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Advocacy Brief

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Decriminalizing Sex work and enhancing equitable access to Health, Justice and Social Protection by Female sex workers in Uganda

An estimated 130,359 Female Sex workers (FSWs) in Uganda operate in a criminalized environment. This environment has not only compromised FSWs' access to Health, Justice and Social Protection but also exposed them to a disproportionate burden of gender inequalities, HIV infection, stigma, discrimination and systemic exclusion, GBV, mental health problems and other life threatening challenges.

About AWAC

For the past five years since inception in 2015, as an umbrella network of grass-root female sex worker (FSW) led-organizations/ groups in Uganda, AWAC has advocated for gender justice and implemented programs in quest for an inclusive Policy and Social environment where the rights of FSWs including FSWs with intersecting vulnerabilities are recognized, promoted and protected to enable them live healthy and productive lives.

AWAC has empowered grassroots FSWs to: organize, understand their rights and responsibilities; lobby for meaningful involvement; seek and demand for equitable access to health, legal, social and economic services; hold leaders accountable and as well challenge oppressive, stigmatizing and discriminatory practices, policies and laws.

Background to the Advocacy brief

During COVID-19 lock down and the immediate post COVID lockdown period, AWAC conducted a “Rapid Assessment on the Impact of COVID-19 among FSWs, Adolescent Girls and Young Women, and Women Living with HIV & AIDS in 30 districts Uganda.” The Assessment revealed that while COVID -19 had aggravated the pre-existing vulnerabilities of sex workers to abuse, GBV, stigma, discrimination, and systemic exclusion, mental health challenges, starvation and homelessness, border districts such as Isingiro had been worst hit. AWAC further conducted an exclusive documentary in

Isingiro in which the findings pointed to a greater need for a risk reduction, coping and resilience mechanisms training for sex workers at Kiikagate border.

This advocacy brief is based on a review of the punitive legal regime affecting sex work, AWAC rapid assessments, documentaries, magazines program data, and partners' reports crowned with recommendations shared during a training workshop held on 11th Dec 2020 in Isingiro district on the risk reduction, coping and resilience mechanisms in response to the COVID19 impact on HIV prevention and PrEP services among FSWs and Adolescent girls and young women (AGYW) in Isingiro district.

The advocacy brief presents how the laws which criminalize sex work push FSWs into the grip of abuse, systemic marginalization and compounding vulnerabilities and as such compromise equitable access to Health, Justice and Social Protection by FSWs by pushing in Uganda. This brief also highlights strategic asks in a call to decriminalize sex work and enhance equitable access to Health, Justice and Social Protection by Female sex workers in Uganda.

The Purpose of the Advocacy brief

This advocacy brief seeks to amplify the call to decriminalize sex work and to enhance equitable access to health, justice and Social Protection by Female Sex workers in Uganda

Context and Discussion

An estimated 130,359 FSWs in Uganda operate in a criminalized environment.¹ This environment has exposed FSWs to a disproportionate burden of gender inequalities, HIV infection, stigma, discrimination and systemic exclusion, GBV, mental health problems and other life threatening challenges.

HIV prevalence and Incidence: HIV Prevalence among FSWs is 3- 4 times higher than that of women from the mainstream population while FSWs and their client contribute to 20% of new HIV infections in Uganda.^{2 3 4}

Depression

A study carried out in Gulu reveals that 47.7% of the FSWs had major depression. with more than half of those with major depression having severe depression. ⁵

Stigma

¹ UAC (2019), Synthesis consolidation and building consensus on key and priority population size estimation.

² National HIV and AIDS Strategic Plan 2015-2020.

³ Hladik W, Baughman A, Serwadda DW, Tappero J et al: burden and characteristics of HIV infection among female sex workers in Kampala, Uganda—a respondent driven sampling survey. BMC Public Health (2017) 17:565 DOI 10.1186/s12889-017-4428-z

⁴ Modes of Transmission Study. UAC, (2016).

⁵ Ouma. S, Mbona. N, Tumwesigye, Ndejjo. R, & Abbo. C. (2020) Prevalence and factor associated with major depression among female sex workers in post-conflict Gulu district: a Cross-Sectional Study. Research Square).

FSWs living with HIV face heavier compounding stigma compared to the mainstream women living with HIV (MWLHIV). A huge number of FSWs living with HIV (FSLHIV) miss out on health services primarily because of non HIV related stigma.⁶

GBV: Research conducted in Kampala and Gulu indicate that 82% of the FSWs had faced at least one form of client-perpetrated GBV, shockingly, over one-third of FSWs had experienced rape three or more times in the last 6 months in Kampala, while 58.7%, had been physically abused and 38.3% had been raped in Gulu district.^{7 8}

It should be noted that whereas the GBV estimates for the women from the general population are far lower than the rate for Female sex workers, with 22% rate for physical violence and 13% facing sexual violence in the past 12 month⁹, Sex workers in Uganda remain largely systemically excluded and underserved due to legal and policy barriers which strongly criminalizes sex work.

Some of the punitive laws with problematic provisions and their impact on sex workers

Among the laws with punitive provisions that target sex workers are: Sections 136, 137, 138, 139 of the Penal Code Act¹⁰ criminalize Prostitution and related activities. This law prohibits acts of persons who knowingly live wholly or in part on the earnings of prostitution, soliciting for immoral purposes; engaging in prostitution, or attempting to procure a prostitute in Uganda or elsewhere,” commit an offence and are liable to imprisonment for seven years.

Moreover, there other laws with provisions which do not explicitly criminalize sex work though indirectly penalize sex work and are often used to target sex workers. These laws include , vagrancy laws under section 168 of the penal code ;the Narcotic drugs and Psychotropic Substances control Act 2016¹¹; The HIV and AIDS Prevention and Control Act 2014¹²; The Tobacco Control Act 2015¹³; The Anti-pornography Act 2014¹⁴ and Public Health and safety directives including COVID -19 restrictions¹⁵. Irrespective of whether sex workers are apprehended for violating the law against prostitution or any

⁶ NAFOPHANU (2019), The PLHIV Stigma Index, Country Assessment, Uganda <https://uac.go.ug/sites/default/files/Reports/PLHIV-Stigma-Index-Report-Uganda-2019.pdf>.

⁷ Schwitters, A., Swaminathan, M., Serwadda, D & Hladik, W. et 'al (2015). Prevalence of Rape and Client-Initiated Gender-Based Violence Among Female Sex Workers: Kampala, Uganda, 2012 AIDS and Behavior (2015) 19 (Suppl 1): 68. <https://doi.org/10.1007/s10461-014-0957-y>.

⁸ Muldoon. K., Akello. M, & Shannon. K. et 'al (2017) Policing the epidemic: High burden of workplace violence among female sex workers in conflict-affected northern Uganda, Global Public Health, 12:1, 84-97, DOI: 10.1080/17441692.2015.1091489.

⁹ Uganda Demographic and Health Survey 2016

¹⁰ Penal Code Act Cap 120 <https://www.upf.go.ug/download/penal-code-act-1950/>

¹¹ The Narcotic Drugs and Psychotropic Substances Control Act 2016 (<https://www.fia.go.ug/narcotic-drugs-and-psychotropic-substances-control-act-2016>)

¹² The HIV and AIDS Prevention and Control Act 2014 <http://library.health.go.ug/publications/hiv/aids/hiv-and-aids-prevention-and-control-act-2014>

¹³ Tobacco Control Act 2015 (https://health.go.ug/sites/default/files/Uganda_Tobacco_Control_Act_0.pdf;

¹⁴ The Anti-Pornography Act 2014 (<https://www.ug-cert.ug/files/downloads/The-Anti-pornography-act-2014.pdf>)

¹⁵ AWAC 2020 A rapid COVID-19 impact among FSWs, mainstream women living with HIV and Adolescent girls and Young women in Uganda. <http://www.peah.it/wp-content/uploads/2020/10/SSEMAKULASbb0a7a2ea4d90543400023042d1aa7fca2177e6a.pdf>

other law, their treatment in the hands of Police is predominantly abusive, repressive, exploitative, oppressive and discriminatory.^{16 17}

Criminalization, Abuse, Arrests and extortion:

The ambiguity in the penal provisions on sex work and associated activities make it practically challenging to prove which has in effect created a fertile ground for law enforcement officers to use the law to abuse and harass sex workers.

Unjustified arrests with false accusations

Cases have been documented where Police officers get on arbitrary arresting spree going about raiding lodges and bars arresting sex workers without any justification for such acts. Upon getting to stations, Police officers trump up any kind of charges they think of on sex workers. HRAPF for example, documented a case in which a group of 27 sex workers were arrested during a hotspot raid and taken to a police station where they were falsely charged for “smoking” in public place in contravention of The Tobacco control Act 2015, yet none of the arrested was smoking or using substances at the time of arrest.¹⁸

Extortion

Often Law enforcement officers arbitrarily arrest and detain FSWs not with the aim of prosecuting them for involvement in sex work, rather, with the aim of extorting money or sex in exchange for release. Majority of them end up being charged on vagrancy grounds. Its commonplace to have sex workers reporting being subjected to humiliating and derogatory treatment, beaten and sexually harassed by police officers and other law enforcement officers such as the LDUs in the course of arrest or while in detention especially after failing to pay in exchange for their freedom.

Reports of ***restriction or denial of access to justice*** by Police officers who fail to give complaints of abuse the attention they deserve are also common. Others officers take sides with perpetrators there by exacerbating impunity. Consequently, many sex workers have given up on reporting violence and have come to normalize it as part and partial of their work experience leading to depression, trauma, anxiety, substance use and other mental challenges¹⁹. (AWAC, 2020 SWARM <https://online.fliphtml5.com/pvfxg/updn/#p=18>)

More than 80% of perpetrators of violence against sex workers are police officers²⁰ With frequent extortions FSWs are unable to accumulate savings to invest and attain economic security.

The Narcotic Drugs and Psychotropic Substance Control Act 2016 criminalizes use and possession of Narcotic drugs and Psychotropic Substances. While use of drugs and substances is a common coping mechanism used by Female sex workers to deal with societal stigma, trauma, anxiety in the face of

¹⁶ HRAPF 2017report on Protection and Violations of Human Rights of Sex workers in Uganda.

<https://www.hrapf.org/index.php/resources/violation-reports/101-report-the-protection-and-violation-of-the-human-rights-of-sex-workers-in-uganda-2018-final/file>

¹⁷ 2017 Framework on the Rights of sex workers and CEDAW

¹⁸ HRAPF 2019 Consolidated Human Rights Violations Against Key Populations in Uganda, 2018

<https://www.hrapf.org/index.php/resources/violation-reports/137-consolidated-human-rights-violations-against-key-populations-in-uganda-2018/file>

¹⁹ (AWAC, 2020 SWARM Magazine <https://online.fliphtml5.com/pvfxg/updn/#p=18>)

²⁰ HRAPF 2017report on Protection and Violations of Human Rights of Sex workers in Uganda

rampant abuse and distress associated with their work. sex workers are also arrested and charged with drug use even when they are not found with drugs but apprehended for merely being found in hotspot where drug use is suspected / known to be common.

Criminalization and access to health services: FSWs like other key populations sub groups report that rampant arrests and detention in prisons and other detention facilities is a huge obstacle to access and effective utilization of HIV, TB and Malaria services.²¹

Criminalization is also a hindrance to access and utilization of condoms and other HIV preventive technologies by FSWs. study by Muldoon et 'al (2017)²² among sex workers in Gulu indicated that 37.3% Sex workers reported rushing negotiations with clients because of police presence in the past 12 months.

Sections 41 and 43 criminalize attempted and willful and intentional transmission of HIV respectively while 12 of the HIV and AIDS prevention and control Act prescribes mandatory testing of an individual apprehended for sexual offenses for purposes of criminal proceedings and investigations. These sections fuel stigma, violence, discrimination and victimization in effect driving sex workers underground and deterring them from access to HIV testing and adhering well to ART

Criminalization and Societal stigma, perpetrator impunity, child abuse, denial of child custodial rights and compromised access to justice

Criminalization facilitates standards of presumed criminality to be imposed on sex workers resulting in societal stigma which breeds the public perception that sex workers are undeserving of safety and respect as human beings and as such makes them an easy target for violence and hate crime. Society has labeled FSWs as vectors of HIV and COVID-19. Due to power dynamics, often perpetrators and apathetic bystanders hold the perception that FSWs are a social disgrace, spoilt women, husband snatchers and thieves who deserve to be punished by anyone, anyhow, anytime. FSWs are denied child custody rights on grounds that FSWs are undeserving to be parents. Children of FSWs face violence because perpetrators believe their mother have nowhere to report. A recent rapid assessment by AWAC on children of FSWs indicated that 80% of the children of FSWs had faced sexual harassment and 70% presented symptoms of common mental disorders.²³

Criminalization and the aggravated impact of COVID-19 on sex workers pre-existing vulnerabilities.

The COVID-19 restrictions such as night curfews, shutdown of bars, lodges and guest houses has left FSWs out of means of survival or exposed many of them to aggravated raids, beatings, sexual violence, stigma, extortion, evictions, starvation, traumatic and depressing experiences. AWAC Assessment on COVID 19 impact among FSWs indicate that 33% were not adhering to ART/ PrEP due to lack of food, 35% were lacking shelter, 80% were facing stigma, 65% had experienced physical

²¹ UAC 2019, results from the UAC 2017 baseline assessment commissioned by Global Fund's Breaking Down Barriers Initiative).

²² Muldoon. K., Akello. M., & Shannon. K. et 'al (2017) Policing the epidemic: High burden of workplace violence among female sex workers in conflict-affected northern Uganda, *Global Public Health*, 12:1, 84-97, DOI: 10.1080/17441692.2015.1091489)

²³ AWAC 2020, Risk Factors, Mental Health and Psychosocial Needs, and Coping among the Children Under of Female Sex Workers and Adolescent Girls surviving in Sex Work Settings: A Rapid Assessment. <https://drive.google.com/file/d/1N4tFCZFmwir0ltfluwaApGZNpiTWZfJr/view?usp=sharing>

violence, 38 sexual violence and 72% psychological violence. 50% were using substances to cope with distress. There is a lack of well-coordinated FSWs tailored GBV response system across all levels. Sensational and stereotype reporting of FSWs' experiences of violence by the media is common.²⁴

Other Issues presented during Isingiro workshop

Often little or no attention has been given to the unique needs of sex workers with intersecting vulnerabilities: FSWs with disabilities, FSWs with mental health challenges; FSWs using drugs, refugee FSWs and the elderly FSWs. Children of FSWs and Adolescents girls surviving in sex work settings have also fallen in the grip of violence and mental health challenges, yet tailored, comprehensive and responsive programs for these children and adolescent girls are not in existence.

FSWs' health seeking and risk reduction behaviors are also constrained by commodities and supplies stock-outs especially STIs Family planning, condoms, lubricants and limited support facilities to enhance ART and PrEP uptake and retention on ART and PrEP care

Many FSWs do not know how to read and write which not only compromises their abilities to understand risk reduction and risk avoidance messages but also suffocates their ability to document and report violations perpetrated against them and as well negotiate inclusion in social protection programs and Socio-economic opportunities.²⁵ FSWs have been excluded from the National Social Protection Policy of Uganda (2015)²⁶ are not regarded among the marginalized or vulnerable groups. The National GBV database incident report form²⁷ does not disaggregate data to accommodate the burden and needs of FSWs.

Recommendations and Key Asks

It's in light of that context that the female sex workers' fraternity in Isingiro district has on 11 Dec 2020 add their voice in a resounding call that:

• The Uganda Law Reform Commission (ULRC)

reviews these punitive laws (136, 137, 138 and 168 of the Penal code; Section 6 of the Psychotic Drugs and Psychotropic Substances Control Act 2016 ; and Sections 12, 41, and 43 of the HIV and AIDS Prevention and Control Act 2014 with the object of recommending reforms in harmony and consistence with reality, international best practice, and established human rights standards.

Parliament

• Repeals these punitive laws (136, 137, 138 and 168 of the Penal code; Section 6 of the Psychotic Drugs and Psychotropic Substances Control Act 2016; and Sections 12, 41, and 43 of the HIV and AIDS Prevention and Control Act 2014

²⁴ AWAC 2020. <http://www.peah.it/wp-content/uploads/2020/10/SSEMAKULASbb0a7a2ea4d90543400023042d1aa7fca2177e6a.pdf>

²⁵ HRAPF 2020 report on How Laws that promote Human Rights Impact on Access to HIV and TB services for Key Populations in Uganda.

²⁶ The National Social Protection Policy 2015 <http://socialprotection.go.ug/newwebsite2/wp-content/uploads/2016/07/National-Social-Protection-Policy-uganda.pdf>

²⁷ The National GBV Database Incident Report Form http://ngbvd.mglsd.go.ug/docs/9630Gender%20Based%20Violence%20Incident%20Report%20Form_.pdf

The Ministry of Gender Labor and Social Development (MGLSD) includes FSWs in the National Social Protection Policy and Frameworks and the National GBV database.

The Equal Opportunities Commission, and the Uganda Human Rights Commissions to investigate and document discriminations and systemic exclusion premised on sex work status and other violations against sex workers

Ministry of Health (MoH) and MGLSD develop a sex workers responsive comprehensive integrated tracker with all the Universal Health care indicators for Sex workers including FSWs with intersecting vulnerabilities and as well develop guidelines and SOPs to guide efficient delivery of integrated responsive services for children of FSWs and AGYW surviving in sex workers' settings.

MoH, MGLSD, CSOs and IPs:

- Invest in development and standardization programs for sex workers which integrate integrating literacy, human rights and digital skills in sex workers service delivery.
- MoH, MGLSD, CSOs and IPs invest in establishment, strengthening and scale up of innovative community health, human rights promotion and social protection systems for sex workers such as the Drop- in Centres (DiC s) and Community Health Livelihoods Enhancement groups (CHLEGs) development accelerators GBV response teams. Community mental health and trauma informed care systems.

The Police

- Conclusively investigate complaints of violence against sex workers with all the fairness and rigor that those complains deserve.
- Document cases and trends of sex worker rights violations.
- Refrain from using the law to violate rights of sex workers.
- Introduce a waiver to prosecution of a sex worker who comes out report a case of violence, abuse or exploitation in the sex industry.

The President of the Republic of Uganda

To remove the COVID-19 SOP declaration on Night curfew, shutdown of Lodges, bars and Night clubs

The Media

- Report objectively and refrain from publishing/ producing sensational, stereotyping, stigmatizing and dehumanizing content that incites hatred against sex workers.
- Promote responsible reporting that advances rights based and evidence informed responses to sex work.
