without distinction as to race, social standing, or choice of occupation. The human rights of sex workers, just like all rights, are inherent, based on their humanity, and grounded in the human rights framework. Sex worker communities, therefore, call upon the Government of Uganda to respect its obligations under the international,

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<sup>46</sup> Human Rights Awareness and Promotion Forum '2019 report on the protection and violation of the human rights of sex workers in Uganda' 2020 <https://www.hrapf.org/index.php/resources/violation-reports/169-sex-workers-violations-report-2019/file> (accessed 27th June 2021).

<sup>47</sup> Human Rights Awareness and Promotion Forum '2018 report on the protection and violation of the human rights of sex workers in Uganda' 2019. .

<sup>48</sup> Human Rights Awareness and Promotion Forum '2017 report on the protection and violation of the human rights of sex workers in Uganda' 2018 .<https://www.hrapf.org/index.php/resources/violation-reports/101-report-the-protection-and-violation-of-the-human-rights-of-sex-workers-in-uganda-2018-final/file> (accessed 27th June 2021).

<sup>49</sup> Human Rights Awareness and Promotion Forum 'The protection and violation of the human rights of sex workers in Uganda in 2016' 2017 <https://www.hrapf.org/index.php/resources/violation-reports/103-protection-and-violation-of-the-rights-of-female-sex-workers-in-uganda-2016/file> (accessed 27th June 2021).

<sup>51</sup> UN Human Rights Committee , 'General comment no. 36, Article 6 (Right to Life)', 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html> (accessed 30 April 2021)

<sup>52</sup> 'Ugandan Sex Workers Arrested at Crisis Meeting Over Murders of Sex Workers' The Global Network of Sex Work Projects 9 October 2017. <https://www.nswp.org/news/ugandan-sex-workers-arrested-crisis-meeting-over-murders-sex-workers>

regional and national human rights law to treat all persons equally regardless of their choice of work.

## 6. Recommendations

Uganda should:

1. Repeal sections 136, 137 ,138 and 139 of the Penal Code Act that criminalise sex work in Uganda
2. Repeal all discriminatory laws inconsistent with Ugandan's international obligations and enact laws to ratify and operationalise international human rights instruments that Uganda is a state party to. In particular, repeal sections 139 of the Penal Code Act and sections 44 (d) (f) of the NGO Act and review the Sexual Offences Bill prior to Presidential assent to remove the further criminalisation of sex work.
3. Strengthen the Judicial systems and complaints systems such as the Uganda Police Professional Standards Unit to better offer redress to victims of violations and intensify efforts to train law enforcement agencies on the human rights of sex workers.
4. Investigate and prosecute state actors and individuals perpetrating violence against sex workers.
5. Strengthen the health policy framework to better serve the unique health needs of sex workers, and strengthen human rights training for health workers on the issues that concern marginalised persons within the healthcare system.
6. Repeal sections 167 and 168 of the Penal code Act Cape 120 which create vague offences on being idle and disorderly and being rogue and vagabond
7. Increase funding for the health sector in line with the Abuja Declaration, with a specific provision of funds to meet the unique SRHR needs of sex workers, and strengthen universal health coverage for HIV services for sex workers.