



2017 REPORT ON THE PROTECTION AND VIOLATION OF THE HUMAN RIGHTS OF SEX WORKERS IN UGANDA

October 2018



With the support of



2017 REPORT ON THE PROTECTION AND VIOLATION OF THE HUMAN RIGHTS OF SEX WORKERS IN UGANDA

October 2018

In collaboration with:

Alliance of Women Advocating for Change,
Crested Crane Lighters,
Lady Mermaids Bureau,
Organisation for Gender Empowerment,
Rights Advocacy and Women Positive Empowerment Initiative and
Women Organisation Network for Human Rights Advocacy

Supported by:



The Partnership to Inspire, Transform and Connect the HIV response (PITCH) enables people most affected by HIV to gain full and equal access to HIV and sexual and reproductive health services.

The partnership works to uphold the sexual and reproductive health and rights of lesbian, gay, bisexual, and transgender people, sex workers, people who use drugs and adolescent girls and young women. It does this by strengthening the capacity of community-based organizations to engage in effective advocacy, generate robust evidence and develop meaningful policy solutions.

PITCH focuses on the HIV response in Indonesia, Kenya, Mozambique, Myanmar, Nigeria, Uganda, Ukraine, Vietnam and Zimbabwe. Partners in these countries also share evidence from communities to influence regional and global policies that affect vulnerable populations.

PITCH is a strategic partnership between Aidsfonds, the International HIV/AIDS Alliance and the Dutch Ministry of Foreign Affairs.

About Human Rights Awareness and Promotion Forum (HRAPF)

HRAPF is an independent, non-partisan, non-governmental organisation that works towards the protection of the rights of marginalised communities in Uganda. HRAPF focuses on the direct provision of legal aid services and also conducts research and legislative advocacy with a view to influence policy reform in favour of marginalised persons. HRAPF operates the only specialised legal aid clinic for marginalised persons including sex workers in Uganda and also engages in strategic litigation for marginalised persons and Most At Risk Populations (MARPS). It also engages the Police, the judiciary, the Uganda Human Rights Commission and the Equal Opportunities Commission on the protection of the rights of marginalised persons and MARPs.

About the Contributing Organisations

Alliance of Women Advocating for Change (AWAC)

AWAC was founded by sex worker leaders and activists in 2016, with a view to creating a strong and vibrant sex workers' movement in Uganda, placing special focus on upcountry Community Based Sex Worker Organisations. The organisation also seeks to promote access to comprehensive HIV/TB and Sexual Reproductive Health Services for sex workers, and promoting sex workers' rights.

Crested Crane Lighters (CCL)

CCL was founded in 2009 with the aim of creating a society where sex workers are not discriminated against and are treated with respect and dignity, and have access to basic social services. The organisation seeks to realise this through economic empowerment, capacity building and rights advocacy for sex workers.

Lady Mermaids Bureau (LMB)

LMB was founded in 2004. It is a female sex worker-led organisation, which focuses on enhancing access to HIV treatment, prevention, counseling and testing services, as well as sexual and reproductive health services for sex workers. The organisation also works towards the elimination of discrimination, stigma and violence against sex workers.

Organisation for Gender Empowerment and Rights Advocacy (OGERA)

OGERA is a female sex worker led organisation that was founded in 2013 with a view to creating awareness on health and human rights of lesbian, bisexual and transgender women, as well as refugee sex workers. The organisation seeks to improve the welfare of refugee sex workers through skills development and enhancement of access to health services for sex workers.

Women's Organisation Network for Human Rights Advocacy (WONETHA)

WONETHA is a sex worker led organisation that was founded in 2008. The organisation's focus is on promoting the rights of sex workers, developing their capacity, and economically empowering them. The organisation has made robust advocacy efforts, especially at the grassroots level, to put an end to various forms of violence against sex workers in the local communities, and is also at the forefront of challenging the constitutionality of the Anti-Pornography Act, which is one of the laws, that fuel violence against sex workers in Uganda.

Women's Positive Empowerment Initiative (WOPEIN)

WOPEIN is a sex worker-led organisation created in 2015, with the aim of promoting the rights of sex workers through advocacy and enhancement of access to health services and legal and human rights knowledge.

Contents

About Human Rights Awareness and Promotion Forum (HRAPF)	ii
About the Contributing Organisations	iii
Glossary	v
List of Acronyms	vi
1. EXECUTIVE SUMMARY	1
2. INTRODUCTION	6
3. INCIDENCES OF PROTECTION OF THE HUMAN RIGHTS OF SEX WORKERS IN UGANDA	9
4. INCIDENTS OF VIOLATION OF THE RIGHTS OF SEX WORKERS IN 2017	12
5. ANALYSIS OF TRENDS IN HUMAN RIGHTS VIOLATIONS AGAINST SEX WORKERS IN 2017	29
6. CONCLUSION AND RECOMMENDATIONS	32

Glossary

Lodge:	A house or dwelling where sex workers engage in sexual activity with their clients
Sex:	The physical and biological distinction between male and female
Sex worker:	An adult person who consensually gives sexual services in exchange for money or other material gain
Site:	An area where sex work is done on a large scale.
Transgender:	A person whose deeply held sense of gender is different from their biological sex assigned at birth
Transgender woman:	A person who was assigned the male sex at birth but identifies as female
Violation:	An act that contravenes a law that guarantees a right.

List of Acronyms

ARVs	Anti Retroviral drugs
AWAC	Alliance of Women Advocating for Change
CCL	Crested Crane Lighters
DPP	Directorate of Public Prosecutions
HRAPF	Human Rights Awareness and Promotion Forum
LMB	Lady Mermaids Bureau
OGERA	Organisation for Gender Empowerment and Rights Advocacy
PEP	Post Exposure Prophylaxis
WONETHA	Women's Organisation Network for Human Rights Advocacy
WOPEIN	Women Positive Empowerment Initiative

1. EXECUTIVE SUMMARY

1.1 Introduction

The 2017 Report on Protection and Violations of the Human Rights of Sex Workers in Uganda contains verified incidents of human rights protection and of violations perpetrated against sex workers based on their engagement in transactional sex. The report seeks to create an evidence base upon which advocacy for respect and promotion of human rights of sex workers is to be done, and also upon which the fight against HIV/AIDS among sex workers and within the general population can be done. Beyond violation of the human rights of sex workers, unjustified arrests and failure to address violations against sex workers worsen an already bad HIV situation. This is because sex work is pushed further underground, leading sex workers into risky sexual practices, which makes them and their clients more susceptible to contracting HIV/AIDS.

The report shows the incidences of protection of the rights of sex workers documented during the year 2017, as well as incidents of human rights violations perpetrated by both state and non-state actors. It also contains recommendations to different stakeholders on how the human rights situation for sex workers in Uganda can be improved.

1.2 Key Findings

1. In only four incidents, were the human rights of sex workers documented to be protected by the duty bearers. This is a very small number compared to the number of violations documented. It is however a step in the right direction.
2. There were 186 incidents of violation of sex workers rights in 2017, which arose out of 71 different cases.
3. Of the 186 violations 153 violations were perpetrated by state actors, while 33 were perpetrated by non-state actors.
4. The right to liberty was the most violated right as the persons arrested were largely picked from the streets and charged with being rogue and vagabond, which is a vague offence.
5. The Uganda Police Force was the most prominent perpetrator of human rights violations against sex workers, accounting for 153 out of 186 incidents of human rights violations. Members of the communities where sex workers reside followed with 12. Their clients ranked fourth with 10 incidents, while their intimate partners ranked third with 9 incidents, and their family members ranked fifth with 2 incidents.

6. Human rights violations against sex workers were largely not addressed by the different authorities as in most cases the law enforcement authorities that have the mandate to give redress for such violations were prejudiced against the sex workers, while in other circumstances, the sex workers chose not to seek redress from the law enforcement officials as they did not expect to get it. In some instances, this was due to self-stigmatisation; while in others it was due to lack of trust in the criminal justice system.

Most of the human rights violations against sex workers were fueled by prejudice against sex workers for transgressing traditional socio-cultural norms on women's sexual modesty and corruption among law enforcement officials and facilitated by vagrancy offences under the Penal Code Act.

1.3 Key Recommendations

The Uganda Police Force

- Ensure equal protection to sex workers by ensuring that violations that are committed against them are properly investigated and that they obtain substantial remedies for them.
- The Police Professional Standards Unit should thoroughly investigate complaints of police officers that violate sex workers' rights that are reported to them, and take disciplinary action against the errant officers.
- The Directorate of Human Rights and Legal Services should engage and train police officers on human rights issues pertaining to sex work with a view to reduce human rights violations against sex workers.
- Stop parading suspected sex workers who have been arrested before the media as they are still presumed innocent until proved guilty and such parading constitutes inhuman and degrading treatment and also puts the women at risk.

The Directorate of Public Prosecutions

- Develop prosecutorial guidelines for the offences of prostitution, being idle and disorderly, and being rogue and vagabond in order to guide state attorneys on the ingredients of the offence and what evidence they should look for before sanctioning files with charges related to sex work.

- Review the files for enough evidence to support charges of being rogue and vagabond as this provision is usually abused to charge sex workers even where there is no sufficient evidence.

To the Uganda Human Rights Commission

- Investigate and document cases of human rights violations against sex workers that are reported to the Commission, include them in the annual reports to Parliament and make the necessary recommendations for legal and policy reform.
- Encourage the various state agencies and organs to use a human rights-based approach when dealing matters involving sex workers as a positive step toward promoting their rights.

To the Equal Opportunities Commission

- Investigate systematic discrimination against women based on their involvement in sex work, especially by state organs and institutions.
- Consolidate partnerships with organisations and individuals that work towards the promotion of the rights of sex workers in order to unearth the violations and inequalities that arise as a result of sex work.

To the Ministry of Health and the Uganda AIDS Commission

- Publish reports showing the link between violence against sex workers and the increasing HIV prevalence among sex workers and among the general population in Uganda.
- Engage with the other state agencies of the danger in harassing and violating the rights of sex workers particularly as regards hampering the fight against HIV/AIDS.

To Members of Parliament

- Repeal the obsolete and unimplemented Penal Code provisions criminalising sex work and related activities in order to create an environment that prevents and redresses violations against sex workers.
- Repeal section 167 and 168 of the Penal Code on idle and disorderly conduct and being rogue and vagabond respectively, which are commonly used to arrest suspected sex workers as they are wide and vague and thus easy to prove.

- Do not adopt provisions criminalising sex work in the Sexual Offences Bill.

To the Judiciary

- The Constitutional Court should hasten the hearing of the case of *Center for Domestic Violence and Others v Attorney General*, which challenges the constitutionality of provisions of the Anti-Pornography Act, 2014 that fuel violence against sex workers.
- Expeditiously handle and conclude cases where individuals, especially women that are suspected of engaging in sex work, are charged under vagrancy and other petty offences.
- Promptly hear and determine applications for unconditional release of individuals that are kept in police custody beyond 48 hours.

To the Uganda Law Reform Commission

- Make formal recommendations to Parliament to repeal provisions in the Penal Code Act that criminalise sex work and related activities that are obsolete and unimplemented and yet promote prejudice and discrimination against sex workers.
- Make formal recommendations for the repeal of laws that promote violence against sex workers, including vagrancy offences.

To the International Community

- Hold the government of Uganda accountable to its regional and international human rights obligations to all individuals, including sex workers.

To National Human Rights Organisations working with the sex worker Community

- Build capacity of staff members to document human rights violations against women based on their engagement in sex work.
- Streamline systems of reporting incidents of human rights violations, evidence collection and data storage to enable easy verification of violations against women based on their involvement in sex work.

To the Media

- While reporting, be respectful to all individuals, especially women, regardless of their supposed involvement in sex work.
- Conduct research on, monitor and report on instances of human rights violations against sex workers.

To the President of the Republic of Uganda

- Veto legislation that promote discrimination and violence against women because of their involvement in sex work.
- Hold the police and all its agencies to their duty to effectively investigate issues of human rights violations against sex workers.

2. INTRODUCTION

2.1 Introduction

This report is a compilation of verified incidents of human rights violations against individuals based on their engagement in sex work in Uganda, that were documented in the year 2017. It is an annual publication, with the first issue having been published in 2017 for violations in the year 2016. It is informed by the increasing violence against sex workers in Uganda, as well as the rising levels of HIV prevalence among sex workers and among the general population in Uganda. It serves as evidence to show that criminalisation of sex work has rather served to put women and other individuals who get involved in sex work at risk of having their human rights violated, and also at the risk of acquiring HIV/AIDS and passing it on to their clients. It is intended to show that criminalisation of sex work does not work, and instead harms society.

The report documents violations against sex workers that were recorded by HRAPF and organisations working with sex workers during the year 2017. The organisations have worked together in a loose coalition to contribute and verify violations, which have led to this report. The report contains violations and abuses by both state and non-state actors.

The report makes recommendations to various stakeholders on how best to prevent and redress these violations and how to promote respect and observance of sex workers' rights.

2.2 Methodology

This is an analytical report that looks at the numbers of violations against sex workers documented by the organisations contributing to this report.

All the organisations that contributed to the report handle cases involving sex workers in different capacities. HRAPF focuses on the provision of legal aid services, while other organisations primarily provide capacity building for sex workers as well as counselling and healthcare services. Data collection was done in accordance with the mandates and methodologies of the contributing organisations, and cases handled by more than one organisation were crosschecked to avoid duplication.

A total of 135 cases were collected, however, human rights violations could only be verified in 73 of these cases. A single case could involve multiple human rights violations and a total of 183 verified violations against sex workers were included from the 73 cases included in this report.

A set of verification guidelines were adopted according to which the reliability of data published in this report was ensured. In accordance with these guidelines, some reported violations that were not supported by proper documentation and adequate witness corroboration did not make it to the report.

The verification process was based on primary evidence, namely documentary evidence and witness statements/corroboration. This evidence included police bond forms to show when a person was released from custody; newspaper clippings to show that the case was reported in the media; medical examination forms that prove that the victim was assaulted; police statements that show that the police took down statements from the victims, as well as statements of victims and witnesses of the human rights violations. It is important to note that only the statements of those who directly suffered or witnessed the violations were considered in verifying the human rights violations.

2.3 Challenges

The greatest challenge that was faced during verification was the absence of a standardised form of documentation for the various contributing organisations. While these organisations all handle cases involving sex workers, their documentation mechanisms are influenced by their different mandates. The organisations handle different aspects in respect of the cases, ranging from health to counseling and legal needs of the sex workers, and as such, they capture the information that is most relevant to the services that the victims seek from them. This often leads to the exclusion of information that is key to verifying the occurrence of a violation in a particular case. It is thus important for organisations working with the sex worker community to document cases in a comprehensive way which extends beyond collecting information that is directly relevant to the services provided. In this regard, HRAPF working with the different partner organisations has published guidelines for documenting human rights violations against sex workers.

The report is also limited in terms of geographical coverage. The majority of the cases that were considered for inclusion in the report were from Kampala and Wakiso. This is mainly due to the fact that most of the organisations that work with sex workers are concentrated in these two districts, and have a limited reach in upcountry areas. Moreover, the few organisations that are situated in upcountry areas have limited capacity to properly document incidents and trends of human rights violations against sex workers. This ultimately makes it difficult to fully understand the human rights situation for sex workers in the rural and upcountry areas. It is therefore important to build the capacity of organisations working with sex workers in upcountry areas to document human rights violations against sex workers.

Generally, there is a lack of capacity among organisations working with the

sex worker community to properly document cases involving human rights violations against the sex workers. That considered, it must be noted that the report does not give a complete account of human rights violations that were suffered by sex workers throughout Uganda in the year 2017, but it focuses on the findings made from the verified incidents of violations that were documented by the participating organisations during the course of the year. Nonetheless, the inclusion of human rights violations from a few upcountry areas does contribute to the reliability of the representation of the general human rights situation for sex workers in Uganda.

2.4 Structure of the report

The first section of the report sets out its purpose, the methodology used and the various challenges encountered in collecting, verifying and analysing the data. The second section is devoted to discussing human rights violations perpetrated against sex workers in 2017. Violations committed by state actors and non-state actors respectively are discussed in two separate sub-sections. The third section of the report is dedicated to analysing trends in violations discernible from the various reported and verified cases. The fourth and final section draws conclusions and makes recommendations to various role-players empowered to improve the human rights situation of sex workers in Uganda.

3. INCIDENTS OF PROTECTION OF THE HUMAN RIGHTS OF SEX WORKERS IN UGANDA

The 1995 Constitution of the Republic of Uganda obliges the government and all its organs and agencies to respect, uphold and protect individual and group rights and freedoms.¹ The obligation by the Ugandan government to protect fundamental rights and freedoms is also enshrined in the various international and regional human rights treaties that Uganda has ratified. These instruments reiterate the rights guarantees and protections that are enunciated in Uganda's Constitution. The obligation to respect requires the state and its agencies not to interfere with the enjoyment of fundamental rights and freedoms, the obligation to uphold requires the state to actively put in place frameworks that enable individuals to fully realise their rights and freedoms, while the duty to protect requires the state to protect individual rights from being abused by third parties and providing substantial remedies in the event that they are abused.²

The 1995 Constitution also provides for equality and non-discrimination for all persons in all spheres of political, economic, social and cultural life, as well as equal protection of the law.³ This implies that the Government of Uganda and all its organs and agencies have as much of an obligation to respect, uphold and protect the rights of sex workers as they do for all other citizens. In order to fulfil this obligation, Uganda as a state has to adopt legal and administrative measures that eliminate social and cultural attitudes that fuel violence and discrimination against sex workers. Such measures could include: legal reform, capacity building for state institutions on combatting violence and discrimination against sex workers, as well as education and sensitisation of the public on the rights of sex workers.⁴

Indeed, there were a number of instances in 2017 when the rights of sex workers were protected by the state agencies. In all these incidents the protector was the Uganda Police Force.

The 1995 Constitution gives the Uganda Police Force the mandate to protect life and property, preserve law and order and to prevent and detect crime.⁵ This increases the opportunity for sex workers to interface with the police, given the

¹ Art 20 of the 1995 Constitution of the Republic of Uganda.

² *Social and Economic Rights Action Centre (SERAC) v Nigeria* (2001) AHLR 60 (ACHPR 2001) accessed at <http://www.chr.up.ac.za/index.php/browse-by-subject/410-nigeria-social-and-economic-rights-action-centre-serac-and-another-v-ni> (Accessed on 18th November 2017).

³ Art 21(1) of the Constitution.

⁴ Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfill the Human Rights of Sex Workers* accessed at <https://www.amnesty.org/en/documents/pol30/4062/2016/en/> (Accessed on 18th November 2017).

⁵ Art 212 of the 1995 Constitution.

fact that sex work is criminalised in Uganda.⁶ Sex workers, due to their socio-economic status and the nature of their work, are susceptible to getting caught up in the criminal justice system, by virtue of laws relating to vagrancy and other petty offences.⁷ This, however, does not exclude them from the ambit of individuals whose lives and property the Uganda Police Force is obliged to protect. It must be noted that while there were a few instances where the police protected sex workers' rights, as highlighted in the subsequent section of this report, there were a lot more instances where they were the direct violators of these rights.

There were four documented instances where they took positive steps towards protecting their rights when they were threatened or infringed upon by other private individuals. These instances are discussed below:

In November 2017, a sex worker in Kawempe was found on the street by her husband, while she was engaging in sex work, and he slapped her, upon which a fight between them ensued. They were both arrested and taken to a police post in Kawempe. Despite the fact that the Officer in Charge, Criminal Investigation and Crime Intelligence (CIID) was aware of the fact that she was in fact a sex worker, he conducted a mediation between her and her husband, from which she got compensation worth UGX 250,000/- for the injuries that he had caused her.⁸

On 17th August 2017, a male sex worker in Bukoto was kidnapped and beaten by men that had disguised themselves as prospective clients. They demanded for a ransom of UGX 200,000/-, and threatened to take him to the Police for being gay and promoting homosexuality if he did not pay it up. HRAPF intervened in the matter and liaised with the OC Station of Kiira Road Police, who had been trained on rights of LGBTI persons, and they rescued the sex worker from his captors.⁹

In February 2017, a sex worker staying in Katanga, a slum in Wandegeya-Kampala, was reported to the police by her neighbours, who were accusing her of being a nuisance because of her engagement in sex work, and they wanted her arrested and prosecuted. A mediation was conducted with the Community Liaison Officer (CLO) at Wandegeya Police Station, together with the numerous complainants, who were the people that stay within her neighbourhood. The CLO convinced the complainants that before arresting her, he would first conduct on-ground investigations to confirm what they were saying.¹⁰

⁶ Sections 138 and 139 of the Penal Code Act.

⁷ 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) 42.

⁸ Case reported at CCL.

⁹ HRAPF/F/128/08/17.

¹⁰ HRAPF/F/26/02/17.

On 7th August 2017, at around 2:00 a.m., a sex worker in Kazo was gang raped by 3 young men that were music performers in a local bar. The matter was reported at Kazo Police Post, and the police tried to trace the men in order to have them arrested, although they failed.¹¹

¹¹ Case reported at LMB.

4. INCIDENTS OF VIOLATION OF THE RIGHTS OF SEX WORKERS IN 2017

4.1 General Overview

Compared to the four incidents of protection of the rights of sex workers, a total of 186 violations were identified from 71 cases. Of the 186 violations, 153 were perpetrated by state actors and 33 by non-state actors. The Uganda Police Force emerged as the greatest perpetrator of human rights violations against sex workers as they were responsible for all the 153 violations committed by the state. Details of the incidents of the violations are discussed below:

The violations were by both state actors and non-state actors, but international law as well as the Constitution of the Republic of Uganda imposes obligations on the state to fulfil, respect, and protect human rights. By violating the rights of sex workers, the state is directly violating human rights by failing to respect and fulfil them, and by allowing third parties to violate the rights of sex workers with impunity, the state indirectly violates the rights of sex workers by violating its obligation to protect.

The violations are classified here in accordance with their perpetrators.

A. Violations by the Uganda Police Force

In the year 2017, the police were documented as the biggest perpetrators of human rights violations against sex workers. These violations were mainly committed under the cloak of preventing crime or protecting against crime.

Of the total 186 of incidents of human rights violations against sex workers that are included in this report, 153 (82%) were perpetrated by the Uganda Police Force, which is the total number of violations by state actors. Most of these violations were committed in the course of arresting sex workers, with multiple violations being committed in a singular arrest. The following were the various incidents of violation of sex workers' human rights in the year 2017:

a) Violation of the right to liberty

The most commonly violated right was the right to liberty. Under article 23(1), of the Constitution every individual has the right to liberty.¹² This right may however be limited on a number of grounds, which include reasonable suspicion that an individual has committed or is about to commit a criminal offence under the laws of Uganda.¹³ When a person's right to liberty is limited

¹² Art 23(1) of the Constitution.

¹³ Art 23(1)(c) of the Constitution.

under the law, it does not take away their other rights. There are in fact specific rights guarantees and protections that they have, both at the time of arrest and during detention, which form part of the normative content of the right to liberty. These include: the right to be kept in a place authorised by law,¹⁴ the right to be informed immediately in a language that they understand of the reason for their arrest and of their right to a lawyer,¹⁵ the right not to be detained beyond 48 hours,¹⁶ the right to inform their next of kin of their detention,¹⁷ the right to be allowed access to their next of kin or lawyer,¹⁸ and the right to access medical treatment.¹⁹ In the year 2017, the Uganda Police Force violated numerous components of the right to liberty for sex workers in various incidents that are discussed below:

i. Freedom from arbitrary arrest

The Constitution lays down circumstances under which the right to liberty may be restricted. This implies that any deprivation of the right to liberty that is not based on the legally established grounds and done in accordance with legally established procedures is arbitrary. Deprivation of the right to liberty is also arbitrary where it is done in circumstances where there is apparent injustice and lack of predictability on the part of the arresting officers.²⁰

While the right to liberty may be limited where there is reasonable suspicion that an individual has committed or is about to commit a crime under the laws of Uganda, most of the time for sex workers, this right is limited on the basis of prejudices that law enforcement officers and the society at large have against them. The existence of the offence of prostitution under Sections 138 and 139 of the Penal Code Act, while a legal ground for arresting sex workers, is not one that is in fact relied on by police. This is because of the definition of the offence of prostitution as the ‘habitual holding out of oneself as available for sexual intercourse or other sexual gratification for monetary or other material gain in public or elsewhere,’ which requires the police to actually get the sex workers offering sex in exchange for monetary or material gain. As a result, the police resort to arresting sex workers without having any reasonable suspicions of them having committed any offence, but on rather unclear grounds that they do not disclose to them at the time of arrest, only to slap trumped up charges on them after such arrest.

14 Art 23(2) of the Constitution.

15 Art 23(3) of the Constitution.

16 Art 23(4)(b) of the Constitution.

17 Art 23(5)(a) of the Constitution.

18 Art 23(5)(b) of the Constitution.

19 Art 23(5)(c) of the Constitution.

20 *Van Alphen v Netherlands Human Rights Council*, Comm.No.305/19988.

There were 11 cases and 43 instances of arbitrary arrests of sex workers documented for the year 2017. In these incidents, sex workers were arrested from the streets, roadsides and bars, on the basis of their appearance, while others were arrested from lodges. Examples of these incidents are discussed below:

Arrest without being informed of the reason for the arrest

In the early morning hours of 1st January 2017, 3 sex workers in Kireka were arrested by police officers, without being informed of the reason for their arrest.²¹

On 7th February 2017, at around 10: 00 pm, 4 sex workers were arrested from Kisenyi without the police officers informing them of the reason for their arrest.²²

On 20th February 2017, at around midnight, 3 sex workers were arrested from the streets of Nakulabye while they were at work. The police officers simply ordered them to get onto the police patrol car, and did not inform them of the reason for their arrest.²³

On 13th March 2017, a sex worker in Kimwanyi was arrested from a bar, where she was found drinking, at 4:00p.m, without being informed of the reason for her arrest. She was detained at the local police station and was later released unconditionally upon HRAPF's intervention.²⁴

In March 2017, at around midnight, 5 sex workers were arrested from a pub in Kasubi, by police officers that were dressed in civilian clothing and who did not inform them of the reason as to why they were arresting them. They were taken to Nakulabye police station and were charged with being rogue and vagabond in Nabweru Magistrates Court. They were later released after getting a non-custodial sentence of community service, following a plea bargain that was done on their behalf by HRAPF.²⁵

On 19th April 2017, a group of sex workers were arrested from the streets of Kawempe, without being informed of the reason for their arrest and they were taken to Kawempe Police Station. They were released on the intervention of CCL.²⁶

In April 2017, at around 10p.m., 2 sex workers were arrested from a guest

21 HRAPF/F/01/01/17.

22 HRAPF/G/23/02/17.

23 HRAPF/F/35/02/17.

24 HRAPF/F/40/03/17.

25 HRAPF/F/46/03/17.

26 Case reported at CCL.

house in Nabweru, without being informed of the reason for their arrest. They were taken to Nabweru court the following day and they were charged with being rogue and vagabond.²⁷

On 11th August 2018, 3 sex workers, one of whom was pregnant, were arrested from the streets in Kinawataka, without being informed of the reason for their arrest.²⁸

In August 2017, the police in Kabalagala arrested a group of 8 sex workers from the streets without informing them of the reason for their arrest. They were taken to Kabalagala police station, where charges of being rogue and vagabond were preferred against them and they were released on police bond the following day, upon HRAPF's intervention.²⁹

Arrest on illegal grounds

In February 2017, a sex worker in Kabalagala reported a case of kidnap at the local police station after a client had held her and another sex worker captive in his house. In addition to arresting the client, the police also arrested the sex workers on the premise that they needed to get information from them about the kidnap. The sex workers were released the following day after the intervention of a HRAPF lawyer.³⁰

On the 26th of September 2017, at around 8:30 p.m., a group of sex workers were arrested from the streets of Kireka while they were at work. In the course of the arrest, 5 of the sex workers were asked by the arresting officers whether they each had UGX 100,000/- and when they stated that they did not have it, they were taken to Kira Police Station, where they were charged with being rogue and vagabond, although they were later released with the charges dropped, upon HRAPF's intervention.³¹

ii. Detention beyond 48 hours

The Constitution stipulates that a person arrested upon reasonable suspicion of having committed or being about to commit a criminal offence under the laws of Uganda shall, if not released earlier, be presented in court as soon as possible, and no later than 48 hours from the time of his or her arrest.³² Seven cases involving 55 individual sex workers were documented in 2017, and these are as described below:

27 HRAPF/F/63/04/17.

28 HRAPF/F/134/08/17.

29 HRAPF/F/124/08/17.

30 HRAPF/F/37/02/17.

31 HRAPF/F/144/09/17.

32 Art 23(4)(b) of the Constitution.

In January 2017, HRAPF received a complaint from a sex worker in Kampala whose client tried to strangle her after she had refused to have sexual intercourse with him without a condom. Upon the intervention of the police, the sex worker's client instead alleged that it was the sex worker that had tried to assault him by biting his genitalia. The police believed the client and arrested the sex worker instead. She was detained for 4 days and later released on police bond, upon HRAPF's intervention.³³

The 3 sex workers that were arrested from Nakulabye on 20th February 2017 were detained at Nakulabye Police Station for 3 days.³⁴

On 22nd December 2017, 2 sex workers were arrested from the streets in Bwaise and detained at Nabweru Police Station for a week before they were taken to Nabweru court where they were charged with being rogue and vagabond.³⁵

On 18th August 2017, a sex worker was arrested from a bar in Kololo on allegations that she had assaulted her ex-boyfriend. She was taken to Kiira Road Police Station, where she was detained for four days before being charged in court.³⁶

On 13th July 2017, 45 sex workers from Abaita Ababiri were rounded up by the police, following the murder of one of their colleagues. They were detained at Entebbe Central Police Station for a week before being taken to Entebbe Chief Magistrates Court, where they were charged with being a common nuisance.³⁷

On 9th July 2017, at around 12:45 a.m., two sex workers, one of whom was male, were arrested from a bar in Kassanda-Mubende. They were taken to Kassanda Police Station, where they were charged with public nuisance, and detained for three days. They were later released unconditionally, following HRAPF's intervention.³⁸

On 27th July 2017, a sex worker was arrested from a bar in Nyendo-Masaka, when her client falsely accused her of stealing his money. She was detained for 3 days, and was later released on police bond.³⁹

33 HRAPF/02/01/17.

34 n 23 above.

35 Case reported at EADWA.

36 HRAPF/F/130/8/2017.

37 HRAPF/F/116/07/17.

38 HRAPF/F/115/07/17.

39 HRAPF/F/119/07/17.

b) Violation of the right to freedom from inhuman and degrading treatment

Article 24 of the Constitution stipulates that no person shall be subjected to any form of torture, cruel, inhuman and degrading treatment or punishment. This right is inalienable, and can under no circumstances be infringed upon or restricted.⁴⁰

The Prevention and Prohibition of Torture Act defines torture as any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person or at the instigation or with the consent or acquiescence of any person, whether a public official or private individual, for such purposes as: obtaining information from the person or any other person; punishing the person for an act he or she or any other person has committed or is suspected of having committed or planning to commit; or intimidating or coercing the person or any other person to do or refrain from doing any act.⁴¹

According to Article 1 of the United Nations Convention Against Torture (UNCAT), torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from them or a third person information or a confession, punishing them for an act they or third persons have committed or suspected of having committed; or intimidating them or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Cruel and inhuman treatment on the other hand is, according to Article 16 of the UNCAT, any ill-treatment that does not fit within the definition of torture as per Article 1 of the Convention. It is ill-treatment that consists of acts causing physical or mental pain that may not be perpetrated by or with the permission or acquiescence of a state official; or which are not so severe or done for the same reasons as those amounting to torture.⁴² Degrading treatment distinctively constitutes acts that cause a person humiliation and loss of self-respect.⁴³

In 2017, 17 cases and 52 incidents of violation of Article 24 were documented. All 52 counts that were documented were in relation to violation of the right to freedom from torture, cruel, inhuman and degrading treatment. 43 of them involved infliction of physical pain, while 6 involved sexual abuse, and 3 involved public shaming. The cases from which these incidents were recorded are discussed below:

⁴⁰ Art 44(a) of the Constitution.

⁴¹ Sec 2(1) of the Prevention and Prohibition of Torture Act, 2012.

⁴² *Wainwright v United Kingdom* Application No.12350/04 (2007)44 E.H.R.R. 40.

⁴³ As above.

i. Infliction of physical harm

Three sex workers were arrested on the morning of 1st January 2017 in Kireka and were beaten by the police officers in the course of the arrest. With the help of a HRAPF lawyer, they reported the incident to the Police although they chose not to pursue the matter any further for fear of getting backlash and experiencing any further violence from the police officers.⁴⁴

On 12th January 2017, at around 4:00 p.m., while a female sex worker was on her way home in Kazinga, a man grabbed her by the hair and started asking her whether he had ever paid for her sex. She felt threatened and reported the matter to the Police, who did not take any steps to arrest the man. She felt that it was not safe for her to stay in the house that she was renting, so she decided to go to the police station with her belongings and camp there until the morning. When the Officer in Charge (OC) Station found her at the police station, he asked her to leave and she refused, having explained to him that the police station was the only place she felt secure. The OC Station reacted by hitting her twice on the neck, kicking her in the abdomen and hitting her with a stick several times.⁴⁵

The four sex workers that were arrested from Kisenyi on 7th February 2017 were beaten by the police officers in the course of the arrest.⁴⁶

On 20th February 2017, 6 sex workers were arrested from the street in Kireka. In the course of the arrest, 4 of them were beaten by the arresting officers and crime preventers.⁴⁷

On 23rd March 2017, 15 sex workers were arrested from the street in Nateete. During the arrest, 5 of them were slapped by the crime preventers that apprehended them.⁴⁸

On 20th April 2017, 3 sex workers were arrested from the street in Abayita Ababiri, and in the course of getting arrested, they were slapped by the police officers.⁴⁹

On 21st April 2017, at around 4:00 a.m., 2 sex workers were arrested from a bar in Bwaise. In the course of arrest, one of the sex workers was slapped and UGX 50,000/- taken from her. The sex workers were charged in Nabweru Court, with the offence of being rogue and vagabond. They pleaded guilty, and they were given 4 hours' community service.⁵⁰

44 HRAPF/F/01/01/17.

45 HRAPF/F/05/01/17.

46 n 22 above.

47 Case reported at WONETHA.

48 Case reported at WONETHA.

49 Case reported at WONETHA.

50 HRAPF/F/62/04/17.

The sex workers that were arrested from a guesthouse in Nabweru were beaten by the police officers in the course of their arrest.⁵¹

On the night of 29th June 2017, a sex worker in Abaita Ababiri was severely beaten by a police officer that she encountered while she was on her way home, at around 10:00 p.m. She sustained deep-cut wounds on her head. When she reported the incident to the police, they refused to register her case until HRAPF lawyers intervened. Unfortunately, the police officer was never prosecuted.⁵²

In the course of arresting the sex worker that was arrested from a bar in Kololo, the police officers dragged her out of the bar and beat her up.⁵³

In the course of getting arrested, one of the sex workers that were arrested in Kinawataka on 11th August 2011 was badly beaten by the police officers.⁵⁴

On 2nd November 2017, a sex worker in Kamalimali village in Bwaise was kicked in the ribs by a police officer when he was arresting her. The sex worker was not able to identify the police officer and so she did not file a complaint against him.⁵⁵

In December 2017, the OC Station of a police post in Bwaise beat up a sex worker for engaging in sex work. The sex worker refused to take any legal action against the police officer for fear that he would persecute her.⁵⁶

On 31st December 2017, a group of sex workers were arrested in Kireka. In the course of getting arrested, 2 of them were beaten and injured by the police officers. They reported the case to HRAPF, and one of the organisation's lawyers assisted them to file a case at Kira Divisional Police Station, against the police officers that beat them up. They however decided not to pursue the matter any further due to fear of getting shot by the police officers that they had reported.⁵⁷

51 n 27 above.

52 HRAPF/F/112/07/17.

53 n 36 above.

54 n 28 above.

55 Case reported at LMB.

56 Case reported at EADWA.

57 HRAPF/F/01/01/17.

ii. Rape and sexual violence

The European Court of Human Rights has defined rape as a form of torture. It has specifically stated that rape of a detainee by a state official is a grave form of ill treatment, given the detainee's vulnerability and the fact that it leaves psychological scars on the victim.⁵⁸

Below are some of the incidents of rape that were suffered by sex workers at the hands of law enforcement officials in the year 2017:

On the night of 29th July 2017, a sex worker was arrested from a bar in Lugazi and forced into a police car by a police officer. He drove her to the police barracks and forcefully had sexual intercourse with her. The police officer was never prosecuted; despite the sex worker filing a complaint at the police station and the Police Professional Standards Unit.⁵⁹

The 5 sex workers that were arrested from a pub in Kasubi by police officers that were dressed in civilian clothing were raped and beaten by the police officers in the course of the arrest. The police officers threatened them and warned them against reporting the fact that they were raped, which threats they succumbed to and never reported the incident.⁶⁰

iii. Parading sex workers before the public and the media

The Inter American Court of Human Rights has held public humiliation and degrading exposure in the media as a violation of the right to freedom from inhuman and degrading treatment.⁶¹

In 2017, there were 2 cases that involved the degrading parading of sex workers before the public and media, which were as described below:

While in police custody, the male and female sex workers that were arrested from a bar in Kassanda-Mubende on 9th July 2017 were beaten by police officers, who also paraded them before the public in a bid to shame them for engaging in sex work, and in a bid to shame the male sex worker for engaging in same-sex sexual conduct.⁶²

On the 5th of January 2017, the police at Wilson Road Police Post in Kampala invited the media (Bukedde TV), to record and report a story of a sex worker that they had arrested on allegations of biting her client's manhood; while they were in a scuffle, which had arisen from the client's attempt to

⁵⁸ *Aydin v Turkey* [1997] ECHR 75,23178/94.

⁵⁹ HRAPF/F/120/07/17.

⁶⁰ n 25 above.

⁶¹ *Loayza Tamayo v Peru* IACHR Series C no.53, IHRL 1436 (IACHR 1999).

⁶² n 38 above.

forcefully have unprotected sex with her.⁶³

c) Violation of the right to freedom from discrimination

Article 21 of the Constitution guarantees the right to freedom from discrimination on the basis of sex and social standing, among other grounds.⁶⁴ In this regard, it guarantees every citizen equal protection of the law, which thus includes equal legal protection for sex workers by all state agencies, including the Uganda Police Force.

Sex workers unfortunately still face discrimination, even from the Uganda Police, from which they ought to get assistance in getting redress for human rights violations that are perpetrated against them. In 2017, 2 incidents of discrimination against sex workers by the police were documented, and these were as follows:

In July 2017, a sex worker in Kajjansi took on a client, who, during sexual intercourse attempted to remove the condom, and she resisted. The client attempted to strangle her, successfully removed the condom and forcefully had unprotected sex with her. When she reported the matter to police, rather than investigate it, they instead threatened to prefer charges of prostitution against her.⁶⁵

On the 20th of August, at around 9:00 p.m., a sex worker in Ntunda-Kyankwanzi was assaulted by a prospective client, who happened to be the local defence secretary's employee. The sex worker had approached and offered him her services, but he instead responded by slapping her, and she fell on ground, after which he repeatedly kicked her. Her fellow sex worker came to her rescue and helped her report the matter at Ntunda Police Post, but she was sent away without any assistance by the OC Station because she was a sex worker. However, luckily, the OC Station was soon transferred, and his replacement met with HRAPF lawyers, and a meeting was held with local council officials during which the area defence secretary compensated the sex worker with UGX 60,000/- for the pain and injuries that were occasioned against her by his employee. The Local Council (LC) officials and the police officers in the area agreed to respect and protect sex workers' rights. The assailant was however never arrested, as he could not be traced.⁶⁶

⁶³ HRAPF/F/02/01/17.

⁶⁴ Art 21 of the 1995 Constitution.

⁶⁵ HRAPF/F /109/07/17.

⁶⁶ HRAPF/F/129/08/17.

d) Violation of the right to privacy

The Constitution guarantees the right to privacy of one's body, and therefore guarantees the individual right to bodily autonomy for all citizens. Unfortunately for sex workers, due to the fact that they are a criminalised community, this is a right that they are often deprived of, especially by law enforcement officials. There was only one incident of violation of this right that was documented in 2017:

In April 2017, a sex worker in Matugga was arrested on allegations that she was holding a young man captive and having sexual relations with him against his will. She was taken to Matugga Police Station, where she was charged with abduction. While in police custody, she was subjected to an HIV test against her will, and the results were shared with the young man's family members that were following up the case at the police. This was in spite of the fact that the young man had informed the police that he was an adult, and was wilfully cohabiting with the sex worker. The HIV test was also conducted, regardless of the fact the HIV status of a suspect facing charges of abduction is not part of the ingredients of the offence, as stipulated in the Penal Code Act.⁶⁷

2.2. Violations by Non-State Actors/Private Individuals

The Constitution stipulates that the rights and freedoms of the individual and groups enshrined in this chapter shall be respected by all organs and agencies of government and by all persons.⁶⁸ This implies that private individuals have a duty to respect individual rights.

The notion of the horizontal duty to respect rights within states has been further enunciated by the Office of the UN High Commissioner for Human Rights, wherein it has stated that while private actors do not have human rights obligations in the international sphere, they do have them in the domestic sphere, and that it is the international duty of the state to ensure that there are laws protecting individual and group rights from violation by them.⁶⁹

In 2017, private/non-state actors were responsible for 33 incidents of human rights abuses against sex workers, which were documented in 33 cases. As indicated in this report, the most common human rights abuses by non-state actors were in relation to the right to freedom from inhuman and degrading treatment.

⁶⁷ HRAPE/F/73/04/17.

⁶⁸ Art 20 (2) of the 1995 Constitution of the Republic of Uganda.

⁶⁹ Office of the High Commissioner for Human Rights, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* Accessed at <https://www.ohchr.org/documents/publications/training9chapter1en.pdf> (on 22nd September 2018).

2.2.1. Violations By Clients

10 incidents of human rights violations against sex workers by their clients were documented in 2017, and they all involved violation of the right to freedom from torture, inhuman and degrading treatment, the normative content of which has been explained above. The incidents of torture, inhuman and degrading treatment that sex workers were subjected to by their clients were of physical violence, and were as described below:

On the morning of 1st January 2017, a sex worker in Kalerwe was subjected to attempted strangulation and had her hair tagged at and pulled by her client. This was after she had told him she was tired of continuing with their sexual encounter, which had gone on for long, and she refused to give him back the money that he had paid her for it. The sex worker was rescued by her colleagues and the security personnel at the lodge. The man was arrested, but later released on bond, and was never rearrested for purposes of prosecuting the matter.⁷⁰

The sex worker that was arrested in January 2018 for allegedly biting her client's genitalia was in fact subjected to attempted strangulation and beaten by the client when she struggled to stop him from having unprotected sex with her against her will.⁷¹

On 26th March 2017, a sex worker in Nabweru was beaten up by one of her regular clients when he got jealous after he had found her with another client. With the help of staff from LMB, she reported the assault at Nabweru police post. The client was arrested, and the matter was settled at the police when he agreed to compensate her for the injury that he had inflicted on her.⁷²

In July 2017, a sex worker in Kajjansi had her client attempted to strangle her when she tried to stop him from removing the condom during sexual intercourse. The client successfully removed the condom and had unprotected sex with her against her will.⁷³

In the early morning hours of 15th September 2017, while on the street in Ntunda-Kyankwanzi District, a sex worker was approached by a man who offered her UGX 1000/- for her services, and she rejected his offer. The man responded by beating her up.⁷⁴

On the 19th of September 2017, at around 10:00 p.m., a sex worker offered services to a man who was her regular client, at a price that they both agreed upon, and which he paid. After their first sexual encounter for the night, the man

⁷⁰ HRAPF/F/15/01/17.

⁷¹ HRAPF/F/02/01/17.

⁷² Case reported at LMB.

⁷³ n 65 above.

⁷⁴ HRAPF/F/151/09/17.

requested for an extension of time with the sex worker, for which she demanded an additional payment. While they were having sexual intercourse, the man expressed dismay at the fact sex workers 'earn a lot of money'. From this, an argument ensued, which ended with the man pulling out a knife and cutting the sex worker across her face. The lodge manager burst the door open, upon hearing the sex worker's cry for help, although the client managed to escape. He was later arrested and detained at Kireka Police Station.⁷⁵

In September 2017, a sex worker in Mbiko was strangled and beaten by her client after he demanded that she gives him back the money that he had paid for her services.⁷⁶

In October 2017, a sex worker in Kinawataka offered her services to a man who took her to a lodge where there were two other men waiting for her. They drugged her and gang raped her. She was not able to report the matter to police because the men had not registered their names and other details in the lodge's guest register.⁷⁷

On 21st October 2017, a sex worker in Kisenyi was beaten by a client when he insisted on continuing to have sexual intercourse with her beyond the agreed time. The lodge manager came to her rescue and tried to get a hold of the client so that he could be taken to police, but he fled.⁷⁸

On 29th November 2017, a sex worker in Kinawataka got a client, to whom she offered her services at a fee that he agreed to and indeed paid. During sexual intercourse, the client stated that the condom was causing him itchiness, and he attempted to remove it. Because of this, a fight ensued between them, during which he tried to strangle the sex worker and beat her up. The latter was saved by her fellow sex workers, who accosted her client and dragged him to Kinawataka Police Station. The client was transferred to Jinja Road Police Station, and charged with assault in Nakawa court.

2.2.2. Violations by members of the communities in which sex workers work and live

a) Violation of the right to freedom from inhuman and degrading treatment

Sex workers are vulnerable to human rights abuses from the members of the communities where they live, and this is because of the negative societal attitudes towards sex work. In 2017, 12 incidents of human rights abuses against sex workers by members of the communities where they reside were

.....
⁷⁵ HRAPF/F/141/09/17.

⁷⁶ HRAPF/F/137/09/17.

⁷⁷ Case reported at AWAC.

⁷⁸ Case reported at LMB.

perpetrated. These were as follows:

i. Assault

On 12th January 2017 a sex worker in Kazinga was randomly accosted by a young man who grabbed her by the hair and started asking her whether he had ever paid for her sex.

In May 2017, a sex worker in Kawempe was beaten by her employer in the restaurant where she used to work during the day, because of her engagement in sex work. The sex worker reported the matter to LMB, and they engaged the LC1 chairman, who facilitated a mediation between the sex worker and her employer, and the matter was resolved amicably, with the sex worker getting compensated for the injury and distress that she suffered.⁷⁹

On 2nd June 2017, a transgender sex worker was beaten by a security personnel at a bar in Bukoto. This was after the security personnel had told the sex worker that he had stopped ‘gay people’ from entering the bar. The matter was reported at Kiira Road Police Station, and the security personnel was arrested, although he was later released on bond, and the sex worker chose not to follow up the matter to see to it that the security personnel is prosecuted.⁸⁰

On 22nd August 2017, at around 9:30p.m, a sex worker in Lugazi was assaulted by a patron in a restaurant, while she was having her meal. The matter was reported to Lugazi police, by both herself and the assailant. The police officers forwarded the matter to court, so that it could be resolved there, but the sex worker later lost interest in following it up.⁸¹

The case that involved a sex worker that was beaten by a prospective client on the 20th of August, 2017, in Kyankwanzi, involved the LC secretary’s employee as the perpetrator.⁸²

The men that kidnapped and beat up a male sex worker in Bukoto and threatened to take him to the police for being gay and promoting homosexuality if he did not pay them UGX 200,000/- were residents of the area where the sex worker also used to reside.⁸³

On the night of 16th June 2017, a sex worker in Kinawataka had her home invaded by a crime preventer, who beat her up, destroyed the property in her house and threw away her ARV medication. She reported the matter

⁷⁹ Case reported at LMB.

⁸⁰ Case reported at LMB.

⁸¹ HRAPF/F/126/08/17.

⁸² n 74 above.

⁸³ n 9 above.

to the police, but later, when she informed them that she had spotted the crime preventer, and called the police to get him arrested, they did not turn up.⁸⁴

On 17th October 2017, a random man beat a sex worker while she was at work in a bar in Rubaga.⁸⁵

ii. Rape

As has been indicated above⁸⁶, rape is a violation of the right to freedom from inhuman and degrading treatment. For the year 2017, the following are the incidents where this violation was perpetrated against sex workers by members within the communities that they reside.

On 7th August 2017, at around 2:00 a.m., a sex worker in Kazo was gang raped by 3 men that were music performers in a local bar. The matter was reported at Kazo Police Post, although the police failed to trace the men in order to have them arrested.⁸⁷

On the night of September 2017, a sex worker in Kawempe was beaten and raped by a man that operated a local video hall. This was after the screening of a movie in the video hall, when all the viewers had left. The sex worker informed LMB about the matter and they assisted her to file a complaint at Kawempe Police Station. The man was arrested, although he was later released when the sex worker decided to abandon the case.⁸⁸

On the night of 15th November 2017, a sex worker in Wandegeya was raped and beaten by a man that used to work in a betting outlet. The incident was reported at Wandegeya Police Station, although the man was never arrested because he could not be found.⁸⁹

b) Violation of the right to freedom from discrimination and equality

In February 2017, the residents of Katanga, in Wandegeya, filed a complaint against a sex worker, accusing her of being a public nuisance because of her engagement in sex work, and demanded that she should be banished from the area.

⁸⁴ HRAPF/F/123/08/2017.

⁸⁵ Case reported at LMB.

⁸⁶ n 66 above.

⁸⁷ Case reported at LMB.

⁸⁸ Case reported at LMB.

⁸⁹ Case reported at LMB.

2.2.3. Intimate Partner Violence

Still because of the negative social attitudes towards sex work, and gender stereotypes, sex workers suffer various forms of domestic violence, which, in terms of the definition of torture under the Prevention and Prohibition of the Torture Act, as well as inhuman and degrading treatment under the UN Convention, amount to violation of the right to freedom from inhuman and degrading treatment. Nine such instances of violence were documented in 2017:

In June 2017, a sex worker fought with her sexual partner with whom she had been cohabiting. In the course of fighting, they tore each other's clothes and they ended up in the yard, half naked. Their yelling attracted a lot of attention, and people gathered around them. They were fighting because the sex worker wanted the man to leave her house, which he loudly stated he was not going to do, especially because she was a sex worker and had infected him with HIV. He got the sex worker's ARVs and threw them in the yard.⁹⁰

On 16th June 2017, a sex worker in Rubaga was beaten by her partner with whom she was cohabiting when she returned home without having made any money for the night. The sex worker informed LMB about the incident and they helped her file a complaint at the Kisenyi Police Post, although the sex worker's partner disappeared and the police therefore failed to arrest him.⁹¹

On 8th August 2017, a sex worker in Wandegeya was severely beaten by her husband, with whom she has 2 children, after he learnt about her engagement in sex work. She reported the matter at Wandegeya Police Station, although she chose not to pursue it any further.⁹²

On 21st August 2017, a sex worker in Kisaasi was beaten by her partner with whom she was cohabiting when she returned home late from work. The partner shunned her for her engagement in sex work, despite having known that she was a sex worker when he started his relationship with her.⁹³

In November 2017, a sex worker in Kawempe was found by her husband, while she was on the street engaging in sex work, and he slapped her, upon which a fight between them ensued.

On 13th November 2017, a transgender sex worker was beaten by her partner with whom she was staying in Makindye because of her engagement in sex work. She reported the incident at Salaama Police Post, although the matter was later amicably resolved with support from LMB.⁹⁴

⁹⁰ Case reported at WOPEIN.

⁹¹ Case reported at LMB.

⁹² Case reported at LMB.

⁹³ Case reported at LMB.

⁹⁴ Case reported at LMB.

On 19th December 2017, a female sex worker in Makindye was battered by her husband when he discovered that she was involved in sex work.⁹⁵

On 21st December 2017, a sex worker in Kamwokya was severely beaten by her boyfriend with whom she had been cohabiting for 2 years. He beat her up because he could no longer deal with the fact that she was involved in sex work.⁹⁶

In 2017, a sex worker got impregnated by her long time client, who neglected providing for the child during the pre-natal period. When the child was born, he started providing for her and cohabiting with the sex worker. After two months, he stopped providing child support, which compelled the sex worker to resume sex work. When the man found her on the street, he beat her and stated that fathering a child with a sex worker was as good as being childless.⁹⁷

2.2.4. Violations By Family Members

a) Violation of the right to freedom from inhumane and degrading treatment

On 11th May 2017, a sex worker in Bwaise, Kiyindi zone was stripped naked in public and beaten by her family members for engaging in sex work. She did not take any action against them because she did not want to antagonise her relationship with them any further⁹⁸

In July 2017, a transgender male sex worker was beaten by his relatives for resorting to sex work and refusing to enter into a marriage that his family members had arranged for him in order to remedy what they considered to be his sexual aversion of being attracted to 'fellow men'. This forced him to run away from home.⁹⁹

⁹⁵ Case reported at LMB.

⁹⁶ Case reported at LMB.

⁹⁷ Case reported at AWAC.

⁹⁸ Case reported at LMB.

⁹⁹ Case reported at LMB.

5. ANALYSIS OF TRENDS IN HUMAN RIGHTS VIOLATIONS AGAINST SEX WORKERS IN 2017

In 2017, the prevalence of human rights violations against sex workers was highest in the districts of Kampala and Wakiso. Out of the 186 incidents of human rights violations that were documented against sex workers, 173 occurred in Kampala and Wakiso, while 13 occurred in Kalangala, Kyankwanzi, Masaka, Lugazi, Mukono and Mubende. Due to the high level of urbanisation in Kampala and Wakiso, 93% of the human rights violations that were documented to have been perpetrated against sex workers in 2017, evidently occurred in the urban areas, while 7% occurred in the rural areas. The rationale behind this is the lesser attachment to traditional socio-cultural norms on women's sexuality and gender roles in the more urban settings, which propels more women to engage in sex work. Additionally, the economic pressures in the urban settings compel many women with limited skill sets that move from the rural areas with the hope of getting gainful employment to engage in sex work as a better means of livelihood for themselves and their families. The generally higher economic levels in the more urbanised areas also makes for a wider and better customer base for sex workers. Unfortunately, while there are various incentives for a sex worker to engage in transactional sex in urban settings, the economic pressures that are characteristic of almost all urban settings also negatively impact on law enforcement officials. These law enforcement officials who are not adequately compensated for their work may be tempted to use the existing legal framework in order to extort sex workers for much-needed money.

The most common human rights violation that was reported to have been committed against sex workers in 2017 was the violation of the right to liberty. These were 98 out of the 186 incidents of human rights violations that were documented. This constitutes 53% of the human rights violations that were committed against sex workers. This is due to the fact that sex work in Uganda is criminalised, which makes sex workers a criminalised community that is vulnerable to getting caught up in the criminal justice system, albeit unjustly. Additionally, while sex work is criminalised under sections 138 and 139 of the Penal Code Act, it is virtually impossible for law enforcement officials to catch sex workers committing the actual act that is criminalised as amounting to 'prostitution' under the Penal Code Act.¹⁰⁰ This causes law enforcement officials to resort to the ambiguous vagrancy laws, especially the offence of being a rogue and vagabond,¹⁰¹ which give them leeway to unjustly and wantonly arrest sex

¹⁰⁰ According to sec 138 of the Penal Code Act, prostitution is when a person, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other form of sexual gratification for monetary or other material gain. It is virtually impossible for police officers to catch sex workers actually holding out as such.

¹⁰¹ Sec 168 of the Penal Code Act.

workers. Vagrancy laws are also used by law enforcement officers against sex workers when they arrest them without reasonable cause or reasonable suspicion that they have committed an offence. This is usually in circumstances where mysterious deaths occur in or near the lodges where sex workers operate, and all the sex workers in the area are arrested on allegations that they were responsible for the deaths, only for them to be charged with being rogue and vagabond.¹⁰²

The existence of vagrancy offences that facilitate the arbitrary arrest of criminalised communities such as sex workers on Uganda's law books is an indication that in addition to failing to respect their right to liberty, the state has failed to uphold and promote it. Uganda is a state party to the International Covenant on Civil and Political Rights (ICCPR). Article 9 of the ICCPR stipulates that everyone has the right to liberty and security of person and that no-one shall be subjected to arbitrary arrest or detention, save on such grounds and in accordance with such procedures as are provided for by law. The UN Human Rights Council¹⁰³ has interpreted 'arbitrariness' not to mean inappropriateness, injustice and lack of predictability rather than simply unlawfulness.

Furthermore, the police often subject sex workers to prolonged detention in a bid to compel them to pay bribes in exchange for their release. Sex workers often give in to this form of intimidation and pay money in order to attend to other aspects of their lives such as their medical needs as well as the needs of their children. While this appears to be a quicker solution, it only escalates the problem of arbitrary arrests owing to the fact that it encourages arbitrary arrests by law enforcement officers with a view to extorting money from the sex workers. The sex workers that are not able to meet the police officers' demands often end up being charged with vagrancy offences and even sometimes end up spending time on remand without their cases being prosecuted for lack of witnesses. It is only a few that are able to access legal assistance while at the police station that survive being presented in court. For those that are charged in court, the more practical solution had been to make a plea bargain with the state prosecutors wherein the sex workers plead guilty to the charges, which are virtually always of misdemeanors, in exchange for non-custodial sentences such as community service and release on caution. This is an effort to combat the negative effects of prolonged detention, which often entail sex workers not being able to access medical treatment while in custody, be it at police or in prison, as well as the danger of their children getting harmed as a result of being left unattended.

The report further indicates that most of the human rights violations against sex workers were directly perpetrated by the state, with the most notorious state agency being the Uganda Police Force, which was responsible for 153 of the 186 incidents of human rights violations that were perpetrated by the state, which

¹⁰² Sec 160 of the Penal Code Act.

¹⁰³ *Van Alphen v Netherlands*, n 20 above.

constitutes 82% of such violations. In addition to interfering with sex workers' enjoyment of their rights, the state also did little to give redress for the other 33 incidents of human rights violations that the sex workers suffered at the hands of clients, intimate partners and members of the general community. The cases in which police officers actually took positive steps towards protecting sex workers' rights in a few hotspots were minimal. The positive steps also did not have a long-term impact, as police officers are often transferred from one police station to another and they have different perceptions of observance of human rights for criminalised communities such as that of sex workers.

The subjection of sex workers to various forms of violence, discrimination and stigma that are illustrated in the various incidents that were documented pushes them further underground and negatively affects their health seeking behaviour, thus creating fertile ground for increase in HIV infections contraction of AIDS among the members of the sex worker community and the general community.

6. CONCLUSION AND RECOMMENDATIONS

6.1. Conclusion

The report indicates that the criminalisation of sex work under sections 138 and 139 of the Penal Code Act continues to place sex workers in a precarious position with the law, which makes them susceptible to various forms of human rights violations that are occasioned against them while in the criminal justice system. It is clear from the report that while these provisions are inoperative, they render sex workers a criminalised community that is left at the mercy of law enforcement officials and community members that are strongly prejudiced against them and view them as social misfits and outlaws. These prejudices are buttressed in the law, and the weaknesses in the criminal justice system are exploited to commit various forms of violence against sex workers. In as far as using the law to occasion violence against sex workers is concerned, vagrancy offences were the key weapon used by law enforcement officers, hence, it is extremely important that they be scrapped from Uganda's law books. On the whole, the legal framework in Uganda provides a harsh climate for the realisation of human rights of women that engage in sex work, which explains why the majority of incidents of human rights violations that were experienced by the sex workers were within the criminal justice system, with the police emerging as the greatest perpetrator. It is important to continue working towards creating and maintaining meaningful engagements with law enforcement officers and other duty-bearers to better the human rights situation for sex workers in Uganda.

6.2. Recommendations

To the Uganda Police Force

The Uganda Police is mandated to keep law and order and protect life and property. There have been a few instances where police have observed and protected the rights of sex workers, but they remain the top violators of sex workers' rights in Uganda, and much work needs to be done in this regard, some of which includes the following:

- The Directorate of Human Rights and Legal Services should endeavor to train police officers in matters of human rights, with emphasis on rights closely relating to women engaged in sex work. This should be done with a view to reduce human rights violations against sex workers.
- The police should avail sex workers with equal protection of the law by ensuring that the violations that are perpetrated against them are properly investigated and handled.

- The Directorate of Human Rights and Legal Services should create a conducive environment for organisations working towards the promotion of sex workers' rights to partner with the police and easily engage them on issues relating to sex workers' rights.
- The Inspector General of Police ought to work towards eradicating the culture of corruption within the Uganda Police Force. This could be done by way of strengthening support for the Police Professional Standards Unit to fulfill its mandate of investigating complaints of police misconduct and subjecting errant officers to disciplinary action; as well as negotiating for better pay and welfare for police officers in order to reduce incentives for arresting individuals, especially sex workers, with a view to extort money from them.
- The Directorate of Human Rights and Legal Services should train the police to apply a human rights-based approach to cases involving sex workers. They should stop parading suspected sex workers who have been arrested before the media as they are still presumed innocent until proved guilty and such parading constitutes inhuman and degrading treatment and also puts the women at risk.

To the Directorate of Public Prosecutions

The office of the DPP is charged with the institution and prosecution of criminal cases in the country. This office can use its mandate to eradicate human rights violations against sex workers in the following ways:

- Develop prosecutorial guidelines for the offences of prostitution, being idle and disorderly, and being rogue and vagabond in order to guide prosecutors on the ingredients of the offence and what evidence they should look for before sanctioning files with charges related to sex work.
- Review the files to ensure that there is enough evidence to support charges of being rogue and vagabond as this provision is usually abused to charge sex workers even where there is no sufficient evidence.

To the Uganda Human Rights Commission

The Uganda Human Rights Commission has the constitutional mandate to investigate incidents of human rights violations and availing redress for them, and to ensure observance of human rights by other state organs and agencies in the course of performing their duties. In order to ensure that sex workers' rights are respected and protected by the state, there is need for the Commission to do the following:

- Investigate and document complaints of human rights violations against sex workers and include them in annual reports to Parliament with the necessary recommendations for legal and policy reform.
- Strengthen partnerships with organisations working with the sex worker community to monitor and document incidents of human rights violations against sex workers, and enable them to understand the Commission and its key role in advancing the sex workers' rights movement.
- Make recommendations for legal reform on laws that promote stigma and violence against sex workers.
- Encourage various state organs, especially the police and local government councils, to employ a human rights-based approach in handling cases involving sex workers.

To the Equal Opportunities Commission

The Equal Opportunities Commission is mandated by the Constitution to address marginalisation and discrimination in Uganda. As such, it is key in addressing stigma and discrimination suffered by women by virtue of their involvement in sex work. In order to make progress on this, the Commission ought to:

- Investigate systematic discrimination against women on the basis of their involvement in sex work in the various state organs and agencies.
- Train the Commission staff members on human rights issues relating to women that engage in sex work, so as to build their capacity to handle matters of stigmatisation and discrimination against sex workers.
- Create and strengthen partnerships with organisations working towards the promotion of sex workers' rights to enable the sex worker community to understand the Commission and how they can utilise it to further their agenda.
- Compile reports on discrimination and marginalisation of sex workers and make the necessary recommendations to the relevant stakeholders on how to combat such discrimination and marginalisation.

To the Ministry of Health and the Uganda AIDS Commission

The Ministry of Health is charged with management of the health sector in Uganda, while the Uganda AIDS Commission is mandated with coordinating HIV/AIDS programming in the country. In this regard, in order to promote sex workers' right to health, and to protect them, the Commission is recommended to do the following:

- Inform the other state agencies of the danger in harassing and violating the rights of sex workers particularly as regards hampering the fight against HIV/AIDS.
- Publish reports showing the link between violence against sex workers and the increasing HIV prevalence among sex workers and among the general population in Uganda.
- Train public health workers on provision of sex worker friendly health services.
- Extend to comprehensive health services to sex work sites.

To Members of Parliament

The Parliament of Uganda is the legislative organ of government with the primary duty to enact laws on various issues in the country. It also has the power to check acts of state institutions and agencies. The Parliament ought to employ its mandate and powers to better sex workers' rights in the following ways:

- Parliament should enact laws that are not discriminatory to women that engage in sex work, or fuel violence against them.
- Repeal laws that are obsolete and which fuel violence against sex workers, in particular Section 138 and 139 of the Penal Code Act.
- Condemn all forms of violence against women on the basis of their involvement in sex work.
- The Parliamentary Committee should engage sex workers and organisations working with the sex worker community in formulation of laws that impact on sex workers' lives.

To the Judiciary

The judiciary is mandated to interpret, apply and enforce laws and the rights and duties that they create. In this regard, in order to protect the rights of sex workers, the judiciary ought to do the following:

- The Constitutional Court should hasten the hearing of the case of *Center for Domestic Violence and Others v Attorney General* as a positive step towards reforming the Anti-Pornography Act, 2014 as one of the laws that fuel violence against sex workers.
- Expediently handle and conclude cases where individuals, especially women that are suspected of engaging in sex work, are charged with vagrancy and other minor offences as prolonged stay on remand has

negative effects on their health and the wellbeing of their children.

- Promptly hear and determine applications for unconditional release of individuals that are kept in police custody longer than is provided for under the Constitution.

The Uganda Law Reform Commission

The Uganda Law Reform Commission is established under Article 243 of the Constitution, which gives it the mandate to make recommendations for legal reform. The Commission can make use of its mandate to promote sex workers' rights by:

- Making formal recommendations to Parliament to repeal provisions in the Penal Code Act that criminalise sex work and related activities that are obsolete and inoperative, yet promote prejudice and discrimination against sex workers. These include Sections 136, 137, 138 and 139 of the Penal Code Act.
- Making formal recommendations for the repeal of laws that promote violence against sex workers, including vagrancy offences under section 160 (Common Nuisance), section 167 (Idle and Disorderly) and section 168 (Rogue and Vagabond) of the Penal Code Act.

To the International Community

The international community is a key stakeholder in world politics, a key component of which is state adherence to human rights standards. The international community can thus influence state organs and agencies to adopt more positive measures towards the promotion of sex workers' rights. As such, the international community ought to:

- Hold the government of Uganda accountable to its regional and international human rights obligations to all individuals, including sex workers.
- Support initiatives geared towards creating public awareness on sex workers' rights and combating discrimination and violence against women because of their engagement in sex work.

To National Human Rights Organisations working with the Sex Worker Community

The human rights CSOs in Uganda that work towards the promotion of sex workers' rights have a duty to keep issues relating to sex workers rights at the forefront of the state's human rights agenda. As such, they ought to:

- Build capacity of staff members to document human rights violations against women based on their engagement in sex work, and use the results obtained from such documentation to advocate for the adoption of key strategies in the promotion of rights of sex workers.
- Engage more in programmes that aim at creating public awareness on sex workers' rights and ending violence against sex workers.
- Support the role of the Uganda Human Rights Commission to monitor and document incidents of human rights violations against sex workers.
- Support the role of the Equal Opportunities Commission of promoting public awareness and understanding of the concepts of equal opportunities and marginalisation with regard to sex workers.
- Create partnerships with other organisations to monitor and documents human rights violations against sex workers.
- Streamline systems of reporting incidents of human rights violations, evidence collection and data storage to enable easy verification of violations against women based on their involvement in sex work.

To the Media

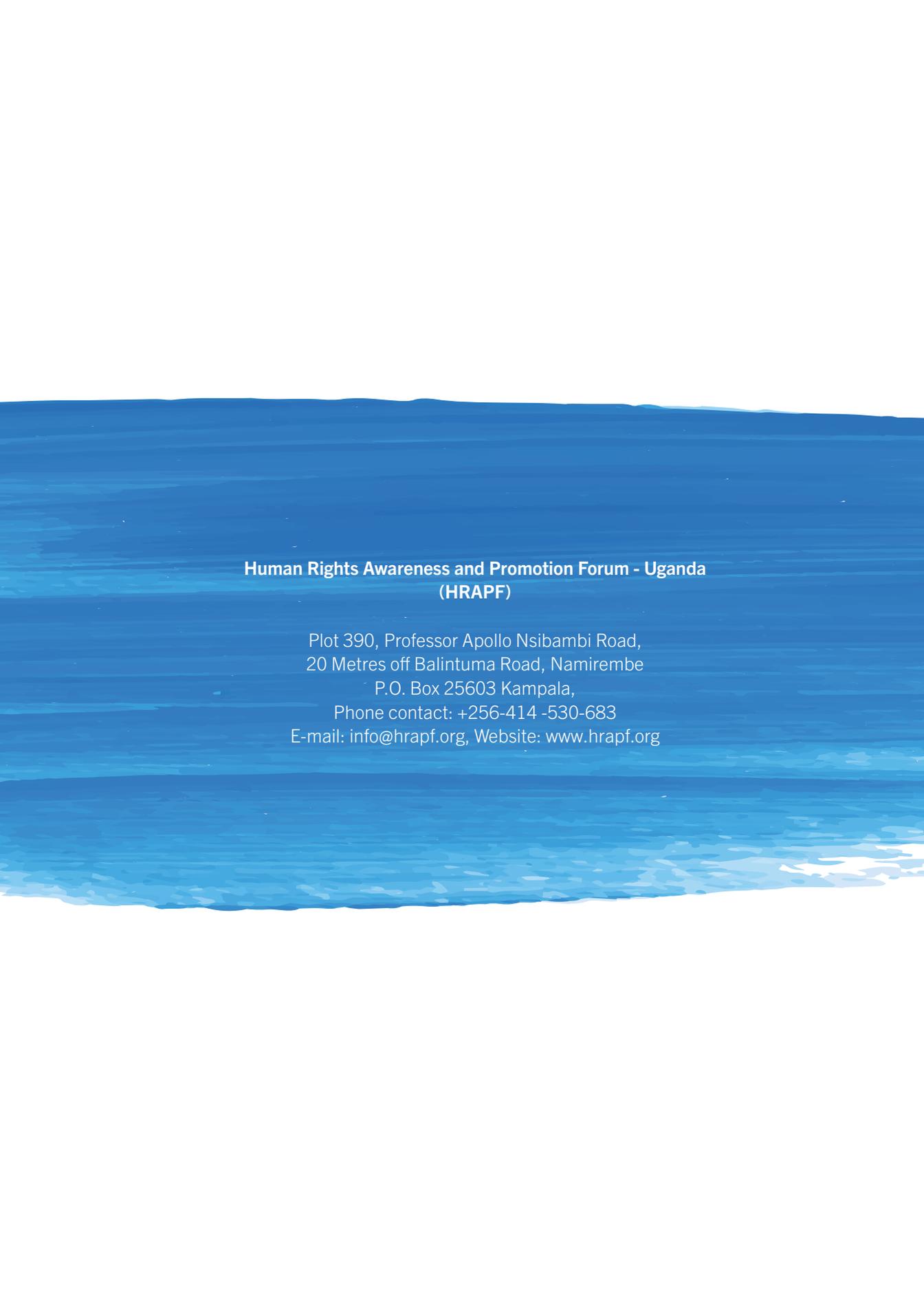
The media is a strong tool in shaping opinions on various issues, and they should therefore use this strength to foster respect for sex workers' rights, rather than feed the already existing prejudices against sex workers. In this regard, the media ought to:

- Be respectful to all individuals, especially women, regardless of their supposed involvement in sex work, in their reporting.
- Avoid convicting women that are suspected of engaging in sex work in 'the court of public opinion' without a legal conviction.
- Conduct research on, monitor and report on instances of human rights violations against sex workers.

To the President of the Republic of Uganda

The President of Uganda is mandated by the Constitution to assent to or reject laws passed by Parliament, and can thus influence the enactment of laws that are non-discriminative towards sex workers and which do not fuel violence against sex workers. In this regard, the President is called upon to:

- Veto legislation that promotes discrimination and violence against women because of their involvement in sex work.
- Hold police and all its agencies to their duty to effectively investigate issues of human rights violations against sex workers.



**Human Rights Awareness and Promotion Forum - Uganda
(HRAPF)**

Plot 390, Professor Apollo Nsibambi Road,
20 Metres off Balintuma Road, Namirembe
P.O. Box 25603 Kampala,
Phone contact: +256-414 -530-683
E-mail: info@hrapf.org, Website: www.hrapf.org