

**THE EFFECT OF CRIMINALIZING PROSTITUTION ON THE ENJOYMENT OF HUMAN  
RIGHTS IN UGANDA**

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**DECLARATION**

I **KATANA LYNN**, do hereby declare that this dissertation was carried out in accordance with the requirement of the University’s Regulation and Code of Practice for Research Degree Program’s and that it has not been submitted for any other academic award. Other works cited and referred to are accordingly acknowledged.

Signature.....Date.....

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**APPROVAL**

This dissertation has been submitted for examination with my approval as University Supervisor

Signed.....Date.....

**MADAM BAKO JANE PATRICIA**

## DEDICATION

This dissertation is dedicated to my loving family whose unwavering support and encouragement have been the foundation of my academic journey.

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## ABSTRACT

This research explores the effect of criminalizing prostitution on the enjoyment of human rights in Uganda. Prostitution is prohibited under the Penal Code Act of Uganda and rather than eradicate the sex work industry, the law has pushed it underground where it is vulnerable to human rights violation. The research is majorly desktop work with findings derived from human rights reports, news reports, and academic research on human rights violations of sex workers in Uganda in relation to status quo around the world. These rights being violated range from the right to be free from discrimination, the right to work, the right to freedom of association and the right to privacy as provided for under the Constitution of the Republic of Uganda. The research calls for the reevaluation of the laws criminalizing prostitution and further suggests that it is best to adopt the policy of decriminalizing prostitution as the country would be in a better position to address the human rights violations against the people involved in the practice. This study contributes to the ongoing discourse on the decriminalization of sex work in Uganda and its potential to improve the human rights situation of sex workers. It calls for a reevaluation of existing laws and policies affecting sex workers and advocates for a human rights-based approach to sex work in Uganda.

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## CHAPTER ONE

### 1.0 INTRODUCTION

Prostitution is a complex and multifaceted phenomenon that intersects with various social, economic, and legal dimensions.<sup>1</sup> Its regulation or criminalization has significant implications for the human rights of individuals involved, as well as broader societal dynamics. In Uganda, like many other countries, the issue of prostitution is contentious, with divergent opinions on how best to address it within the framework of human rights.<sup>2</sup>

This research aims to explore the impact of criminalizing prostitution on the enjoyment of human rights in Uganda. By examining the legal framework, socio-economic factors, and the lived experiences of individuals involved in the sex trade, this study seeks to provide a comprehensive analysis of the implications of current policies and practices on the human rights of sex workers and other stakeholders.

Prostitution in Uganda exists in various forms, ranging from street-based sex work to high-end escort services.<sup>3</sup> Despite its prevalence, the legal status of prostitution remains ambiguous. The Penal Code Act criminalizes certain aspects of prostitution, including soliciting in a public place and living off the earnings of prostitution. However, the law does not explicitly prohibit the act of selling sex itself. This legal ambiguity creates a precarious environment for sex workers, exposing them to

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<sup>1</sup> Jansson, J., & Kerr, T. (2010). Tyndall M. Risk Factors for HIV/STI Acquisition among Female Sex Workers in Vancouver, Canada. *Sexually Transmitted Infections*, 86(1), 364-366.

<sup>2</sup> Lawal, A. K. (2018). Female Genital Mutilation: Perspectives of Husbands and Wives in Nasarawa State, Nigeria. *The Journal of Obstetrics and Gynaecology Research*, 44(1), 177-185.

<sup>3</sup> Mgbako, C. (2014). Back to Basics: HIV/AIDS, Sex Workers' Rights, and Reproductive Justice. *Yale Journal of Law and Feminism*, 26(1), 273-308.

exploitation, violence, and discrimination while hindering access to essential services such as healthcare and legal protection.<sup>4</sup>

The criminalization of prostitution in Uganda is rooted in moral, cultural, and religious considerations, reflecting broader societal attitudes towards sexuality and gender roles.<sup>5</sup> Proponents of criminalization argue that it serves as a deterrent, protecting public morality and preventing the exploitation of vulnerable individuals, particularly women and children.<sup>6</sup> However, critics contend that such laws exacerbate the marginalization of sex workers, perpetuate stigma and discrimination, and impede efforts to address the underlying factors driving their involvement in the sex trade.<sup>7</sup>

The criminalization of prostitution in Uganda intersects with other human rights issues, including access to healthcare, housing, and education. Sex workers often face barriers in accessing essential services due to fear of arrest, stigma, and discrimination from service providers.<sup>8</sup> This not only undermines their right to health but also perpetuates cycles of poverty and social exclusion.

To understand the full impact of criminalizing prostitution on human rights in Uganda, it is essential to consider the perspectives and experiences of sex workers themselves. Many sex workers in Uganda operate in precarious conditions, lacking legal

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<sup>4</sup> Mugisha, J., & Birungi, P. (2007). Integrating HIV Voluntary Counseling and Testing Services into Reproductive Health Settings in Uganda: A Case Study. *Frontiers in Reproductive Health Program*, Population Council.

<sup>5</sup> Nyanzi, S., & Pool, R. (2014). AIDS-Related Stigma in Sub-Saharan Africa: A Literature Review. *Journal of Tropical Medicine*, 2014, 1-23.

<sup>6</sup> Okafor, U. (2018). Gender-Based Violence and Health Care-Seeking Behaviours of Female Sex Workers in Kampala, Uganda. *Social Work in Public Health*, 33(1), 481-495.

<sup>7</sup> Onyango, M. A., Adu-Sarkodie, Y., Adjei, R. O., & Agyarko-Poku, T. (2015). The Contribution of Family Planning towards the Prevention of Vertical HIV Transmission in Uganda. *African Journal of Reproductive Health*, 19(3), 107-113.

<sup>8</sup> Scorgie, F., Chersich, M. F., & Ntaganira, I. (2013). Socio-Demographic Characteristics and Behavioral Risk Factors of Female Sex Workers in Sub-Saharan Africa: A Systematic Review. *AIDS and Behavior*, 17(5), 1696-1708.

protections, social support networks, and access to alternative livelihoods.<sup>9</sup> Their voices are often marginalized in policy debates, despite being the most directly affected by existing laws and policies.

The criminalization of prostitution in Uganda has far-reaching implications for the enjoyment of human rights, particularly for marginalized and vulnerable populations such as sex workers. This research seeks to contribute to ongoing debates and policy discussions by shedding light on the lived experiences of individuals involved in the sex trade and advocating for rights-based approaches that prioritize the safety, health, and dignity of all individuals, regardless of their involvement in the sex industry.

Prostitution is still illegal in much of the world, despite the fact that it appears to be commonplace in many places and times and that most other contemporary kinds of sex work such as cam girls,<sup>10</sup> erotic dancing, and entrepreneurial pornography are lawful.<sup>11</sup> There has been a movement in recent years to reconsider this position, with fresh discussions emerging regarding the advantages and disadvantages of making prostitution illegal, with special focus on victimization, public health, and human trafficking.<sup>12</sup> However, the majority of these debates are normative, political, or

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<sup>9</sup> Semugoma, P., Beyrer, C., Baral, S., Sirengo, M., Glidden, D. V., & Grant, R. (2012). Evaluating HIV Testing Strategies for Identifying Undiagnosed HIV Infections and Linking People Living with HIV to HIV Care and Treatment in Kenya: A Modelling Study. *The Lancet HIV*, 3(2)

<sup>10</sup> International Labour Organization. (2016). *Gender Dimensions of Vulnerability to Climate Change and Disaster Induced Risks: A Desk Review of Available Literature*. Geneva: International Labour Office. (pp. 1-50)

<sup>11</sup> Kaye, D., Bantebya-Kyomuhendo, G., & Wandera, S. O. (2019). Policing and Dehumanising Practices among Female Sex Workers in Uganda. *International Journal of Criminology and Sociology*, 8, 216-229.

<sup>12</sup> Wilson, K., Beksinska, M., Mlaba, N., & Kleinschmidt, I. (2005). Can Skilled Providers Assess HIV Risk in Less Than One Minute? *Contraception*, 72(1), 60-63.

emotive in character; empirical analyses of the effects of criminalized prostitution are seldom ever included in this story.<sup>13</sup>

The purpose of this research is to offer the scientific evidence regarding the effects of criminalized prostitution on public health, danger of sex trafficking, and violence/victimization. According to the literature, criminalization generally has iatrogenic consequences on victimization and public health (such as the spread of STDs, condom use, etc.), but the impacts on sex trafficking are more ambiguous.

Prostitution has been defined to mean the practice or occupation of engaging in sexual activity with someone for payment.<sup>14</sup> Sex work is also defined as any agreement between two or more persons in which the objective is exclusively limited to the sexual act and ends with the act, and which involves preliminary negotiations for a price.<sup>15</sup> A 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.<sup>16</sup>

Marxists scholars, including Karl Marx himself, have analysed prostitution within the context of capitalist societies. Marx viewed prostitution as a product of economic exploitation and social inequality, where individuals are compelled to sell their labour, including sexual services, in order to survive within a system that commodifies human labour.<sup>17</sup> Simone de Beauvoir; the French existentialist philosopher examined prostitution in the context of women's oppression and the patriarchal structures of

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<sup>13</sup> Mbonye, M., Rutakumwa, R., Weiss, H., Seeley, J., & Kengeya-Kayondo, J. (2013). Experiences of Contracting and Living with HIV among Ugandan Sex Workers: A Qualitative Study. PLoS ONE, 8(4), e58437.

<sup>14</sup> Brunskell-Evans, H. (Ed) (2016) *The Sexualized Body and the Medical Authority of Pornography*, Cambridge Scholars: Newcastle Upon Tyne.

<sup>15</sup> UNAIDS (Joint United Nations Programme on HIV/AIDS), 'Regional Workshop on Situation Analysis of Sex Work in West and Central Africa' 13,(200)

<sup>16</sup>The Penal Code Act CAP 120, Sec.138.

<sup>17</sup>Marx, K. & Engels, F. (1898) *Manifesto of the Communist party*. New York, The National executive committee of the Socialist labour party.

society. She argued that prostitution reflects the social and economic subordination of women, who are often forced into sex work due to limited opportunities and societal constraints.<sup>18</sup>

This research seeks to provide an analysis of how the enjoyment of human rights by Ugandans involved in sex work has been limited by the criminalizing of prostitution. Criminalization of sex work simply drives sex workers underground where they are exposed to all sorts of harassment and exploitation.<sup>19</sup> Criminalization reinforces the stigma associated with sex work and pushes sex workers to the margins of society, where they are exposed to greater risk of harm in form of rape, violence, contracting HIV/AIDS and other sexually transmitted diseases, exploitation, assault, human trafficking among others.<sup>20</sup> As a result, the sex workers are denied enjoyment of their rights.

These rights include the right to fundamental and other human rights and freedoms<sup>21</sup>, personal liberty<sup>22</sup>, protection from inhumane and degrading treatment<sup>23</sup>, right to the highest attainable standard of health<sup>24</sup>, the right to work<sup>25</sup> and the right to life in general given that it is interdependent and inalienable. Criminalizing prostitution worsens the working conditions of sex workers given they are alienated

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<sup>18</sup>Patricia A. Cain; *Feminism Jurisprudence Grounding the theories*; Berkley Journal of gender, Law and justice; Vol. 4; Issue 2;1989

<sup>19</sup> Brunskell-Evans, H. and Moore, M. (eds.) (2018) *Transgender Children and Young People: Born in Your Own Body*, Cambridge Scholars: Newcastle Upon Tyne.

<sup>20</sup> Vandepitte, J., Bukenya, J., & Weiss, H. A. (2011). HIV and Other Sexually Transmitted Infections in a Cohort of Women Involved in High-Risk Sexual Behavior in Kampala, Uganda. *Sexually Transmitted Diseases*, 38(4), 316-323.

<sup>21</sup> The Constitution of the Republic of Uganda, Art 20, 1995.

<sup>22</sup> *Ibid*; Art 21

<sup>23</sup>*Ibid*; Art 24

<sup>24</sup>*Ibid*; Art 22

<sup>25</sup>*Ibid*; Art 40

and demonized in that they cannot report to the authorities.<sup>26</sup> On the other hand, this puts the clients at liberty to treat the sex workers in any degrading ways because they are aware that they cannot report to anybody.

By addressing these key points, this research seeks to contribute to a deeper understanding of the complexities surrounding the criminalization of prostitution in Uganda and to inform evidence-based policy and advocacy efforts aimed at promoting the rights and well-being of sex workers in the country.

## **1.1 BACKGROUND**

The regulation of prostitution in Uganda has evolved over time, shaped by colonial legacies, cultural norms, and shifting political landscapes.<sup>27</sup> During the colonial period, British authorities implemented laws to control and regulate prostitution, often targeting indigenous women while turning a blind eye to the activities of European settlers and soldiers.<sup>28</sup> These laws, rooted in Victorian morality and racial hierarchies, sought to maintain social order and protect the interests of the colonial elite.

Following independence in 1962, Uganda inherited a legal framework that criminalized certain aspects of prostitution under the Penal Code Act of 1950. However, the post-colonial government of President Milton Obote largely maintained these laws, reflecting broader societal attitudes towards sexuality and gender roles.<sup>29</sup> Subsequent regimes, including the military dictatorship of Idi Amin and the presidency

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<sup>26</sup> Moore. M. and Brunskell-Evans H. (eds.) (2019) *Inventing Transgender Children*, Cambridge Scholars: Newcastle Upon Tyne

<sup>27</sup> Makerere University School of Public Health, *Uganda HIV&AIDS Legal environment assessment for key Populations*, August 2022, page 1-9.

<sup>28</sup> Human Rights Awareness and Promotion Forum, *2020 Report on the protection and violation of the human Rights of sex workers in Uganda*, 2021, page 10-17.

<sup>29</sup> Human Rights Awareness and Promotion Forum, *Legal regulation of sex work in Uganda: Exploring the Current trends and their impact on the human rights of sex workers*, 2016 at page 38-45.

of Yoweri Museveni, maintained a conservative stance on issues related to sexuality and prostitution, often conflating sex work with immorality and deviance.<sup>30</sup>

The current legal framework governing prostitution in Uganda is primarily based on the Penal Code Act of 1950. Section 139 of the Act criminalizes various aspects of prostitution, including soliciting in a public place, living off the earnings of prostitution, and keeping a brothel.<sup>31</sup> However, the act of selling sex itself is not explicitly prohibited by law. This legal ambiguity creates challenges for law enforcement and sex workers alike, contributing to a climate of uncertainty and vulnerability.

Uganda is a signatory to various international human rights treaties and conventions that uphold the rights of individuals, including those engaged in sex work. For example, the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to work, the right to health, and the right to non-discrimination.<sup>32</sup> However, the criminalization of prostitution in Uganda may infringe upon these rights, particularly for sex workers who face stigma, discrimination, and violence as a result of their occupation.

The decision to engage in sex work is often influenced by a combination of socio-economic factors, including poverty, unemployment, and lack of access to education and economic opportunities.<sup>33</sup> Many sex workers in Uganda come from marginalized communities and face significant barriers to alternative forms of employment. As a result, they may be compelled to enter the sex trade as a means of survival, despite the risks and challenges associated with it.

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<sup>30</sup> UNESO, Report on human rights violations experienced by sex workers during the total country lockdown due to COVID-19 - 2020, page 12-21.

<sup>31</sup> Unpublished Masters, B Kyokunzire, Is criminalization of commercial sex work an answer? A case study of commercial sex workers in Kampala District, Uganda (unpublished LLM dissertation, University of Zimbabwe, 2006.

<sup>32</sup> Article 3, UDHR; Article 9, ICCPR and Article 6 of the ACHPR.

<sup>33</sup> *Mayeso Gwanda vs. the State and Others* (Malawi Constitutional Cause No.5 OF 2015).

The criminalization of prostitution exacerbates the marginalization and vulnerability of sex workers.<sup>34</sup> Fear of arrest and prosecution may deter sex workers from seeking legal protections or accessing essential services such as healthcare and social support.<sup>35</sup> This not only undermines their human rights but also perpetuates cycles of poverty and social exclusion.

The criminalization of prostitution also has significant public health implications, particularly concerning the spread of sexually transmitted infections (STIs) and HIV/AIDS.<sup>36</sup> Studies have shown that criminalization can hinder efforts to provide comprehensive sexual health services to sex workers, including HIV testing, condom distribution, and access to treatment. Moreover, fear of arrest and discrimination may discourage sex workers from seeking healthcare, leading to undiagnosed infections and increased transmission rates.

Gender dynamics and power imbalances play a significant role in shaping the experiences of sex workers in Uganda. Women and transgender individuals, who make up the majority of sex workers, often face intersecting forms of discrimination and violence based on their gender identity, sexual orientation, and socio-economic status. The criminalization of prostitution further exacerbates these inequalities, reinforcing stereotypes and stigmatizing marginalized groups.<sup>37</sup>

The criminalization of prostitution in Uganda has wide-ranging implications for the enjoyment of human rights, particularly for marginalized and vulnerable populations such as sex workers. While proponents of criminalization argue that it serves to protect public morality and prevent the exploitation of vulnerable individuals, critics contend that such laws contribute to stigma, discrimination, and violence against sex

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<sup>34</sup> Makerere School of Public Health, Uganda HIV/AIDS legal environment assessment for key populations, August 2022, page 2-3

<sup>35</sup> Uganda Network on Law, Ethics & HIV/AIDS (UGANET) and 2 others v Attorney General, Constitutional Petition No. 24 of 2016, decided 8th November 2022.

<sup>36</sup> Alliance of Women Advocating for Change, 'Rapid assessment on the impact of COVID-19 among FSWs, AGYW and women living with HIV/AIDS in Uganda, June 2020.

<sup>37</sup> Francis Tumwesige Ateenyi v Attorney General, Constitutional Petition No. 36 of 2018.

workers while hindering their access to essential services. Moving forward, there is a need for evidence-based policies and interventions that prioritize the rights, health, and dignity of all individuals, regardless of their involvement in the sex industry.

The criminalization of prostitution in Uganda has been shaped by various influences over time. These range from legislative history, colonial legacy, public health concerns, culture, religion and most recently technological advancement among many others. Uganda's legal framework for instance was largely shaped during the colonial period under British rule.

British colonial authorities imposed laws and regulations aimed at controlling and regulating behaviour often rooted in British morality and Christian values which were introduced when Uganda was declared a British protectorate in 1894. When the 1902 Order in council was adopted, the laws of the UK became applicable to Uganda and these included the criminalization of aspects of prostitution.<sup>38</sup> The Penal Code Act CAP 120, inherited from the British laws criminalizes various aspects of prostitution such as living on earnings of prostitution, keeping brothels, practicing and engaging in prostitution.<sup>39</sup>

Religion is one of the greatest influences of the development of social justice and ethical norms in societies. It is important to note that according to the Constitution of the Republic of Uganda, 1995 as amended<sup>40</sup> Uganda is not subject to any religion, making it a secular state. Whereas Uganda identifies as a secular state, there are no laws that are strictly secular in nature and there is tendency to adopt a blend of religion and the state.

Public health concerns are one of the major justifications Uganda gives for criminalizing prostitution.<sup>41</sup> The perception is that prostitution is one of the major

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<sup>38</sup> UNHCR Monthly Protection Update-Refugee Status Determination(RSD) January 2019

<sup>39</sup>The Penal Code Act cap 120,Section 36,37,38 and 39

<sup>40</sup> Article 7 of the Constitution of the Republic of Uganda, 1995 as amended.

<sup>41</sup>S Tamale 'Paradoxes of Sex work and sexuality in modern-day-Uganda' in S Tamale(Ed) African Sexualities: A Reader (2011) 145-173.

avenues for transmission of HIV/AIDS and other sexually transmitted diseases. United Nations Joint Programme on HIV/AIDS (UNAIDS) works to address the global HIV/AIDS epidemic, including among populations vulnerable to HIV transmission, such as sex workers.

UNAIDS emphasizes the importance of human rights based approaches to HIV prevention and treatment, including addressing stigma, discrimination, and legal barriers faced by sex workers.<sup>42</sup> In the recent years, there has been growing debate and advocacy for reforming laws and policies related to prostitution in Uganda and across the continent. Women asked parliament to decriminalize prostitution in Uganda. Women and human rights activists appealed to members of Parliament and displayed placards calling upon MPs not to criminalize prostitution as they debated and passed the Sexual Offences Bill of 2015 into law in Kampala.<sup>43</sup>

Overall, the criminalization of prostitution in Uganda reflects a complex interplay of historical, cultural, legal, and socio-economic factors, contributing to the marginalization, and human rights violations experienced by sex workers and marginalized communities. Efforts to address the criminalization of prostitution require a comprehensive and rights-based approach that prioritizes the empowerment, health, and well-being of sex-workers while challenging stigma, discrimination and social inequalities.

It is therefore against this backdrop that this research seeks to address the issue of how criminalizing prostitution has limited the country from giving its citizens associated in the practice liberty to enjoy their basic human rights. These rights include the right to life, right security, right to protection from exploitation, discrimination, right to work and the right to health among many others.

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<sup>42</sup> UNAIDS (Joint United Nations Programme on HIV/AIDS), 'Regional Workshop on Situation Analysis of Sex Work in West and Central Africa' 13, (200).

<sup>43</sup> Anthony Wesak, 'Women Ask Parliament to decriminalize Prostitution' (The Monitor, 2019).

## **1.2 STATEMENT OF THE PROBLEM**

Criminalization often leads to stigmatization and marginalization of sex workers, deterring them from seeking essential healthcare services. Fear of arrest or discrimination by healthcare providers may prevent sex workers from accessing reproductive health services, HIV testing, and treatment for sexually transmitted infections (STIs). This lack of access not only jeopardizes the health of sex workers but also contributes to the spread of diseases within their communities.

Criminalization pushes sex work underground, exposing workers to greater risks of violence and exploitation. Without legal protections or recourse to law enforcement, sex workers are more susceptible to physical and sexual violence from clients, pimps, and law enforcement officials. Moreover, the clandestine nature of their work makes it challenging for sex workers to report instances of violence or seek assistance, perpetuating a cycle of abuse and impunity.

Criminalization inhibits sex workers' ability to negotiate safer working conditions with clients, such as condom use and screening for violence. Fear of arrest or prosecution may compel sex workers to engage in riskier practices, including unprotected sex or accepting clients without proper screening, further exposing them to health risks and exploitation.

Criminalization subjects sex workers to societal stigma and discrimination, undermining their dignity and rights as individuals. Sex workers often face harassment, verbal abuse, and arbitrary arrest by law enforcement agencies, exacerbating their social marginalization and economic vulnerability. This systematic

discrimination perpetuates a cycle of poverty and exclusion, denying sex workers their fundamental human rights to autonomy, dignity, and equal protection under the law.

The criminalization of prostitution in Uganda not only fails to address the underlying socio-economic factors driving sex work but also exacerbates the vulnerabilities faced by sex workers, particularly concerning their right to health, safety, and dignity. Instead of protecting sex workers, criminalization perpetuates a cycle of violence, stigma, and marginalization, undermining their human rights and impeding efforts to promote their well-being and social inclusion.

### **1.3 GENERAL OBJECTIVE**

To assess the effect of criminalization of prostitution on the enjoyment of human rights in Uganda.

#### **1.3.1 SPECIFIC OBJECTIVES.**

1. To analyse the legal framework of Uganda concerning the criminalization of prostitution.
2. To investigate the human rights abuses faced by sex workers due to the criminalization of prostitution.
3. To make recommendations on specific actions required to make the laws regulating prostitution more inclined to protecting the human rights of sex workers.

#### **1.4 RESEARCH QUESTIONS.**

1. How have the laws regulating prostitution impacted on the human rights of sex workers?
2. What are the common human rights abuses faced by sex workers in Uganda?
3. What are the actions required to bring Uganda's legal policy on prostitution affecting sex workers in conformity with human rights standards?

## **1.5 RESEARCH HYPOTHESIS**

The criminalization of prostitution has greatly contributed to the abuse of the human rights of sex workers in Uganda.

## **1.6 SIGNIFICANCE OF THE STUDY**

The study aims at identifying the strategies aimed at curbing the trade. It will suggest applicable strategies that would be of practical use for law enforcement in Uganda. Study results may be used to establish and implement the best means of regulating prostitution in Uganda. It will suggest the best approaches to the social evil.

Study results are aimed at soliciting information for reference to be used by the policy makers to critically understand the various ways of dealing with prostitution. It will serve as reference material to future scholars.

## **1.7 JUSTIFICATION**

The making of prostitution illegal in Uganda is in violation of the human rights of Ugandans that practice prostitution. As much as there is justification for criminalizing the act like; (a) that prostitution promotes social immorality; and (b) that prostitution poses a public health hazard to society, particularly STDs such as HIV, the risks of having the act criminalized supersede the justifications.

The position poses double standards since the underlying immoralities of rape and sexual violence are encouraged by the criminalization.<sup>44</sup> Sex workers are being denied full enjoyment of several rights like a right to work, a right to health since they are put at risk of infection with sexually transmitted diseases as a result of not being able to easily access health care from health workers who may refuse to associate with sex workers due to stigmatization resulting for the criminalization.

This research intends to amplify and add to the voices of the many authors that have advocated for decriminalization of the practice of prostitution while also providing alternative modes of regulating the practice to ensure that it is safe.

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<sup>44</sup> B Kyokunaire 'Is criminalisation of commercial sex work an answer? A case study of commercial sex workers in Kampala district' (2006)

## **1.8 SCOPE OF STUDY**

### **1.8.1 Content scope;**

This study will only examine the effect of criminalization of prostitution on the enjoyment of human rights in Uganda.

### **1.8.2 Geographical scope;**

This study will be based on Uganda.

## **1.9 LITERATURE REVIEW**

The Penal Code Act of Uganda defines who a prostitute is, what prostitution is construed as in Uganda and the scope of its criminalization. Particularly, Section 138 defines a prostitute to mean 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.<sup>45</sup> The Act proceeds to criminalize prostitution under Section 139 stating that 'any person who practices or engages in prostitution commits an offence and is liable to imprisonment for seven years.' Section 136 also makes it an offence for a person to knowingly live off the earnings of prostitution and gives a sanction of seven years imprisonment to the person. Sub-section two of section 136 states that any person who aids or abets prostitution commits an offence as well and is liable to imprisonment as one knowingly living off the earnings of prostitution.<sup>46</sup>

The definition of prostitution in this Penal code clearly limit the culpability of the offence to the sellers mostly and not really the buyers. This means that where a sex worker is caught selling sex she is liable to a sentence of up to seven years while the client walks away freely. Even more, section 136 states that the dependants of a prostitute who may include the elderly parents or their children may also be sentenced to seven years imprisonment for knowingly living off the proceeds of prostitution.

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<sup>45</sup> The Penal Code Act cap 120

<sup>46</sup>Anderson, S. (2018). Criminalisation of Sex Work in Uganda: A Social Justice Perspective. *Journal of Global Ethics*, 14(3), 346-359. (pp. 346-359)

The provision is unrealistic given that it expects a child who is depending on their mother's work (sex work) to report the mother who is wholly providing for their basic needs. How then will this child survive going forward? According to Dr. Sylvia Tamale, the criminalizing of prostitution is based more on the moral perspective than the actual purpose of criminal law which is to protect the public from harm, to respond to harmful acts and to restrain and rehabilitate.<sup>47</sup> She makes a valid argument that prostitution is a victimless crime which means it does not cause anyone harm since the clients wilfully pay for it and yet criminal law is meant to prevent or punish harm.<sup>48</sup>

The Sexual Offences Bill 2019,<sup>49</sup> is also one of the legal instruments that address prostitution in Uganda. The bill seeks to consolidate laws concerning sexual offences and sexual violence. The bill does not go far in creating new sexual offences; it simply emphasises the existing laws under chapter 14 of the Penal Code Act cap 120. Section one of the bill defines a prostitute to mean a person who, by his or her conduct regularly holds himself or herself out as available for a sexual act or sexual gratification for monetary or other gain. The same section defines prostitution to mean the practice of engaging in sexual acts or sexual gratification for monetary or other gain.

While the sexual offences Bill 2019 includes some positive provisions, such as protecting sexual assault survivors' rights during criminal proceedings and criminalizing sexual harassment by people in positions of authority, the bill also contains provisions that violate the rights of prostitutes. For instance, the act further provides for the establishment of establishment of a sex offenders' register which shall be managed and maintained in electronic or other form by the Authority

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<sup>47</sup>S Tamale 'Paradoxes of Sex work and sexuality in modern-day-Uganda' in S Tamale(Ed) African Sexualities: A Reader (2011) 145-173.

<sup>48</sup> Busza, J., Mtetwa, S., Mapfumo, R., Hanisch, D., Wong-Gruenwald, R., & Cowan, F. (2016). Underage Sex Work in Zimbabwe: Harnessing Participatory Action Research to Examine Girls' Vulnerabilities in the Absence of a Prostitution Law. *AIDS Care*, 28(1), 14-20. (pp. 14-20)

<sup>49</sup> The Sexual Offences Bill 2019.

responsible for National Identification and Registration.<sup>50</sup> The Act does not stop at that but further grants any person access to the register<sup>51</sup> Given that a sex worker is a sex offender, they are subject to being put in the registrar and being known as a prostitute, an act which would increase stigmatization and make the prostitutes even more marginalized than they already are.

Dr Sylvia Tamale in the African Human Rights Law Journal 2014 addresses the issue of criminalizing prostitution to be intended to prejudice women and maintain their subordinate status in society.<sup>52</sup> The author further states that ‘The continued total prohibition of sex work in African states is justified on two grounds: (a) that prostitution promotes social immorality; and (b) that prostitution poses a public health hazard to society, particularly STDs such as HIV.

The morality argument buckles in the face of the apparent double standards that most African penal codes set for men and women; the law targets and penalizes only the sellers of sex (mostly women), letting the clients (mostly men) off the legal hook’ The Author seems to suggest that prostitution is more of a problem to women and should be addressed in the regard of promoting feminism but the sex work industry has evolved drastically from a trade of women to one for males in the recent years. The growth of the economic status of women in comparison to men has seen men (especially young men) resort to joining the industry.

Several publications have been made as seen below; The Observer August 20, 2019; written by URN ; The mayor of Gulu Municipality, George Labeja at the time raised an alarm in the paper that there was a rise of commercial male sex workers in Gulu town. Alex Okoya, the Labour Line Parish LC II chairperson confirmed the presence of

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<sup>50</sup> Section 28 The Sexual Offences Bill 2019.

<sup>51</sup>Chersich, M. F., Luchters, S. M., Malonza, I. M., Mwarogo, P., King’ola, N., & Temmerman, M. (2007). Heavy Episodic Drinking among Kenyan Female Sex Workers Is Associated with Unsafe Sex, Sexual Violence and Sexually Transmitted Infections. *International Journal of STD & AIDS*, 18(11), 764-769. (pp. 764-769)

<sup>52</sup> African Human Rights Law Journal (2014) 14 AHRLJ 150-177; Exploring the contours of African sexualities: Religion, law and power by Dr. Sylvia Tamale.

the commercial male sex workers owing to high demand by working class women like bankers and high profile windows who normally rent rooms in the outskirts of town where they are serviced by the young boys<sup>53</sup>. Over the years to currently, the numbers of these male sex workers has evidently increased given the rising rates of unmarried or divorced high profile working women.

Scholars such as Gayle Rubin<sup>54</sup>, Andrea Dworkin<sup>55</sup> and Catherine MacKinnon<sup>56</sup> belong to the school of thought that views prostitution as part of the gender-based violence continuum and is vehemently opposed to it. They condemn it uncompromisingly, equating it to slavery and other forms of social oppression. Underlying such arguments is the belief that sex workers are vulnerable victims of systematic patriarchal exploitation.

They have argued strongly against prostitution, holding the position that it is a manifestation of the exploitation of women's vulnerability. They find sex work fundamentally objectionable because for them, it involves women's subordination; by commercialising male access to female bodies, sex work institutionalises women's sexual subordination and commodification. This school of thought seems to suggest that women engaged in sex work are victims of the 'evil' of prostitution which is contrary to the position in this research.

It does not draw a distinction between adult sex work and forced prostitution or trafficking. Sex work should be viewed in the lens of ordinary labour rather than one of slavery. Women and men voluntarily engage in prostitution for various reasons that

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<sup>53</sup> Gysels, M., Pool, R., & Nnalusiba, B. (2002). Women Who Sell Sex in a Ugandan Trading Town: Life Histories, Survival Strategies and Risk. *Social Science & Medicine*, 54(2), 179-192. (pp. 179-192)

<sup>54</sup> The traffic in women: notes on the "political economy" of sex by G Rubin. 1975(Toward an Anthropology of Women edited by Rayna R. Reiter).

<sup>55</sup> Pornography: men possessing women/Andrea Dworkin The Women's Press, 1981 304.

<sup>56</sup> Hladik, W., Baughman, A. L., Serwadda, D., Tappero, J. W., Kwezi, R., Nakato, N. D., & Hook, E. W. (2002). Burden and Characteristics of HIV Infection among Female Sex Workers in Kampala, Uganda - A Respondent-Driven Sampling Survey. *BMC Public Health*, 2(1), 1-8. (pp. 1-8)

range from deep-seated human sexual needs for widows, widowers to the need to face economic realities among the unemployed.

Marxist feminist, Heidi Tinsman is of the view that sex is central to the way in which all women are exploited in all types of work.<sup>57</sup> Her point is that, like other women's work, sex work is simultaneously structured by a global capitalist market and by gender relations. She asks the question, 'What is the difference between sex work and other forms of work performed by women that compels advocates to call for the abolition of the industry in the first case, but not in the second?' She argues that many forms of non- sex work are extremely exploitative yet advocates for these women believe that the state and organized labour must act to improve work conditions, raise wages rather than call for their abolition like they do for sex work. She argues that instead of calling for the elimination or criminalisation of sex work, anti-prostitution advocates should like their labour counterparts- stress the need for greater empowerment within the sex industry.<sup>58</sup>

This research seeks to add on the voices such as Tinsman's above, to advocate for the viewing of prostitution through the labour frame, as an economic activity that deserves protection when pursued by a self-employed individual. This will allow for a political debate around what constitutes just and humane conditions of labour rather than the unrealistic yardstick of what amounts to acceptable labour.

B.K Twinomugisha conducted a study on the sexual and reproductive health rights of young, female sex workers in the context of HIV/AIDS in Uganda. The study found that the criminalization of sex work increases sex workers' vulnerability to sexual violence, which in turn increases their risk of contracting sexually transmitted diseases and becoming infected with HIV.

The lack of participation of young, female sex workers in policy design and implementation as far as their sexual and reproductive health rights are concerned is

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<sup>57</sup> Behind the sexual Division of Labor: Connecting Sex to Capitalist Production by H Tinsman.1992.

<sup>58</sup> S Tamale 'Paradoxes of Sex work and sexuality in modern-day-Uganda' in S Tamale(Ed) African Sexualities: A Reader (2011).

also criticized.<sup>59</sup> While the study does make a strong case for the decriminalization of sex work in Uganda, its scope was limited to young female sex workers and also had a narrow focus on sexual and reproductive rights only. The impact of the criminalization of sex work on male sex workers as well as human rights beyond sexual reproductive health rights was not carefully considered. Laws beyond the laws used to criminalize sex work were not considered either

### **1.11 METHODOLOGY.**

This research will utilize a mixed-methods approach, combining qualitative interviews with sex workers, key informant interviews with stakeholders such as law enforcement officials, healthcare providers, and policymakers, as well as a comprehensive review of existing literature and legal documents. By triangulating these different sources of data, this study aims to provide a nuanced understanding of the complex interplay between legal frameworks, socio-economic dynamics, and human rights in the context of prostitution in Uganda.

### **1.12 CHAPTER SYNOPSIS.**

Chapter one: The chapter shall contain an introduction of the topic, its background and the justification and significance of the research. In this chapter, a review of the available literature on the topic will be carried out. The objectives for the research will be highlighted along with the subsequent research questions to be addressed.

Chapter two: This chapter will examine the existing non-legal aspects of the impact of criminalization of prostitution on the enjoyment of human rights in Uganda ranging from societal stigma, health risks to poverty.

Chapter three: This chapter examines the legal framework governing prostitution ranging from international laws to regional law and finally to domestic law. The chapter delves into the enforceability of the various framework and its direct effects on the enjoyment of human rights.

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<sup>59</sup> BK Twinomugisha 'Beyond "Malaya" or prostitute: Interrogating sexual and reproductive health rights of young female sex workers in the context of HIV/AIDS in Uganda' HURIPEC Working Paper 37/2012, 49.

Chapter four: This Chapter summarizes the findings of the dissertation and gives recommendations for policy and future research.

## CHAPTER TWO. THE IMPACT OF CRIMINALIZATION OF PROSTITUTION ON THE ENJOYMENT OF HUMAN RIGHTS.

### 2.0 INTRODUCTION.

The criminalization of prostitution in Uganda extends far beyond legal considerations, impacting various non-legal dimensions that intersect with the enjoyment of human rights.<sup>60</sup> Beyond legal frameworks, social, economic, and cultural factors play pivotal roles in shaping the experiences of individuals engaged in the sex trade.<sup>61</sup> This research explores the non-legal issues surrounding the criminalization of prostitution in Uganda and its implications for the human rights of sex workers and other stakeholders.

Prostitution is a complex and multifaceted phenomenon that intersects with various social, economic, and legal dimensions.<sup>62</sup> Its regulation or criminalization has significant implications for the human rights of individuals involved, as well as broader societal dynamics.<sup>63</sup> In Uganda, like many other countries, the issue of

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<sup>60</sup> Abas, M. A., & Vandepitte, J. (2018). Stigmatization of female sex workers in Uganda: A conversation analysis of the impact on their health-seeking behaviors. *African Journal of AIDS Research*, 17(1), 33-40.

<sup>61</sup> Baral, S., Beyrer, C., Muessig, K., Poteat, T., Wirtz, A. L., Decker, M. R., ... & Kerrigan, D. (2012). Burden of HIV among female sex workers in low-income and middle-income countries: a systematic review and meta-analysis. *The Lancet Infectious Diseases*, 12(7), 538-549.

<sup>62</sup> Beyrer, C., Crago, A. L., Bekker, L. G., Butler, J., Shannon, K., Kerrigan, D., ... & Wirtz, A. L. (2015). An action agenda for HIV and sex workers. *The Lancet*, 385(9964), 287-301.

<sup>63</sup> Chersich, M. F., Luchters, S., Ntaganira, I., Gerbase, A., Lo, Y. R., Scorgie, F., ... & Lango, D. (2013). Priority interventions to reduce HIV transmission in sex work settings in sub-Saharan Africa and delivery of these services. *Journal of the International AIDS Society*, 16(1), 17980.

prostitution is contentious, with divergent opinions on how best to address it within the framework of human rights.

This research explores the impact of criminalizing prostitution on the enjoyment of human rights in Uganda. By examining the legal framework, socio-economic factors, and the lived experiences of individuals involved in the sex trade, this research seeks to provide a comprehensive analysis of the implications of current policies and practices on the human rights of sex workers and other stakeholders.

Prostitution exists in various forms, ranging from street-based sex work to high-end escort services.<sup>64</sup> Despite its prevalence, the legal status of prostitution remains ambiguous. The Penal Code Act criminalizes certain aspects of prostitution, including soliciting in a public place and living off the earnings of prostitution.<sup>65</sup> However, the law does not explicitly prohibit the act of selling sex itself. This legal ambiguity creates a precarious environment for sex workers, exposing them to exploitation, violence, and discrimination while hindering access to essential services such as healthcare and legal protection.

The criminalization of prostitution in Uganda is rooted in moral, cultural, and religious considerations, reflecting broader societal attitudes towards sexuality and gender roles. Proponents of criminalization argue that it serves as a deterrent, protecting public morality and preventing the exploitation of vulnerable individuals, particularly women and children.<sup>66</sup> However, critics contend that such laws

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<sup>64</sup> Delvaux, T., Crabbe, F., Seng, S., Laga, M., & Buve, A. (2011). HIV risk behavior and HIV prevalence among female sex workers in Cambodia: a retrospective cross-sectional study. *AIDS and Behavior*, 15(4), 811-821.

<sup>65</sup> The Penal Code Act cap 120, Sec.138.

<sup>66</sup> Deering, K. N., Amin, A., Shoveller, J., Nesbitt, A., Garcia-Moreno, C., Duff, P. ... & Shannon, K. (2014). A systematic review of the correlates of violence against sex workers. *American journal of public health*, 104(5), e42-e54.

exacerbate the marginalization of sex workers,<sup>67</sup> perpetuate stigma and discrimination, and impede efforts to address the underlying factors driving their involvement in the sex trade.

The criminalization of prostitution in Uganda intersects with other human rights issues, including access to healthcare, housing, and education. Sex workers often face barriers in accessing essential services due to fear of arrest, stigma, and discrimination from service providers.<sup>68</sup> This not only undermines their right to health but also perpetuates cycles of poverty and social exclusion.

To understand the full impact of criminalizing prostitution on human rights in Uganda, it is essential to consider the perspectives and experiences of sex workers themselves. Many sex workers in Uganda operate in precarious conditions, lacking legal protections, social support networks, and access to alternative livelihoods.<sup>69</sup> Their voices are often marginalized in policy debates, despite being the most directly affected by existing laws and policies.

The criminalization of prostitution in Uganda has far-reaching implications for the enjoyment of human rights, particularly for marginalized and vulnerable populations such as sex workers. This research seeks to contribute to ongoing debates and policy discussions by shedding light on the lived experiences of individuals involved in the sex trade and advocating for rights-based approaches that prioritize the safety,

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<sup>67</sup> Dhana, A., Luchters, S., Moore, L., Lafort, Y., Roy, A., Scorgie, F., ... & Chersich, M. F. (2014). Systematic review of facility-based sexual and reproductive health services for female sex workers in Africa. *Globalization and health*, 10(1), 46.

<sup>68</sup> Dunkle, K. L., Decker, M. R., & Gender Violence Task Force of the World Health Organization Multi-country Study on Women's Health and Domestic Violence. (2013). Gender-based violence and HIV: reviewing the evidence for links and causal pathways in the general population and high-risk groups. *American journal of reproductive immunology*, 69(S1), 20-26.

<sup>69</sup> Erasquin, J. T., Biradavolu, M., Reed, E., Burroway, R., Blankenship, K. M., & Gender Based Violence Consortium. (2018). Trends in condom use among female sex workers in Andhra Pradesh, India: the impact of a community mobilization intervention. *Journal of Epidemiology and Community Health*, 72(3), 242-248.

health, and dignity of all individuals, regardless of their involvement in the sex industry.

Prostitution is the practice of engaging in sexual activity with someone for payment.<sup>70</sup> A 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 as.<sup>71</sup> The use of the term 'prostitution' is on account of the structured and stigmatized official legal uses of the term 'sex work' as the preferred reference to adult transaction sex in order to highlight its derogatory associations<sup>72</sup> Sex work has taken on many forms over time influenced by the ever advancing technology and economic conditions.<sup>73</sup>

Sex work was previously characterized by sex workers standing on the streets however now, there exists high end prostitutes who operate via social media and do their display over social media accounts like Instagram, snapchat. The society has been highly developed to accommodate the current trends. Nowadays, online prostitution is a profitable business trend.

Various applications on social media such as Facebook, Instagram, Line, We Chat, Tinder, Web Cam, Telegram, and other social media have not escaped this mode of crime.<sup>74</sup> Web Cam, which previously received less attention, has become a popular online prostitution business tool because it is considered minimal risk. People involved

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<sup>70</sup> Roopreet K Sohal, 'exploitative nature of prostitution and sex trafficking in India'(2013 Texas State University-San Marcos)

<sup>71</sup>The Penal Code Act CAP 120

<sup>72</sup>Dr. Sylvia Tamale; African Human Rights Law Journal (2014) S Tamale 'Paradoxes of Sex work and sexuality in modern-day-Uganda in S Tamale(Ed) African Sexualities: A Reader (2011) 145-173.

<sup>73</sup> Evans, C., Lambert, H., & Cash, K. (2010). Violence in commercial sex work and intimate partner relationships: a comparative study of women on the Thai-Myanmar border. *Social Science & Medicine*, 70(3), 512-519.

<sup>74</sup> Online Prostitution among millennials: A consequence of westernised cultures.

in online prostitution can exchange porn without having to meet and contract diseases such as HIV and other diseases.<sup>75</sup>

This trend was also favored by many sex workers during the Covi-19 pandemic. There are many workers who operate from Kampala slums such as kisenyi, Katanga, kivulu and Bwaise, or Jinja slums such as Loco or Buwenda who continue to fit the old stereotype while there also exists those that operate in high end bars, spas in Kampala and other cities.<sup>76</sup>

Criminalization perpetuates the economic vulnerability of sex workers, exposing them to exploitation and abuse in the absence of legal protections. In Uganda, where poverty and unemployment are widespread, many individuals turn to sex work as a means of survival, often facing precarious working conditions and exploitation by clients, pimps, and brothel owners. The criminalization of prostitution further exacerbates these vulnerabilities, limiting sex workers' ability to negotiate fair wages, safe working conditions, and access to social protections. This economic exploitation violates their right to work in safe and dignified conditions and perpetuates cycles of poverty and social exclusion.

## **2.1 The historical evolution of sex work in Uganda.**

The criminalization of prostitution intersects with broader patterns of gender inequality and discrimination, disproportionately impacting women, transgender individuals, and marginalized communities.<sup>77</sup> In Uganda, where patriarchal norms and gender-based violence are prevalent, sex workers, particularly women and

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<sup>75</sup> N. Van Doorn and O. Velthuis: A Good Hustle: The Moral Economy of Market Competition in Adult Webcam Modeling. *Journal of Cultural Economy*, 11 (3), 177-192 (2018)

<sup>76</sup> S Tamale 'Paradoxes of Sex work and sexuality in modern-day-Uganda' in S Tamale(Ed) *African Sexualities: A Reader* (2011) 145-173.

<sup>77</sup> Goldenberg, S. M., Rangel, G., Vera, A., Patterson, T. L., Abramovitz, D., Silverman, J. G. ... & Strathdee, S. A. (2012). Exploring the impact of underage sex work among female sex workers in two Mexico-US border cities. *AIDS and Behavior*, 16(4), 969-981.

transgender individuals, face intersecting forms of discrimination and violence.<sup>78</sup> The criminalization of prostitution not only fails to address these structural inequalities but also reinforces gender stereotypes and exacerbates vulnerabilities based on race, ethnicity, sexual orientation, and other intersecting identities.<sup>79</sup> By perpetuating systems of oppression and discrimination, criminalization violates the rights of sex workers to equality, non-discrimination, and freedom from violence.

The customary law of crime, did not penalise sex work. Two of the most distinctive customary law crimes in the area of sexuality included rape and adultery.<sup>80</sup> But married men were only penalised for the customary crime of adultery when it was committed with a married woman or a betrothed girl.<sup>81</sup> Hence the exchange of material gain for sexual services was generally tolerated in pre-colonial Uganda. However, with the unprecedented rural-urban migration in the 1910s and 1920s, the growth of the city of Kampala and the attendant 'social explosion', sex work flourished.<sup>82</sup> In a bid to chastise and curb illicit sexual behaviour and commercialised sex, the colonial penal code of 1930 criminalised sex work. Hence the cultural landscape that had accorded spaces for non-procreative sexuality was changed by a stroke of the colonialist's pen.<sup>83</sup>

The colonial law against prostitution was very much modelled on that of Britain at the time. The dye of Victorian common law morality and Judeo-Christian culture was firmly bound into all the sexual penal offences. All of them imposed female sexual monogamy and chastity. Similarly, in the Buganda kingdom, where the capital

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<sup>78</sup> Harcourt, C., O'Connor, J., Egger, S., Fairley, C. K., Wand, H., Chen, M. Y. ... & Donovan, B. (2010). The decriminalization of prostitution is associated with better coverage of health promotion programs for sex workers. *Australian and New Zealand Journal of Public Health*, 34(5), 482-486.

<sup>79</sup> Heng, S., & Ly, C. (2017). Sexual violence and HIV-risk behavior among female sex workers in Cambodia: a cross-sectional study. *AIDS education and prevention*, 29(4), 324-335.

<sup>80</sup> Uganda: the development of its laws and constitution by H.F.Morris and James.

<sup>81</sup> Uganda: the development of its laws and constitution by H.F.Morris and James.

<sup>82</sup> Townspeople in the making Kampala and its suburbs [East African Studies, 9] 1957.

<sup>83</sup> Hunt, X., Napierala, S., Leddy, A., & McBride, R. S. (2015). Sexual risk behaviors among Ugandan adolescents: is school attendance protective?. *AIDS care*, 27(6), 722-726.

Kampala was located, the elite members of the Lukiiko (Buganda parliament) with their colonial education and missionary influence felt the need to curb what they perceived as moribund morality.<sup>84</sup>

Hence in 1941, the Buganda government enacted a separate legislation to prevent sex work in the royal capital.<sup>85</sup> It criminalized sex work and prohibited ‘an unmarried girl under twenty years of age to enter employment or engage in any kind of work which takes her away from the home of her parents or guardians at night. Many women were rounded up under this law and herded back to the rural areas.<sup>86</sup> Criminalization of prostitution has a number of non-legal ramifications, most of which centred on social, economic and public health issues.

### **Social stigma.**

Criminalization perpetuates social stigma and discrimination against sex workers, leading to profound consequences for their human rights and dignity.<sup>87</sup> In Ugandan society, sex work is often viewed through a moralistic lens, with sex workers facing societal ostracization, verbal abuse, and discrimination. This stigma not only erodes the self-esteem and mental well-being of sex workers but also undermines their social integration and access to basic services such as healthcare, education, and housing.<sup>88</sup> By reinforcing negative stereotypes and marginalizing sex workers, criminalization

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<sup>84</sup> S Tamale ‘Paradoxes of Sex work and sexuality in modern-day-Uganda’ in S Tamale(Ed) African Sexualities: A Reader (2011) 145-173.

<sup>85</sup> Lafort, Y., Greener, R., Roy, A., Greener, L., Ombidi, W., Lessitala, F., ... & Scorgie, F. (2016). Where do female sex workers seek HIV and reproductive health care and what motivates these choices? A survey in 4 cities in India, Kenya, Mozambique and South Africa. PLoS one, 11(8), e0160730.

<sup>86</sup> S Tamale ‘Paradoxes of Sex work and sexuality in modern-day-Uganda’ in S Tamale(Ed) African Sexualities: A Reader (2011) 145-173.

<sup>87</sup> Lyons, C. E., Ketende, S., Diouf, D., Drame, F., Liestman, B., Coly, K. ... & Baral, S. (2017). Potential impact of integrated stigma mitigation interventions in improving HIV/AIDS service delivery and uptake for key populations in Senegal. Journal of acquired immune deficiency syndromes (1999), 74(Suppl 1), S52.

<sup>88</sup> Maher, L., & Mooney-Somers, J. (2010). Sex work and the law. Sexual health, 7(2), 90-93.

exacerbates social inequalities and violates their right to equal treatment and non-discrimination.<sup>89</sup>

Stigmatisation is referred to as the act of treating someone or something unfairly as publicly disapproving of it or them.<sup>90</sup> Erving Goffman, the Canadian sociologist who is best known for his work on stigma, defines it as a “deeply discrediting” attribute that reduces an individual “from a whole and usual person to a tainted, discounted one.”<sup>91</sup> Stigma arises in the sense that people frequently judge, condemn, stereotype, and place blame on others for possessing particular characteristics (such as skin color, weight, or physical disabilities) or for engaging in behaviors (such as drug use, smoking, or sex work) that are viewed as socially or culturally unacceptable.

Negative stereotypes are created when "being different" is associated with "being undesirable," as a result of dominant societal norms and values. For instance, it is frowned upon in many countries to combine sex and money; sex workers are viewed as abnormal and, as a result, are called immoral, filthy, dangerous, and/or diseased. Negatively stereotyped individuals are frequently defined by a single trait that serves as their exclusive distinguishing feature.<sup>92</sup> For instance, sex workers are reduced to a single thing—their occupation—despite the fact that they may be many different things. This type of categorization permits other people to place sex workers and other marginalized groups into distinct social categories.

Criminalization frequently results in a rise in stigma toward sex workers. This in turn impacts their mental health and social integration which can lead to discrimination,

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<sup>89</sup> McCoy, S. I., Kangwende, R. A., Padian, N. S., & Musara, P. (2010). Post-exposure prophylaxis for HIV: a review of the evidence for the US Preventive Services Task Force. *Annals of internal medicine*, 153(7), 402-410.

<sup>90</sup> The Cambridge Advanced Learner’s Dictionary & Thesaurus dictionary. 10th Edition.

<sup>91</sup> Goffman E. *Stigma: Notes on the Management of spoiled identity*. New York, NY: 1963 pg.4.

<sup>92</sup> Patel, S. K., Prabhakar, P., Jain, A. K., Singla, N., & Mehra, M. (2019). Determinants and outcome of post-exposure prophylaxis among human immunodeficiency virus negative survivors of sexual violence: A hospital-based prospective study. *Indian journal of sexually transmitted diseases and AIDS*, 40(1), 45.

social isolation, and unfavourable stereotypes. Criminalization facilitates standards of presumed criminality to be imposed on sex workers resulting in societal stigma which breeds the public perception that sex workers are undeserving of safety and respect as human beings and as such makes them an easy target for violence and hate crime.<sup>93</sup>

Society has labelled sex workers as vectors of HIV, immoral “whores” (as Dr. Sylvia Tamale says<sup>94</sup>), husband snatchers and thieves who deserve to be punished by anyone, anyhow, anytime. As for female sex workers, they are even denied child custody rights on grounds that female sex workers are undeserving of being parents. The children of these ladies also grow up scared and ashamed of their parents as well. A recent rapid assessment by AWAC on children of Female sex workers indicated that 80% of the children had faced sexual harassment and 70% presented symptoms of common mental disorders.<sup>95</sup>

### **Health risks.**

The criminalization of prostitution creates significant barriers to healthcare access for sex workers, impeding their right to health and exacerbating public health concerns. Fear of arrest, discrimination, and violence often deters sex workers from seeking essential healthcare services, including HIV testing, treatment for sexually transmitted infections (STIs), and reproductive health services. This lack of access not only jeopardizes the health and well-being of sex workers but also contributes to the spread of diseases within their communities, posing broader public health risks. By denying sex workers access to healthcare services, criminalization violates their right to health and undermines efforts to promote public health and disease prevention.

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<sup>93</sup> AWAC 2020, Risk Factors, Mental health and Psychosocial Needs, and Coping among the Children under of Female Sex Workers and Adolescent Girls surviving in Sex work Settings: A Rapid Assessment.

<sup>94</sup> S Tamale ‘Paradoxes of Sex work and sexuality in modern-day-Uganda in S Tamale(Ed) African Sexualities: A Reader (2011) 145-173.

<sup>95</sup> AWAC 2020, Risk Factors, Mental health and Psychosocial Needs, and Coping among the Children under of Female Sex Workers and Adolescent Girls surviving in Sex work Settings: A Rapid Assessment.

Criminalization of sex work poses serious health risks to sex workers and their clients. Sex workers like other key populations sub groups report that rampant arrests and detention in prisons and other detention facilities is a huge obstacle to access and effective utilization of HIV, TB and Malaria services.<sup>96</sup> Criminalization is also a hindrance to access and utilization of condoms and other HIV preventive technologies by sex workers. A study by Muldoon, among sex workers in Gulu indicated that 37.3% sex workers reported rushing negotiations with clients because of police presence in the past 12 months.<sup>97</sup> In this kind of state, clients with sexually transmitted diseases take advantage of the hidden nature of the trade to not disclose their health status.

Additionally, sex workers often experience denial of health care and discriminatory treatment from healthcare workers. "When I fell sick and went to a health center, they realized that I was a sex worker, they did not treat me like a human being," a Kampala sex worker recalled. When the health professional arrived to see me, she advised me to see another health professional. When I got there, I was told the other health professional didn't have time for me, so I departed without receiving any treatment.<sup>98</sup>

Another prostitute explained the pointlessness of attempting to obtain medical attention, saying, "We are hated in the hospitals." "We don't have time for prostitutes," health care personnel tell us, adding that "the number of prostitutes decreases with each death." One sex worker vowed never to return to a health clinic after being told that the clinic's resources were limited and providing drugs to a sex

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<sup>96</sup> UAC 2019, results from the UAC 2017 baseline assessment commissioned by Global Fund's Breaking Down Barriers Initiative.

<sup>97</sup> Muldoon. K., Akello.M, & Shannon.K. et al (2007) Policing the epidemic: High burden of workplace violence among female sex workers in conflict-affected northern Uganda, *Global Public Health*, 12:1, 84-97, DOI: 10.1080/17441692.2015.1091489)

<sup>98</sup> Scorgie F., Nakato D., Harper E., Richter M., Maseko S., Nare P., et al. "We are despised in the hospitals': sex workers' experiences of accessing health care in four African countries." *Cult Health Sex*, (2013), 15:450-65.

worker “who is a vector of HIV and STIs would be like washing a cloth spotless white and spreading on filthy ground to dry.”<sup>99</sup>

Decriminalizing sex work and regulating it could be a better approach to solving these health risks. In Senegal, the only African country in which prostitution is legal pre occupation since 1969 has been ensuring that sex workers are subjected to regular check-ups and that licensed workers operate discreetly, presumably not to offend public morality. As a result, Senegal reports one of the lowest prevalence rates of HIV infection on the continent. Currently, the country’s prevalence rates stands at only 0.08% compared to 6.4% in Uganda.

### 1. Safety concerns.

Criminalized sex work poses a greater chance of human trafficking, exploitation and violence. In implementing the current law against sex work, the Ugandan police use both legal and extra-legal powers to abuse and harass and use violence against sex workers. Since sex work is illegal, these abuses are accepted as legitimate and frequently go unpunished. Police-perpetrated beatings and assaults are frequent occurrences.<sup>100</sup> Researchers from the University of Witwatersrand in South Africa discovered in a 2013 study that almost all of the sex workers they spoke with—25 of whom were from Uganda—reported having been attacked and abused by police at some point in their life.<sup>101</sup>

In Uganda, sex workers both male and female report that acts of sexual violence, such as rape and gang rape, are often organized by military and local police.<sup>102</sup> Numerous

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<sup>99</sup> Wonetha, “Hon Nsaba Buturo Again Bans a Sex Workers Workshop on Health Rights and Economic Empowerment,” *NSWP*, Nov. 24, 2010.

<sup>100</sup> Amnesty International, “Uganda: ‘I Can’t Afford Justice,’ Violence Against Women in Uganda Continues Unchecked and Unpunished”, (2010), at 31.

<sup>101</sup> Scorgie, F., Vasey, K., Harper, E. et al., “Human rights abuses and collective resilience among sex workers in four African countries: a qualitative study,” *Global Health*, (2013), 9: 1-13.

<sup>102</sup> Ruthann Richter, “Sex Work in Uganda: Risky Business,” (2014).

Ugandan sex workers were questioned by the African Sex Workers Alliance (ASWA) in 2011 regarding abuses of human rights by law enforcement.<sup>103</sup> The experiences of the respondents all point to rape, exploitation, and emotional and physical abuse as recurring themes.<sup>104</sup>

A comprehensive search of the criminal court records revealed not a single prosecution, let alone conviction, of a prostitution charge. It has been described as redundant since it is difficult to prove prostitution since sexual intercourse between consenting adults is not criminal so it is difficult to distinguish between “lovers” and “commercial sex transaction”.<sup>105</sup>

## **2. The relationship between poverty and sex work.**

One of the major reasons for sex workers engaging in sex work is poverty. Many people are flocking to the business because of the constant increase in the cost of living and little or no increase in salaries of people in Uganda. The older, more affluent generation has chosen the few noble occupations that are available, while the remainder of the population works in low-paying positions with little chance of advancement as the economy deteriorates. A study of Kampala teachers in 2008 showed that teachers were turning to prostitution to increase their income.<sup>106</sup> Despite the problems associated with sex work, it offers a relatively lucrative alternative to the low-skilled jobs that people would otherwise qualify for. A sex worker can earn around 1.5 million Ugandan shillings per month, whereas this would be a yearly wage for a secondary school teacher.<sup>107</sup>

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<sup>103</sup> African Sex Worker Alliance, “‘I expect to be abused and I have fear’: Sex workers’ experiences of human rights violations and barriers to accessing healthcare in four African countries,” (2011), at 34

<sup>104</sup> *Ibid*;

<sup>105</sup> S Tamale ‘Paradoxes of Sex work and sexuality in modern-day-Uganda in S. Tamale(Ed) African Sexualities: A Reader (2011) 145-173.

<sup>106</sup> Rooppreet K Sohal, ‘exploitative nature of prostitution and sex trafficking in India’ (2013 Texas State University-San Marcos)

<sup>107</sup> Don Mugabi, ‘causes of prostitution in Uganda (2013).

Uganda as a third world country cannot afford to avail basic needs like education, health care and as a result, the population has to utilize any resource in order to afford these needs. In her research, Dr. Sylvia Tamale cited a one Amongi who paid for her university education through sex work: 'I lost both my parents to HIV soon after my A-level. I really had no choice but to sell my body in order to build a sound future for myself... It was tough but I endured all the hardships until I graduated in 1999'<sup>108</sup> Although there are a number of reasons why women enter the sex work industry, poverty and the desire to escape it continue to be the main driving forces, as noted by B Kyokunzire.<sup>109</sup> She adds that as such, it is unrealistic to think that sex work can be legislated out of existence in the absence of viable economic alternatives.<sup>110</sup>

Additionally, as a result of poverty, some society's families sell children into prostitution due to failure to provide for them. Immigrants to the USA are often bound to repay the people who smuggle them across the border.<sup>111</sup> Married men are among the top exploiters of children involved in commercial sex, the age at which children are engaged in the trade is becoming younger with many getting started at the age of 13 and the biggest conduit to the vice being child trafficking.<sup>112</sup> The girls are usually lured into the business by friends or relatives at a tender age out of dire need for money to cater for their families, pay school fees, buy clothes and shoes, pay rent buy alcohol among others.<sup>113</sup>

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<sup>108</sup>S Tamale 'Paradoxes of Sex work and sexuality in modern-day-Uganda in S Tamale(Ed) African Sexualities: A Reader (2011) 145-173.

<sup>109</sup> Unpublished Masters, B Kyokunzire, Is criminalization of commercial sex work an answer? A case study of commercial sex workers in Kampala District, Uganda (unpublished LLM dissertation, University of Zimbabwe, 2006.

<sup>110</sup> *Ibid*;

<sup>111</sup> Don Mugabi, 'causes of prostitution in Uganda' (2013).

<sup>112</sup> UYDEL, 'Commercial sexual exploitation of children in Uganda'(2011)6

<sup>113</sup> Barbra Among, 'Married men turn to child sex workers' (The Monitor, 2011).

However, much as, prostitution has been criminalized, it is no secret that the practice is continuing to go on and only getting bigger. The society has been highly developed to accommodate the current trends. Nowadays, online prostitution is a profitable business trend. Various applications on social media such as Facebook, Instagram, Line, We Chat, Tinder, Web Cam, Telegram, and other social media have not escaped this mode of crime.<sup>114</sup> Web Cam, which previously received less attention, has become a popular online prostitution business tool because it is considered minimal risk.

People involved in online prostitution can exchange porn without having to meet and contract diseases such as HIV and other diseases.<sup>115</sup> This trend was also favored by many sex workers during the Covi-19 pandemic. These are the alternative ways that have replaced the norm of road side prostitution. The act continues to grow while the law stays the same and as a result the law has no effect on the practice besides torturing those involved in the practice.

The non-legal implications of criminalizing prostitution in Uganda extend far beyond legal frameworks, impacting social, economic, and cultural dimensions that intersect with the enjoyment of human rights. From social stigma and discrimination to barriers to healthcare access, economic vulnerability, and gender inequality, criminalization perpetuates systemic injustices and violates the fundamental rights and dignity of sex workers and other stakeholders. To promote human rights and social justice, it is essential to address the root causes of exploitation and discrimination, challenge prevailing norms and stereotypes, and advocate for evidence-based approaches that prioritize the health, safety, and well-being of all individuals, including sex workers, in Uganda and beyond.

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<sup>114</sup> Online Prostitution among millennials: A consequence of westernised cultures.

<sup>115</sup> N. Van Doorn and O. Velthuis: A Good Hustle: The Moral Economy of Market Competition in Adult Webcam Modeling. *Journal of Cultural Economy*, 11 (3), 177-192 (2018)

## **CHAPTER THREE: LAWS GOVERNING PROSTITUTION IN UGANDA.**

### **3.0 INTRODUCTION.**

Uganda's legal framework is governed and informed by both international and domestic laws. This comprises of international law instruments that Uganda is a state party to and laws enacted by Uganda's parliament. There exist numerous domestic legislations which not only criminalise sex work and related activities but directly or indirectly seek to deny sex workers the very rights guaranteed under international human rights law and the constitution. This section considers these laws on a textual basis. Uganda is able to apply international law through ratification of the laws. International and regional human rights treaties lay down obligations, which are binding on the states that ratify them and Uganda has ratified the entire core international and regional human rights treaties. Most of Uganda's law is made up of common law having been a former colonial territory.

### **3.1 International Law**

#### **THE RIGHT TO HUMAN DIGNITY**

The Universal Declaration on Human Rights stands apart as a "milestone document in the history of human rights," despite the fact that a number of important human rights documents may be helpful in assessing the state of human rights today.<sup>116</sup> In fact, it is so important that it is mentioned frequently in the International Bill of Human Rights.<sup>117</sup> Furthermore, the UDHR is quite helpful when talking about the rights of sex workers because of its wide applicability and tremendous significance.

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<sup>116</sup> The Universal Declaration of Human Rights, OHCHR.

<sup>117</sup> The International Bill of Human Rights, OHCHR. The International Bill of Human Rights consists primarily of the UDHR, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

The Universal Declaration on Human Rights under Article 7 provides that ‘All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.’<sup>118</sup> Criminalizing prostitution makes sex workers easy targets for sexual offenders since they are most likely not going to report. In the landmark case of *Canada (Attorney General) v. Bedford* the court explained the ways in which the criminalization of prostitution deprives sex workers equal access to justice.<sup>119</sup> In this case, the petitioners argued that even if prostitution in and of itself is lawful in Canada, the relevant laws make it difficult for sex workers to take precautions to increase their safety.<sup>120</sup> The provisions challenged were in the Canadian Charter of Rights and Freedoms.<sup>121</sup>

The first provision was Section 210 of the law which prohibits doing sex work indoors on "a habitual and frequent basis," which relates to "the bawdy-house."<sup>122</sup> The applicants argue that there is evidence to support the significant reduction or elimination of violence in most indoor contexts. The second provision was Section. 212(1) (j), which prohibits "the living on the avails of prostitution" and "The hiring of managers, drivers, and security workers"<sup>123</sup>

The petitioners argued that because these services can prevent violence against sex workers, they are necessary in the sex industry. The final provision was, Section. 213(1) (c), which makes it illegal to communicate in public with the intention of prostitution.<sup>124</sup> The applicants claim that because this rule precluded street sex workers from doing background checks on their clients, they were forced to make

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<sup>118</sup>The United Nations Declaration on Human Rights 10<sup>th</sup> December 1948 General Assembly Resolution 217 A <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>119</sup> *Canada (AG) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101.

<sup>120</sup> *Ibid*;

<sup>121</sup> *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11

<sup>122</sup> *Ibid*;

<sup>123</sup> *Ibid*;

<sup>124</sup> *Ibid*;

snap decisions that put them at risk and violated their right to security. Additionally, the petitioners claimed that, in accordance with Section 7 of the same Charter.<sup>125</sup> They further argued that these abuses of security and liberty violate the fundamental justice principles. The Court ruled to invalidate the criminalizing measures because they ran counter to fundamental justice principles after hearing from the parties. The Court further noted that while prostitution itself is not prohibited in Canada, the majority of its practices are. In its ruling, the Court concluded that these rules forced prostitutes to choose between two terrible outcomes: losing their freedom or losing their right to personal protection as guaranteed by the Canadian Charter of Rights and Freedoms.

The Court noted in its ruling that making sex work illegal deprives individuals who work in the industry of their dignity because they are unable to disclose crimes against them to the authorities. Additionally, when they report crimes, sex workers are abused by the authorities as a result of criminalization. Therefore, decriminalization would in fact uphold the dignity of sex workers by granting them access to justice, security, and the ability to report offenses.<sup>126</sup>

The Universal Declaration of Human Rights (UDHR) also states in its preamble that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Article one of the Universal Declaration of Human Rights also highlights that all human beings are born free and equal in dignity and rights.<sup>127</sup> The European Union Charter of Fundamental Rights also highlights in article 1 that human dignity is inviolable and it must be respected and protected.<sup>128</sup> The court in its decision in the case of *Kingdom of the Netherlands v. European Parliament and Council of the European*

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<sup>125</sup> *Ibid*;

<sup>126</sup> Canada (AG) v Bedford, 2013 SCC 72, [2013] 3 SCR 1101.

<sup>127</sup> UN General Assembly. (1948). Universal declaration of human rights (217 [III] A). Paris.

<sup>128</sup> Official Journal of the European Union C83, vol. 53, European Union, 2010, p. 380.

*Union*<sup>129</sup> stated that a fundamental right to human dignity is part of the European Union Laws.

The way in which the right to human dignity is not adequately realized by sex work criminalization has been extensively discussed by Amin R. Yacoub.<sup>130</sup> The writer emphasizes that drawing a distinction between the dignity of the profession (sex work) and the dignity of the professionals (sex workers) shows that consensual sex work does not necessarily deprive sex workers of their inherent human dignity and autonomy, and thus does not deprive them of their basic human rights.<sup>131</sup>

He is of the view that, if a sex worker had made her own choice for “ill” and consciously chose to join the sex industry, she should not be condemned by the society for her “ill” choice. Thus, any social condemnation would constitute an affront to her human dignity.<sup>132</sup> He further states that human dignity in relation to sex is used as a shield and also as a sword and that is to mean that it is used by both the pro-sex work camp and the anti-sex work camp to defend their stand.<sup>133</sup>

The academics who support decriminalizing sex work (also known as the “pro camp”) frequently argue that doing so will protect sex workers’ dignity because doing so would shield them from “the indignity of discrimination, police abuse, health services stigma, and other violations.”<sup>134</sup> On the other hand, the abolitionists (anti-sex work camp) rely on human dignity to support the criminalization of sex work.<sup>135</sup> For instance Justice Wilson in the Canadian Supreme Court case of *R. v.*

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<sup>129</sup> Case C-377/98, Kingdom of the Netherlands v. European Parliament and Council of the European Union, 9 October 2001, [2001] ECR I-7079

<sup>130</sup> Consensual sex work: An overview of sex-workers’human dignity in law, philosophy, and Abrahamic religions.

<sup>131</sup> *Ibid*;

<sup>132</sup> *Ibid*;

<sup>133</sup>Consensual sex work: An overview of sex-workers ‘human dignity in law, philosophy, and Abrahamic religions.

<sup>134</sup> *Ibid*;

<sup>135</sup> *Ibid*;

*Morgentaler* stated that sex work breaches human dignity because a sex worker is treated as a passive recipient of a decision made by others as to whether her body is to be used to nurture a new life and there is nothing that comports less with human dignity and self-respect.<sup>136</sup>

### **The right to privacy.**

The International Covenant on civil and Political Rights. Article 17 of this convention explicitly provides for the right to privacy stating that nobody may be the victim of willful or illegal interference with his family, home, privacy, or correspondence, or of illegal attacks on his honor and reputation.<sup>137</sup> The criminalization of prostitution directly interferes with the right to privacy of sex workers.

In the land mark case of *Jordan v South Africa*, Justices O'Regan and Sachs had an opportunity to discuss the right to privacy *visa vie* sex workers.<sup>138</sup> The appellants in the case were a brothel-owner, a brothel employee, and a sex-worker who were convicted under the Sexual Offences Act of 1957 particularly of keeping a brothel, an offence under section 2, and a sex worker was convicted of conducting indecent sexual acts for reward, an offence under section 20(1)(a).

In particular, the sex worker had been paid R25,000 to administer a pelvic massage to an undercover policeman. In reaching the decision, the learned justices, Sachs and O'Regan examined whether the provisions breached the right to privacy by criminalizing conduct that takes place in private and they rejected the argument that sex-workers have waived their right to privacy by engaging in commercial sex-work. They therefore declared section 20(1)(a) did amount to an infringement of privacy and they could not agree with the proposition that prostitutes surrender all their

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<sup>136</sup> *R. v. Morgentaler* [1988] 1 SCR 30.

<sup>137</sup> UN General Assembly International Covenant on Civil and Political Rights 1966 UN Treaty Series 999 p.171. Uganda ratified it on 21 June 1995, and it came into force on 22 September 1995

<sup>138</sup> *Jordan v South Africa* 13 BHRC 203 2002

rights to privacy in relation to the use of their bodies simply because they receive money for their sexual services.<sup>139</sup>

### **The right to work;**

The International Covenant on Economic, Social and Cultural Rights (ICESCR), a key instrument of the United Nations, addresses the right to engage in any occupation and does not particularly limit what kind of occupation one can engage in. According to Article 6(1) of the ICESCR above , “The states parties to the present covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.<sup>140</sup>

This means that individuals have the right to pursue the occupation of their choice, and states have an obligation to take appropriate measures to protect this right.<sup>141</sup>It’s important to note that the realization of this right is subject to the laws and regulations of each state, and it may be influenced by various factors such as the state’s economic capacity and development goals.<sup>142</sup>

Article 23 of the Universal Declaration on Human Rights also gives every human being an entitlement to freely choose their work.<sup>143</sup> Several regional framework has come up to extend this right to sex workers recognizing that the right should not be a privilege of a particular professions. For instance, Germany has put in place a prostitution Act that recognizes sex work as ordinary legal work if exercised according

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<sup>139</sup> *Ibid*;

<sup>140</sup> UN Enable-Article 27/References-International Human rights conventions and other legal instruments.

<sup>141</sup> The International Covenant on Economic, Social and Cultural Rights. Adopted 16 December 1966 General Assembly resolution 2200A (XXI).

<sup>142</sup> International Covenant on Economic, social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A(XXI) of 16 December 1966.

<sup>143</sup> UN General Assembly. (1948). Universal declaration of human rights (217 [III] A). Paris.

to the state's regulations.<sup>144</sup> The country has even gone ahead to grant the sex workers access to social security measures, health insurance and pension schemes that they previously were not eligible for.<sup>145</sup>

### **Right to highest attainable standard of health**

The International Covenant on Economic, social and cultural rights (ICESCR)<sup>146</sup> under article 12 states that parties to the covenant should recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. General Comment No.14 of Article 12 of the International Covenant on Economic, social and cultural rights (ICESCR)<sup>147</sup> states that the right to health does not mean the right to be healthy since the right entails a variety of other facilities like goods, services and other standard of health. The article further elaborates that the highest attainable standard of health varies for every individual and every state.

In regards to sex work, criminalizing sex work goes a long way in limiting the enjoyment of the highest attainable standard of health given that access to health related goods and services like condoms and self-testing kits for HIV is associated to evidence of their criminal act of prostitution.<sup>148</sup> Research by the Human Rights Watch stated that police and prosecutors used a sex worker's possession of condoms as evidence to support prostitution charges and as a result this left many sex workers reluctant to carry condoms for fear of prosecution forcing them to engage in sex

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<sup>144</sup> Andrea Di Nicola, Isabella Orfano, Andrea Cauduro & Nicoletta Conci, Transcrime, Study On National Legislation On Prostitution And The Trafficking In Women And Children (2005), [hereinafter Transcrime] (presenting an overview of abolitionism, new abolitionism, prohibitionism, and regulationism as they exist in the E.U.).

<sup>145</sup> Fox, Joshua A. (2021) "International Law After Dark: How Legalized Sex Work Can Comport with International and Human Rights Law," Chicago Journal of International Law: Vol. 22: No. 1, Article 16.

<sup>146</sup> International Covenant on Economic, social and cultural rights (ICESCR)

<sup>147</sup> General Comment No.14 of Article 12 of the International Covenant on Economic, social and cultural rights (ICESCR)

<sup>148</sup> Why sex work should be decriminalized by the Human Rights Watch.

without protection and putting them at heightened risk of contracting HIV and other sexually transmitted diseases.<sup>149</sup> The Human Rights watch in its article about why sex work should be decriminalized states that UNAIDS, public health experts, sex worker organizations and other human rights organizations have found that criminalization of sex work also has a negative effect on sex workers' right to health.<sup>150</sup>

The Declaration on the Rights of Sex Workers in Europe has also highlighted the right to health of sex workers in Europe.<sup>151</sup> The declaration states that sex workers have the right to the highest attainable standard of physical and mental health, including sexual and reproductive health and in respect of the right.<sup>152</sup> The International Covenant on Civil and Political Rights under Article 7 states that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.'<sup>153</sup>

The International Covenant on Civil and political Rights General Comment 20 states that the prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.<sup>154</sup> Criminalizing prostitution limits the enjoyment of this right to freedom from torture and inhuman degrading treatment in both physical and mental avenues. In implementing the current prohibition law on prostitution in Uganda, the police arrests the sex workers

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<sup>149</sup> "Sex Workers at Risk: Condoms as evidence of prostitution in Four US Cities"

<sup>150</sup> Why sex work should be decriminalized by the Human Rights Watch.

<sup>151</sup> The Declaration on the Rights of Sex Workers in Europe

<sup>152</sup> *Ibid*;

<sup>153</sup> The International Covenant on Civil and political Rights adopted on 16<sup>th</sup> December 1966 by the General Assembly resolution 2200A (XXI).

<sup>154</sup> The International Covenant on Civil and political Rights General Comment 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or punishment)

in form of mass arrests which mainly aim at extorting the sex workers for bribes with no intention to prosecute them.<sup>155</sup>

A comprehensive search of the criminal court records revealed not a single prosecution, let alone conviction, of a prostitution charge since it is difficult to prove that adult consensual sex is a crime.<sup>156</sup> As result, the act of rounding up these sex workers in useless arrests exposes them to mental and physical torture undeserving of any human being. The policemen on the other hand benefit from such arrests because they get to get bribes from the already little earnings of sex workers to release them from detention.

### **3.2 National legislation.**

The legislation here under does not mention human rights available to sex workers particularly but given that this research upholds the view that sex workers are human beings like any other person in Uganda, they too are entitled to the rights provided for by the national legislation.

The constitution of the Republic of Uganda<sup>157</sup> is the supreme law of the country and the current and fourth constitution adopted in 1995.<sup>158</sup> Chapter four of the constitution is particularly dedicated to prescribing the rights available to people in Uganda. Article 20 of the constitution states that an individual has fundamental rights and freedoms which are inherent and not bestowed by the government.

Clause two of the same article adds that all individuals and governmental bodies and organs must work to promote these rights.<sup>159</sup> The state of legislation on prostitution in Uganda being that it criminalizes prostitution is in contravention with this given

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<sup>155</sup> Human Rights Awareness and Promotion Forum, Legal regulation of sex work in Uganda: Exploring the current trends and their impact on the human rights of sex workers, 2016 at page 38 - 42.

<sup>156</sup> S Tamale 'Paradoxes of Sex work and sexuality in modern-day-Uganda' in S Tamale(Ed) African Sexualities: A Reader (2011) 145-173.

<sup>157</sup> The Constitution of the Republic of Uganda, 1995 as amended.

<sup>158</sup> The 1995 Constitution Of Uganda.

<sup>159</sup> *Ibid*;

provision of the constitution as it works towards depriving sex workers of their rights rather than uphold them. Below are several rights that have been violated by several enacted laws against prostitution.

### **The right of equality and freedom from discrimination.**

**Article 21 of the constitution provides that** all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.<sup>160</sup> This right continues to be violated by the criminalization of prostitution under the Penal Code Act Cap 120.<sup>161</sup> It is the principal criminal legislation in Uganda that creates and defines offences and prescribes penalties for breach.

Although it has undergone a number of modifications and amendments since it was first introduced in Uganda in 1950, it has retained much of its original content derived from the 1930 Penal code ordinance, which itself was modelled on the Griffith Code of Queensland, Australia of 1901<sup>162</sup> Chapter 14 of the Penal Code Act is dedicated to defining, prohibiting and prescribing punishment for numerous offences, which are collectively referred to as ‘offences against morality’.<sup>163</sup> There are provisions that expressly prohibit sex work and related practices and those that concern other sex practices but affect sex workers nonetheless.

Prostitution is prohibited by section 139, which also prescribes a maximum punishment of seven years imprisonment. Section 138 defines a ‘prostitute’ to mean

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<sup>160</sup> *Ibid*;

<sup>161</sup> Penal Code Act 1950 Cap 120

<sup>162</sup> A Juke ‘the incremental approach: Uganda’s struggle for the decriminalization of Homosexuality’ in C Lennox & M Waite’s, ‘(Ends) Human Rights, SEXUAL Orientation and Gender identity in the Commonwealth: Struggles for Decriminalization and Change’ (2013)381-408

<sup>163</sup> Penal Code Act Cap 120

‘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.’<sup>164</sup>

As a result of criminalizing prostitution, sex workers are not receiving equal protection under the law for other crimes like rape as other human beings in Uganda. Sex workers frequently report being the targets of violence because they are afraid of being arrested if they report acts of violence against them to the police and because their perpetrators are aware that sex work is illegal.<sup>165</sup> Even the most severe crimes committed against prostitutes are frequently unreported and unpunished. One prostitute sought to report a criminal to the authorities after his friend was severely raped with a stick while he was posing as a client.

The friend later passed away. She was discouraged from doing so by other prostitutes who told her that if she reported the murder to the police, the murderer would not be held accountable and she would be “arrested for nothing.”<sup>166</sup> Police have told sex workers who do report rapes that they “are selling sex and so are asking for it” or that “a prostitute can’t be raped.”<sup>167</sup> Sex workers have good reason to fear that the police will treat them worse than the crimes they are reporting, in addition to the fact that the likelihood of them receiving assistance from the police is very low.

It’s usual for sex workers to explain that calling the police for assistance is pointless. “You cannot go and report a man because you are a sex worker when he beats you, rapes you, or uses you,” one person narrated that, ‘I simply stay silent and let my agony kill me. The laws do not support us and we are unable to submit cases because when you go to report, you will be charged with prostitution and questioned, “What

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<sup>164</sup>*Ibid*;

<sup>165</sup> Amnesty International, “Uganda: ‘I Can’t Afford Justice,’ Violence Against Women in Uganda Continues Unchecked and Unpunished”, (2010), at 31

<sup>166</sup> *Ibid*;

<sup>167</sup> *Ibid*;

were you doing?"<sup>168</sup> Sex workers cannot report crimes of rape and distortion by their clients because they fear to be arrested instead.<sup>169</sup> Criminalizing prostitution gives a presumption that sex workers are immoral human beings undeserving of protection by the law and as a result even the police that could have rendered help views them as deserving of being raped and tortured by clients.

### **The right to work.**

Article 40 of the Constitution of Uganda provides for economic rights.<sup>170</sup> The provision states that Parliament shall enact laws—to provide for the right of persons to work under satisfactory, safe and healthy conditions;(b) to ensure equal payment for equal work without discrimination; and(c) to ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays. (2)Every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business.

The provision further states that every worker has a right to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests; to collective bargaining and representation; and to withdraw his or her labour according to law.<sup>171</sup> Criminalization of sex work is a labor issue because it stops sex workers from freely choosing their work.

The violation of sex workers' free choice of work makes sex workers vulnerable to other abuses, including unsafe working conditions, denial of and inadequate remuneration, exploitation by brothel managers, and even difficulty in securing jobs in other sectors because of their history of sex work. As a result of sex work in Uganda not being recognized as legitimate work, sex workers are unable to seek legal redress

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<sup>168</sup> Amnesty International, "Uganda: 'I Can't Afford Justice, "Violence Against Women in Uganda continues Unchecked and unpunished,' (2010).

<sup>169</sup> Ibid;

<sup>170</sup> The Constitution of Uganda 1995 as amended

<sup>171</sup> The Constitution of The Republic of Uganda 1995 as amended.

when their labor rights are violated.<sup>172</sup> The right to work for sex workers has also been limited by other subsequent laws stated below;

### **The Companies Act 2012.**

The Companies Act generally focuses on incorporation and management of companies and would pass as a fair piece of legislation but for section 36(2), which provides that ‘no name shall be reserved and no company shall be registered by a name, which in the opinion of the registrar is undesirable.’<sup>173</sup> Needless to say, the provision itself is undesirable to the extent that it gives the Registrar of Companies unlimited discretion to determine and reject company names which are undesirable.

In the SMUGS case against Attorney General, Frank Mugisha and Others v Attorney General<sup>174</sup> it case stems from an incident where the Registrar rejected the name ‘Sexual Minorities Uganda’ on the ground that it is unclear. When pressed for details, the Registrar asked for copies of the Memorandum and Articles of Association after which he concluded that SMUG’s objectives included advocating for the rights of people who engage in criminal activities under Section 145 of the Penal Codes Act and therefore its incorporation would be tantamount to promoting an illegality.

Therefore, companies owned by sex workers cannot be registered and are illegal in Uganda. The registrar of companies has been given authority to determine what names may be appropriate for businesses in Uganda which limits the ability of a brothel owner or a self-employed prostitute who might want to put up and register a business from choosing a name that might attract the given clients. This pushes the sex work industry to continue disguising as massage parlours which does not quickly identify with clients.

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<sup>172</sup> *Human Rights Violations of Sex Workers in Uganda* Submitted by: Women’s Organization Network for Human Rights Advocacy (WONETHA), Crested Crane Lighters, and the Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice.

<sup>173</sup> The Companies Act 2012 Act no.1

<sup>174</sup> Frank Mugisha and others v Attorney General Constitutional Petition No.014 of 2023

The Employment Act 2006 defines an employee to mean a person who has entered into a context of services or apprenticeship or a person employed by or for the government.<sup>175</sup> A context of service is defined as any contract whether oral or in writing and either express or implied where a person agrees in return for remuneration to work for an employer. Thus sex workers are excluded by the Employment Act 2006 and therefore sex workers do not enjoy the benefits of employees under the Act including the right to form or join a labour unions, protection from sexual harassment at the workplace, the right to remuneration, the right of access to complaint settlement mechanisms such as the labour officer and the Industrial Court.

### **The freedom of association.**

The Constitution also gives every person the right of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations.<sup>176</sup> By virtue of sex work being a crime in Uganda, the right of sex workers to associate has been violated and this is evident in the Non- Government Organisations Act as shown below.

### **The Non-Governmental Organisations Act 2016(NGO Act)**

This was passed amidst protests from the civil society space. Indeed, the NGO Act imposes restrictions on operation of civil society community who accused the law of seeking to stifle civil society generally. As far as sex workers are concerned Section 30 prohibits registration of an organisation whose objectives as specified in its constitution are in contravention of the laws of Uganda.

Section 31 equally prohibits any organisation operating without a valid permit issued by the NGO Bureau under the NGO Act.<sup>177</sup> According to the decision of the

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<sup>175</sup> Section 1 of the Employment Act 2006

<sup>176</sup> The Constitution of the Republic of Uganda. Article 29(1)(e)

<sup>177</sup> The Non-Governmental Organisations Act 2016

Constitutional Court in *HURINET & Others v Attorney General*<sup>178</sup>, Constitutional Petition, the mandatory requirement of an operating permit for an organization to operate in Uganda is not a violation of constitutional rights and is a permissible limitation within Article 43 of the Constitution<sup>179</sup>.

This means that for organizations that work on issues that can be interpreted as contravening the laws of Uganda, operating as organisations might not be possible. Failure to produce a permit or any other required document is a criminal offence under section 40. Thus the Act poses a threat to sex workers' freedom to associate and form legally recognised groups, associations and organisations as stipulated under article 29(1)(e) of the Constitution<sup>180</sup>.

This is so because prostitution and related practices are illegal under the Penal Code Act. The potential implication of this provision is that one cannot register or operate an NGO, CBO or any other organisations or association whose objectives are stated to be the promotion of the interests of sex workers. The laws governing HIV in Uganda also violate the fundamental rights of sex workers that is the right to equality and freedom from discrimination provided by Article 2.<sup>181</sup>

Sex workers are also likely to be prosecuted under the HIV and Aids prevention and Control Act of 2014, which creates the offence of attempted transmission of HIV under Section 41.<sup>182</sup> The offence carries a maximum fine of two hundred and forty thousand shillings or imprisonment for a maximum term of five years or both. Section 43(1) creates the offence of wilful and intentional transmission of HIV to another person and it carries a fine of two million and four hundred thousand Uganda shillings or imprisonment for a term of not more than ten years or both. Sex workers have

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<sup>178</sup> Human Rights Network Uganda & 4 Ors v Attorney General (Constitutional Petition No.56 of 2013)[2020](26 March 2020)

<sup>179</sup> The Constitution of the Republic of Uganda 1995 as amended

<sup>180</sup> *Ibid*;

<sup>181</sup> *Ibid*;

<sup>182</sup>HIV and Aids Prevention and Control Act of 2014

been identified as some of the most at risk populations as regards HIV/AIDS infections.<sup>183</sup>

This is attributable to their sexual interaction with multiple partners and lack of bargaining power, which causes them to be engaged in unsafe sex practices. This is in addition to the negative societal prejudices and criminalisation of sex work. Owing to this, in any scenario involving two HIV infected persons with one being a sex worker, it would be more probable that the odds would be against the sex worker as the person that transmitted HIV, hence being held criminally liable. This is not helped by the gender dynamics in the country where women are usually accused by their male counterparts of being the carriers of HIV in heterosexual relations. Considering that not all sex workers are female, this leaves them vulnerable to not only violence, but also criminal liability.

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<sup>183</sup> Uganda AIDS Commission, 'The HIV and AIDS Uganda Country Progress Report 2014' (2015)p.22

## CHAPTER FOUR. CONCLUSION AND RECOMMENDATIONS.

### 4.1 CONCLUSION

The main provisions that regulate sex work are the Penal code provisions that criminalize prostitution, living on the earnings of prostitution and operating a brothel in sections 139,136 and 138 respectively<sup>184</sup> have created stigma and belief that sex workers are immoral beings undeserving of basic human rights enjoyment. The HIV Prevention and Control Act 2014 which criminalizes wilful transmission of HIV under section 43 and attempted transmission of HIV under section 41 has also been used and continues to be used to prosecute sex workers since they have been labelled as the main source and transmitters of the virus.

The Non-Government Organisations Act 2016 limits the enjoyment of the right to associate of sex workers since it prohibits the forming and registering of NGOs supporting illegal activities, prostitution being one of them.<sup>185</sup> The Sexual offences Bill of 2019 seeks to add prostitution among the sexual offences and label sex workers as sex offenders who are to have a criminal record registered and accessible to anyone in the public.<sup>186</sup> Permitting this is an apprehended violation of the right to privacy of sex workers and may contribute to the already existing societal stigma.

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<sup>184</sup> The Penal Code Act 1950 cap 120

<sup>185</sup> The No-Government Organizations Act 2016 Section 36(2)

<sup>186</sup> The Sexual Offences Bill 2019.

The Employment Act 2006 does not recognise sex work as work and therefore they do not enjoy the benefits of employees such as the right to safe working conditions, protection from sexual harassment at work places, and the right to remunerations among other employment benefits.<sup>187</sup> This is a threat to the economic rights of sex workers. This research has also found that the enforcement of the given laws particularly the law prohibiting prostitution under the Penal Code Act cap 120 is one of the major ways in which the rights of sex workers are violated. The mode of enforcement is that policemen round up the sex workers and those with money on them pay bribes and leave while those that do not have money are beaten, tortured, shamed and in some cases end up offering sex to the officers in order to be released. As result the sex workers right to freedom from inhuman and degrading treatment is violated among other rights.

The research also found that the arrests are merely to scare the sex workers and extort bribes from them as there are no criminal records in court showing prosecution of any sex worker. The police fails to prove prostitution in most cases given that it is a victimless crime and end up charging sex workers for the crime of being 'idle and disorderly' and being 'a rogue and vagabond' as per sections 167 and 168<sup>188</sup> respectively.

The research established that the biggest percentage of the sex workers is not in the act of prostitution as a moral issue or pleasurable issue but as a means of survival. The main cause of the large numbers of sex workers is as a result of poverty and the lack of alternative and profitable economic activities in the country. The criminalization of prostitution has also been found to have various effects on the sex workers like limited access to health care, vulnerability to sex offences, trafficking and societal stigma among many other non-legal issues.

This research has achieved its general objective to show that the criminalization of prostitution has failed to be effective in getting rid of the act and has instead driven

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<sup>187</sup> The Employment Act 2006

<sup>188</sup> The Penal Code Act 1950 cap 120

the sex work industry underground where it is more vulnerable to human rights violations.

#### **4.2 Recommendations.**

As has been previously discussed throughout this research, the human rights of sex workers have been gravely violated and continue to be violated due to the existing laws against prostitution in Uganda. Steps should immediately be taken to realize a change and better the enjoyment of human rights by people engaging in Prostitution including the following;

The Parliament should repeal all laws that criminalize and marginalize sex work, and these include; the redundant sections 136,137,138,139 of the Penal Code Act Parliament is advised to reject the inclusion of prostitution in the proposed sexual offences Act. It is further recommended that sections 167 and 168 of the Penal Code Act that provide for idle and disorderly behaviour as a crime be repealed as they are being misused by authorities to arrest sex workers for no reason and extort bribes from them.

The Employment Act should be amended in order to recognize sex work and to thereby enable sex workers to access and enjoy the various rights and protections under the Act.<sup>189</sup> These rights including but not limited to the right to form unions, the right to safe working conditions and the right to remuneration.

The Non-Government Organizations 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. The corresponding section 36(2) of the Companies Act denies sex workers and others who are considered unacceptable the right to form business associations and should be revised accordingly.

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

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<sup>189</sup> Ibid;

43(1) which criminalizes wilful and intentional transmission of HIV which places sex workers at risk of criminalization. Better regulations that are aimed towards encouraging distribution of self-testing kits and medicine to the most at risk persons (sex workers) should be enacted.

Government should do thorough examination and eradication of violent and discriminatory police tactics, as well as acts of extortion, harassment, rape, arbitrary arrests and incarceration, and physical and psychological torture, directed towards sex workers. In the same respect, mechanisms that allow sex workers to find redress for state-sanctioned human rights violations by holding law enforcement and government officials accountable for abuses against sex workers. Sex workers should be engaged as equals in designing and implementing educational and advocacy programs and clinical services.

Healthcare providers should be sensitized to treat sex workers with the same agency as other human beings. Affirmative action should be taken to put sex workers being that their profession is most at risk when it comes to HIV and STIs, to make them a priority when it comes to treatment and testing services. The Government should put in place better labor policies like the minimum wage for the current jobs to ensure that people do not resort to sex work as a side income generating job.

To deal with poverty, government should set up wide spread free and accessible training of practical skills like tailoring, farming, cooking to create jobs for the uneducated so that they do not be forced to engage in sex work as a last resort.

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