



JAS Programme

Joint Advocacy for Sexual Reproductive
Health and Rights in Uganda

A feminist approach to sex work

Technical Brief



Background And Purpose

The purpose of this technical brief is to promote a common understanding of an intersectional feminist analysis and approach to sex work in the context of Uganda, where multiple often divisive arguments have been advanced for or against sex work either by those drawing from the prevailing legal and policy framework that criminalizes any acts that fall under the orbit of what is considered sex work or by conservative forces such as religious or cultural leaders that view sex work from a moralist lens or by the feminist movement that draws on the consolidated opinions of four different feminist philosophies that stemmed from the “sex wars” of the 1980s such as abolitionism, neo-abolitionism, decriminalization and legalization or by the public health imperative of stemming STDs especially HIV/ AIDs in the society.

Further, this brief seeks to contribute to strengthening the voice and agency of sex workers and sex worker organisations to advocate for SRHR interventions that promote bodily autonomy and choice.

Akina Mama wa Afrika (AMwA), as one of the implementing partners under the Joint Advocacy for Sexual Reproductive, Health and Rights (JAS) Programme seeks to ensure that an intersectional feminist analysis is infused in the design and implementation of the program including the development of critical feminist analysis pieces on thematic areas of the program. This brief looks at the definition of sex work, the different legal and social contestations on sex work, and also elaborate on SRHR issues for sex workers.



In the Uganda legal and policy framework, sex work as a term has not been defined. It can however be conflated with the term prostitution. A prostitute is defined by the Penal Code Act, CAP 120, “” .1 Sex work has however been given a broader definition by scholars and other jurisdictions as;

- a) The exchange of sexual services, performances, or products for material compensation. The term sex work encompasses all forms of activities related to the sex industry.²
- b) The provision of sexual services in exchange for money or other forms of compensation such as housing, food, or drugs. It is commonly referred to as the oldest profession which is indicative of its presence in human civilization for centuriesThe authors continue to provide several occupational categories in prostitution, “ranging from high-end escort/call girl services to street level services.³
- c) A sexual act or contact with another person in return for giving or receiving a fee or a thing of value.⁴

The underlying theme within the definitions and understanding of sex work is that there is a vendor who traditionally considered to be (often considered societal undesirables and their contribution to the workforce and larger economy is unrecognized and the invisible man as purchaser whose identity is preserved. This is evidenced by the double standards within the law where the woman is often punished, while the purchaser is not.

1.1 Forms of sex work

Sex workers exist in multiple diversities and include The most commonly understood form of sex work is street workers who are often poor and lack a designated place to work.

However there are other forms such as;

- a) High end escort services who meet clients in fancy hotels and at parties as well as;
- b) Indirect sexual stimulation (pornography, stripping, telephone sex, live sex shows and erotic webcam performances).

1 Section 138

2 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4730391/#R64>

3 Ibid

4 The United States Department of Justice.



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Legal and policy framework on sex work in Uganda.

The existing laws in Uganda criminalize and stigmatize sex work. Despite Uganda's Constitution being a progressive document incorporating fundamental human rights and freedoms for all persons⁵ and Uganda being a state party to various international human rights instruments that provide adequate safeguards and protection measures for sex workers, there exist numerous domestic legislations which not only criminalize 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.⁶

Sections 138 and 139 of the Penal Code Act criminalize prostitution. Section 138 defines a "prostitute" and Section 139 provides that, any individual engaged in selling sex can be imprisoned for up to seven years. Third parties, like brothel owners, also face up to seven years imprisonment for "living wholly or in part on the earnings of prostitution." Prostitution charges are difficult to prove for law enforcement. Thus, the police often use section 168 of the penal code, which creates the offense of rogue and vagabond, to intimidate and exploit sex workers for monetary and sexual bribes. Sex workers especially those who work from the street are continually targets of arrests and harassment by law enforcement.

In 2014, Uganda enacted the Anti-Pornography Act (APA), which defines pornography as “any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual excitement.”¹⁶ The Anti-Pornography Act has led to the further criminalization of sex work because police arbitrarily deem sex workers’ appearance or attire “sexually exciting.”

Further, Ugandan law also criminalizes homosexuality, subjecting sex workers who are LGBTIQ to double prosecution and stigmatization. Although the constitutional court declared the Anti-Homosexuality Act of 2014 unconstitutional because it was passed without the requisite quorum, the Ugandan Penal Code of 1950 still criminalizes the LGBTIQ community. Under Section 145, consensual sex between individuals of the same sex is prohibited and punishable by life imprisonment.¹⁸ Section 146 makes any person who attempts to commit the “unnatural offences” enumerated in Section 145 liable for seven years imprisonment under felony charges. In 2014, Uganda also passed the HIV and AIDS Prevention and Control Act, which requires mandatory HIV testing for those charged with sexual offences. The Act also criminalizes the transmission of HIV with up to five years in prison. This law is both discriminatory and counter-productive, since it further marginalizes and alienates the at-risk groups who already face stigma and discrimination. These measures exacerbate the pre-existing stigma and institutional exclusion that prevent sex workers from accessing treatment and health services.⁷



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⁷ Human Rights Violations of Sex Workers in Uganda: Submission to the United Nations Universal Periodic Review of the Republic of Uganda; Submitted: March 21, 2016



3.1 Is sex work, work? Is it exploitative?

The contest about sex work is a multi-faceted debate. There is the anti-prostitution feminist camp which characterizes prostitution as an exploitative institution of patriarchy, a form of sexual slavery and violence against women, and therefore a violation of women's rights. They have used the human rights paradigm as a clarion call to "save" women from prostitution. On the other hand, the pro-sex-worker feminist camp, uses the language of human rights to advocate for sex workers' protection by characterizing sex work as a legitimzassion.⁸

One side of the debate posits that sex work is structural exploitation of women and women's bodies. The premise of this is based tied to the question; whether sex work or any exchange of sex for something of financial value is or can be voluntary. This camp of feminists generally view all commercial sex acts as patriarchal and oppressive. They argue that sex work is inherently violent and thus another manifestation of social control and male domination and exploitation of women and their bodies. Advocates of this debate are inclined to ban all forms of sex work and sex industry from existence.⁹

This argument for this led by radical feminists is that women have few choices except to become persons who then freely choose roles socially constructed for them. ""¹⁰

8 Fordham International Law Journal Volume 33, Issue 4 2011: Sex Work and Human Rights in Africa: Chi Mgbako and Laura A. Smith

9 Lara Gerassi: A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work.

10 Debra Haak: Re (De) Fining Sex Work and Prostitution: Conceptual Clarity for Legal Thinking.

In this model sex work is viewed as, economic exploitation which includes many forms, primarily prostitution and pornography, and therefore must be viewed as oppressions of sex and class. Women's sexuality and sexual energy is appropriated by the men who buy or control the sexual exchange (for example pimps) just as any worker's energy is appropriated to the capitalists for their profits, leading to alienation of one's choice and bodily autonomy.

The other side of this debate is the one that focuses on all the ways sex work is legitimate work, can involve human agency, and may be potentially validating or empowering for women. In addition, it criticizes the debate about abolishing sex work on account of exploitation as paternalistic. This argument is to the effect that categorizing all sex workers everyone as ¹¹victims of sex trafficking and or exploitation creates an unhelpful division within the law and social services of looking for victims that are always under some form of force, fraud, or coercion and therefore under the control of another. Critics also argue that these forms of feminism do not support the autonomy of women currently exchanging or who have exchanged sex for money when they choose to leave the field or provide any subsequent form of advocacy work.

The focus is on the ways in which sexual services qualify as work. This argument holds that there is nothing inherent in sex work that would prevent it from being organized for mutual gain to all parties-just as in other economic transactions. The empowerment paradigm provides a viewpoint that contrasts from the oppression paradigm in that it places emphasis on the issue of autonomy when discussing sex work.¹²

This is the argument for decriminalization of sex work because criminalization of the sex work compromises the ability of sex workers to properly screen clients, affects their negotiation power for safe sex, leads them to work from hide outs and limits their access to HIV tests/treatment and other health services due to fear and therefore increases their vulnerability to violence or exploitation in their workplace. Feminists in favor of this side of the debate claim an embodiment of the spirit of empowerment and liberation which includes, amplifying the voices of sex workers and fighting to make the profession safe after all the majority of sex workers, and research, agrees that decriminalization would improve the health outcomes of those in the profession.¹³



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¹¹ Lara Gerassi: A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work.

¹² Halcyon Francis: Educating Students about the Social Constructs of Sex Work: Integrating a Course Focused on Prostitution into the Social Work Curriculum.

¹³ https://www.who.int/hiv/topics/sex_work/en/



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A Feminist approach to sex work

A feminist approach to sex work foregrounds the principle of bodily autonomy which is essentially “the right to self-governance over one’s own body without external influence or coercion.”¹⁴ Bodily autonomy is rooted in discourse on body politics that dominated second wave feminism and fronted sex work as an issue of legitimate concern, in the same vein as a woman’s right to safely terminate an unwanted pregnancy. Bodily autonomy “relates to the concept of affirmative consent, which requires full and eager participation in any sexual encounter”¹⁵ and has voice, choice and agency as critical components.

It is important to acknowledge that women from developing countries demonstrate constrained levels of agency that impact their ability to consent to sex work. The legal and economic barriers that push women from developed countries into the sex industry differ greatly than that of white women who benefit from social privilege, and therefore many of the scenarios in which women of from developing countries participate in sex work or other commercial sex acts may align with definitions of modern-day trafficking. Women from developing countries are statistically more likely to engage in commercial sex under false pretenses such as coercion, in which the boundaries of consent are obscured, and view their sex work as entrapment or survival sex.

Choice --

the ability of individuals to make and influence decisions that affect their lives. Sex work is often a manifestation of women's economic hardships, however, it is an option that provides an alternative to other low wage economic endeavors. One can therefore choose to perform sex work out of a number of options available. However power dynamics in the field of sex work make choice incredibly complex to navigate. The legal regime and the social status of sex workers means that most of the choices available to sex workers are few and quite unfavourable. For example some of them do not have a choice over which clients to have sex with, or which sex acts to engage in, or a choice on how much to be paid. The power lies mostly in the client's hands as sex work is mostly illegal or stigmatized.

Voice--

the capacity to actively assert one's interests, articulate opinions and desires, demand change, and to shape and share in discussions that are relevant to one's life. In an ideal world, sex workers should be able to comfortably negotiate with clients over services offered, how much to be paid and to demand for respect and recognition. However, as discussed, the power of voice for sex workers shrinks because of their location in society where they are not seen as bonafide constituents with needs and contributions to make to society. Feminist organising and solidarity building among sex workers can strengthen and amplify their voice.

Agency--

the capacity/ability to make an individual choice or take action on something. Agency is linked to voice and choice, and is also quite complex because it is influenced by social conditioning. It is hard to determine with full certainty if a choice one makes is truly "individual" and is made independent of prevailing norms.

While feminist anthropological academia continues to progress by considering cross-cultural narratives of sex work, one question remains: can sex work legislation advance the roles of women, or does its perceived exploitive and misogynistic nature hinder social and legal advancement?



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Sexual and Reproductive Health and Rights needs of sex workers

Sex workers are a severely stigmatised population and therefore extremely vulnerable to adverse sexual reproductive health outcomes related to having multiple sexual partners such as unwanted pregnancies, high exposure to sexual transmitted infections (STIs), and sexual violence, among others. (Uganda Network of Sex Work-led Organizations, UNESO)

The nature of sex work means that a number of unique SRHR needs arise, which have to be met in order to satisfy the Guttmacher-Lancet Commission's definition of SRHR¹⁶ which emphasizes physical, emotional, mental, and social wellbeing as well as decision making power over one's own body as critical to achieving SRH.

5.1. What are the most common intersecting identities of sex workers?

Sex workers are diverse and come from a different backgrounds and have different experiences that yield a variety of identities some of which include; Women living in poverty Transgender women; Women living with HIV; Illiterate women; Migrant women; Differently abled women and Women who use and inject drugs.

An intersectional analysis shows that one sex worker could harbor all or some these identities which means that their vulnerability is increased, as well as their SRHR needs.

¹⁶ <https://www.guttmacher.org/guttmacher-lancet-commission/accelerate-progress-executive-summary>

5.2. Sex work issues under the Sexual and Reproductive Health and Rights (SRHR) umbrella

Stigma and discrimination— A lot of judgment and stigma towards sex work on moral grounds exists in societies around the world. Sex workers subvert norms around sexual relations by challenging the idea that women should only have sex within the institution of marriage with their male partner. Sex workers also challenge the public/private dichotomy of sex which has always been seen as something to be done in dark bedrooms with no prying eyes, certainly not spoken about publically and least of all hawked for economic gain. Furthermore, the idea of women deciding for themselves how their bodies will be used (not to ignore that some of these choices are fraught with extenuating circumstances), is decidedly an insurgent one. Sex workers are therefore seen to be wrecking the fabric that holds society together and therefore a threat. Sex workers are consequently treated as outcasts and discriminated against through policy and practice across socio-economic and political issues. For example, because their work is not considered legitimate, it is not accorded the labour protections that other forms of trade enjoy. When trying to access healthcare, they have to conceal who they are for fear of judgment and reprisal from health workers. Subsequently, their unique needs are not attended to.

Criminalization— The vast majority of countries in the world have either criminalized sex work or regulate it in some regard. Making it illegal to make a living off of proceeds from sex work contributes to a slew of SRHR challenges that sex workers face. It has been argued that criminalization helps to entrench sex workers' already vulnerable location in society because they have no channels of recourse on a number of issues. Sex workers for example cannot openly seek health services for fear of being arrested. Already invisible to society because of the stigma they face, any human rights violations against them are also rendered invisible because of the illegality of the work they do.

High Rates of HIV Infection -- UNAIDS considers sex workers as part of key population groups that are particularly vulnerable to HIV and frequently lack adequate access to services. However, in spite of this, sex workers are least likely to seek health services. This is informed in part by the stigma associated with sex work, with being HIV positive, and lastly the criminalization of sex work. Evidence shows that HIV prevalence among sex workers is 12 times greater than among the general population. Even in very high prevalence countries, HIV prevalence among sex workers is much higher than among the general population (3). An analysis of 16 countries in sub-Saharan Africa in 2012 showed a pooled prevalence of more than 37% among sex workers.¹⁷ UNAIDS recommends the removal of punitive laws, policies and practices that block an effective AIDS response.

Access to Sexual and Reproductive Health services— Sex workers have challenges meeting the costs of regular health checkups, purchasing commodities such as condoms and other contraceptives, as well as Pre-Exposure Prophylaxis (PREP) to reduce the risk of contracting HIV. Furthermore, the stigma and discrimination they face because of societal attitudes, as well as punitive laws force sex workers to conceal what they do which means that they do not access the unique healthcare needs they have. Furthermore, where SRH programs for sex workers exist, the main focus is on HIV prevention and control at the expense of other SRH services, such as contraception, care for unwanted pregnancies, cervical cancer screening, and sexual and gender-based violence (SGBV) services.¹⁸

¹⁷ UNAIDS, 2014

¹⁸ <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-017-0277-6>

Access to safe abortion— The nature of sex work means that women engaging in the trade have higher chances of getting pregnant when they had no intention to. Sex workers are therefore most likely to need safe abortion services to terminate unintended and unwanted pregnancies. However, abortion remains illegal particularly in Sub-Saharan Africa. A study¹⁹ on abortion amongst sex workers showed that a number of them saw pregnancy as a burden because they had to spend money on abortion, it wasted their work time, and they were at risk of complications due to pregnancy. Among a representative sample of women sex workers in Abidjan, Côte d'Ivoire, a history of unwanted pregnancy was reported by 46%, and 82% of these pregnancies ended in abortion.¹³ In a Gambian study, 35% of sex workers reported an abortion during the previous five years.¹⁴ Access to safe abortion for women sex workers is therefore a critical issues.^[7]

Violence against sex workers-- The clandestine nature of sex work because of criminalization means that sex workers are vulnerable to violence, with sexual violence featuring quite prominently, and with transgender sex workers being disproportionately impacted. Sex workers are afraid to report cases of violence which further exacerbates the situation and emboldens perpetrators to abuse them with impunity. Sex workers who are raped are routinely further victimized by being told that they asked for it. State actors like the police whose work is to serve and protect are some of the biggest perpetrators of violence against sex workers. Law enforcement exact more violence on sex workers who come to them for help and also extort them for money.

Sex work in rural areas— Talk of sex work usually conjures images of women in cities. However, rural areas now increasingly have sex workers in operation. Rural areas tend to have more conservative values which means that sex workers face even greater stigma. UNESO says that there is limited access and availability of health related services in hard to reach rural areas which makes it hard for sex workers to have their health needs attended to. Furthermore, sex workers in rural areas are not as organized as those in urban areas which makes building solidarity and information sharing difficult. There is therefore a dearth of information on sexuality and reproductive health which affects decision making power over SRHR.

Conclusion

Globally, sex work is widely contested and criminalized. However, sex work advocacy has provided opportunities to imagine a world where sex work is recognized as work, and is accorded the protections and validation that comes with other kinds of work. Some countries have made strides in getting to this reality by either legalizing, or decriminalizing sex work completely. There is still a lot of critique leveled at these jurisdictions, even with their more liberal outlook as sex workers' freedoms are still limited, while in cases where it has been legalized, there is still a lot of control of their actions. There is no doubt however, that addressing the SRHR needs of sex workers begins by acknowledging their existence and legitimizing their work.

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¹⁹ <https://www.tandfonline.com/doi/full/10.1016/S0968-8080%2803%2902163-3>



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