Policy Brief

Protecting the Health and Rights of Vulnerable Women Engaged in Sex Work

HDI
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PROTECTING THE HEALTH AND RIGHTS OF VULNERABLE WOMEN ENGAGED IN SEX WORK

A policy brief developed
by
Health Development Initiative (HDI),
Great Lakes Initiative for Human Rights and Development (GLIHD), and Ihorere Munyarwanda Organisation (IMRO)

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Background

Throughout Rwanda, women engaged in sex work are a particularly vulnerable group. They are marginalized, underserved, and heavily affected by HIV and other Sexually Transmitted Infections (STIs). According to the Rwanda Biomedical Centre, an estimated 51% of women engaged in sex work in Rwanda have HIV. This figure is more than 17 times higher than the HIV prevalence rate of 3% in the Rwandan general population. It is estimated that female sex workers (FSWs) contribute up to 46% of new HIV infections in Rwanda, while their clients could contribute to 9-11% of new infections.

The Government of Rwanda has recognized women engaged in sex work as a key population for addressing HIV and has prioritized this group in the National Strategic Plan on HIV and AIDS 2013-2018. However, the current criminalization of sex workers and their clients is impeding these efforts by increasing women's vulnerability to HIV, ill-health, and rights violations.

This policy brief analyses the barriers created by the Penal Code in responding to HIV and the potential human rights violations sex workers face. This policy brief recommends the amendment of the Penal Code.

Criminalization of prostitution (Sex work)

Article 205 of the Penal Code reads as follows : "Any person who engages in prostitution shall fulfill, for a period not exceeding one year, one or more of the following obligation:

1. Not to leave territorial limits determined by the Court;
2. Not to go to certain places determined by the Court;

3. To be subjected to surveillance measures;
4. To seek medical treatment;
5. To periodically report to administrative services or authorities determined by the Court.

Violations of these obligations as determined by the court can result in a term of imprisonment for 3-6 months. The penalties of this paragraph also apply to anyone caught having sexual intercourse with a prostitute.

Criminalization of sex work and vulnerability to HIV infection: an evidence linkage

Evidence shows that, in countries where sex work is criminalized, women are more vulnerable to HIV and other Sexually Transmitted Infections (STIs) – both through their direct engagement in sex work and through partners who are clients of sex workers. Indeed, criminalization of sex work forces underground men and women engaged in sex work, limits condom use due to rushed transactions and fear of carrying condoms, hinders vulnerable women from reporting and seeking services for sexual violence, and causes a lack of medical prevention and treatment among the key population.

These are also true for Rwanda, where the prevalence rate of HIV among women engaged in sex work is 51% - more than 17 times higher than that of the general population.

Furthermore, it is estimated that female sex workers contribute up to 46% of new HIV infections in Rwanda, while their clients contribute to 9-11% of new infections.

Broad framing of the penal code: a potential barrier to service providers

Article 212 criminalizes aiding, abetting, and protecting prostitution. The article states that "any person, who in anyway, knowingly aids, abets or protects or solicits prostitution" is liable to imprisonment for 6 to 24 months and/or a fine of 500,000 to 1,000,000 RWF.

The broad interpretation of article 212 of the Penal Code can lead to the prosecution of organizations involved in HIV prevention and treatment. Such potential prosecution will lead to decreased access to HIV related services for sex workers as organizations and individuals who are involved in the provision of HIV prevention and treatment will refuse to offer services to avoid prosecution.

Criminalization of sex work increases women's vulnerability to rights violations

As stated in the preamble of the Rwandan Constitution of 2003, revised in 2015, the People of Rwanda are "committed to building a State governed by the rule of law, based on the respect for human rights, freedom and on the principle of equality of all Rwandans before the law as well as equality between men and women". This commitment is evident throughout the Constitution as well as through the ratification of numerous international and regional human rights treaties by the Government of Rwanda. As such, every Rwandan is entitled to protection from discrimination, the highest attainable standard of health, privacy, liberty and security, freedom of movement, protection from forced labour, child labour and trafficking, and all other human rights.

The Government of Rwanda recognizes its obligation to respect, protect, fulfill, and promote rights enshrined in the Constitution and the human rights instrument to which it is a party. When sex work is criminalized, however, men and women engaged in sex work are more subject to human rights violations than when sex workers and their clients are not criminalized.

In particular, article 205 of the current Penal Code violates:

- The right to dignity, by subjecting women engaged in sex work to measures of surveillance, breaching their right to privacy;
- The right to equal protection of the law and the right to non-discrimination, by creating restrictions and obligations for women engaged in sex work that are not applicable to their clients or perpetrators of other sexual related crimes, such as child defilement, rape and marital rape;
- The right to equal protection of the law, by omitting to determine that a person has to be found guilty by the court before being subjected to measures of surveillance and mandatory health seeking;
- The right to bodily integrity, by putting vulnerable women at an increased risk of sexual violence including rape, from police, clients and strangers; and
- The right to liberty and security of person, by subjecting vulnerable women to arbitrary arrest and unlawful arrest

"

Decriminalizing sex work could avert 33-46% of new HIV infections

Decriminalization of sex work: a step to ending HIV

Those who support the criminalization of sex work might argue that it is a deterrent from engaging in sex work and thus could prevent them. However, there is evidence that decriminalizing sex work does not increase the number of women engaged in sex work. International modeling has shown that decriminalizing sex work could avert 33-46% of new infections suggesting that decriminalization could have public health advantages. In addition, decriminalization of sex work creates a conducive environment where female sex workers can report without fear cases of sexual violence, including rape perpetrated against them, thus making possible the prosecution of sexual violence.

Conclusion and recommendations

As demonstrated above, the criminalization of women engaged in sex work and their clients is a major public health and human rights concern. Rwanda is a country that can pride itself on the gains made in development, gender equality, and health and human rights. To continue on this path, the Government of Rwanda has prioritized women engaged in sex work, as well as their clients, as a key population in the national response to HIV- the National Strategic Plan on HIV and AIDS 2013-2018 that sets out several direct interventions for FSWs and their clients. It is evident that the Government of Rwanda does not wish to create barriers for HIV prevention.

Health Development Initiative (HDI), Great Lakes Initiative for Human Rights and Development (GLIHD), and Ihorere Munyarwanda Organisation (IMRO) call upon the government of Rwanda to consider the following when reviewing the current penal code:

- Decriminalizing the act of engaging in prostitution (sex work) and the act of having sexual intercourse with a prostitute by repealing article 205 of the current penal code as a critical contribution to advancing public health and human rights in Rwanda.
- Amend articles 207 and 212 of the penal code to ensure that they do not pose potential barriers or obstacles for services providers working with sex workers/ prostitute and their clients within the framework of public health.
- Criminalizing human trafficking, sexual exploitation and child defilement.

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8 Rwanda Biomedical Center (2011). National guidelines for HIV prevention among sex workers, Republic of Rwanda.

9 Rwanda biomedical center (2011). National Guidelines for HIV prevention interventions among sex workers.

10 Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

11 Article 23 of the Constitution and article 17 of the International Covenant on Civil and Political Rights

12 Article 15 of the Constitution ; Article 26 of the International Covenant on Civil and Political Rights and Article 3(2) of the Afri-

can Charter on Human and Peoples' Rights.

13 Article 16 of the Constitution, article 2 (1) of the International Convention on Civil and Political Rights; article 2 of the African Charter on Human and Peoples-Rights

14 Article 14 of the Constitution and article 7 of the International Covenant on Civil and Political Rights , article 5 of the African Charter on Human and Peoples Rights , article 3 (4) of the Protocol to the African Charter on Human and Peoples- Rights to rights of women in Africa (Maputo Protocol)

15 Article 24 of the Constitution , article 9 of the International Covenant on Civil and Political Rights and article 6 of the African Charter on Human and Peoples' Rights

16 Open Society Foundation, 2012, 10 Reasons to decriminalize sex work

17 Beyrere, C. et al (2015) An action agenda for HIV and sex workers. The lancet 385, 287-301

Inyandiko y'ubuvugizi kuri pilitiki

Turengere ubuzima ndetse n'uburenganzira bw'abagore bugarijwe n'ibibazo: Abagore bakora umwuga w'uburaya

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TURENGERE UBUZIMA NDETSE N'UBURENGANZIRA BW'ABAGORE BUGARIJWE N'IBIBAZO: ABAGORE BAHUZA IBITSINA HATANZWE IKIGUZI

Health Development Initiative (HDI), Great Lakes Initiative for Human Rights and Development (GLIHD) and

Ihorere Munyarwanda (IMRO

Amavu n'amavuko

Mu Rwanda, abagore bakora umwuga w'uburaya bugarijwe n'ibibazo byihariye. Bahabwa akato, ntibitabwaho neza, kandi bafite ibyago byinshi byo kwandura Virusi itera Sida n'izindi ndwara zandurira mu mibonano mpuza bitsina. Ikigo gishinzwe ubuzima mu Rwanda (RBC) cyagaragaje ko, hafi 51% by'abagore bakora imibonano mpuzabitsina hatanzwe ikiguzi mu Rwanda bafite ubwandu bwa Virusi itera Sida. Uyu mubare ukubye hafi inshuro zirenga 17 ikigereranyo cya 3% cy'ubwandu bwa Virusi itera Sida kiboneka mu bandi banyarwanda muri rusange. Bivugwa ko abagore bakora imibonano mpuzabitsina hatanzwe ikiguzi bagira uruhare rungana na 46% by'ubwandu bushya bwa virusi itera Sida mu Rwanda, mu gihe abakiriya babo bashobora kugira uruhare ruri hagati yi 9 na 11 ku ijana by'ubwandu bushya.

Leta y'u Rwanda yemeje ko abagore bakora umwuga w'uburaya ari itsinda ry'abaturage ryihariye muri gahunda yo kurwanya ubwandu bwa virusi itera Sida ndetse iryo tsinda ryashyizwe mu byihutirwa mu ngamba zo kurwanya Virusi itera Sida muri gahunda yi 2013-2018. Nyamara, amategeko ahana abakora imibonano mpuzabitsina ikorws hagamijwe ikiguzi hamwe n'abakiriya babo, adindiza ishyira mu bikorwa by'izo ngamba bigatuma abagore barushaho kugarizwa na Virusi itera Sida, ubuzima bubi n'ihohoterwa uburenganzira bwabo.

Iyi nyandiko y'ubuvugizi muri politiki irasesengura inzitizi zatewe n'Igitabo cy'Amategeko Ahana mu rwego rwo gushakira ibisubizo ikibazo cya Virusi itera Sida n'ihohoterwa ry'uburengazira bwa muntu rishobora kuba rikorerwa ~~abakora~~ abakora umwuga w'uburaya. Iyi nyandiko y'ubuvugizi kuri politiki iratanga icyifuzo cyo ingingo zo mu gitabo cy'amategeko ahana

Guhana uburaya (imibonano mpuzabitsina yishyurwa)

Ingingo ya 205 y'Igitabo cy'Amategeko Ahana ivuga ko: "Umuntu wese ukora uburaya ategekwa kubahiriza mu gihe kitarenze umwaka umwe kimwe cyangwa byinshi mu bintu bikurikira:

1. kutarenga imbibi zagenwe n'urukiko;
2. kudatarabukira ahantu havuzwe n'urukiko;
3. gufatirwa icyemezo cy'igenzura;
4. kwivuza;
5. kwitaba buri gihe inzego z'imirimo cyangwa z'ubuyobozi zagenwe n'Urukiko.

Umuntu unyuranya na kimwe mu bitegetswe mu duce kuva ku ka 1º kugeza ku ka 5º tw'iyi ngingo, ahanishwa igifungo kuva ku mezi atatu (3) ariko kitageze ku mezi atandatu (6). Ibihano biteganijwe mu gika cya 2 cy'iyi ngingo ni nabyo bihabwa umuntu wese ufatirwa mu cyuho akorana imibonano mpuzabitsina n'indaya.

Isano rigaragara hagati yo guhana icyaha cy'uburaya no kugarizwa n'ubwandu bwa virusi itera Sida

Ubushakashatsi bugaragaza ko mu bihugu bifite amategeko ahana igikorwa cyo guhuza ibitsina hatanzwe ikiguzi, ~~abagore barushaho kugarizwa.~~ abagore barushaho kugarizwa na virusi itera Sida n'izindi ndwara zandurira mu mibonano mpuzabitsina – banduriye mu mwuga w'uburaya cyangwa se pandujwe n'abao baryamana baba ari abakiriya b'indaya. Ni byo koko, guhana abakora imibonano mpuzabitsina hatanzwe ikiguzi bituma iyo mibonano abagabo n'abagore bayikorera mu bwihisho,bikagabanya ikoreshwa ry'agakingirizo Bayiciririkanya biyibye, bagatin-

ya kwitwaza udukingirizo maze bikabera inzitizi abagore bakora umwuga w'uburaya yo kubasha kuvuga ko bafashwe ku ngufu no kwegera serivisi zibafasha. Ibyo bituma batabona bikorwa bagenerwa byo kwirinda ndetse n'ubuvuzi.

Ibyo ni nako bimeze ku Rwanda, aho Ikigereranyo cy'ubwandu bwa Virusi itera Sida mu bagore bakora umwuga w'uburaya kigeze kuri 51% - kikaba gikubye inshuro zirenga 17 ugereranyije n'ikiboneka mu baturage bose muri rusange. Byongeyeye, ubushakatsi buvuga ~~ko~~ ko abagore bakora umwuga w'uburaya bagira uruhare rungana na 46% by'ubwandu bushya bwa virusi itera Sida mu Rwanda, mu gihe abakiriya babo bashobora kugira uruhare ruri hagati yi 9 na 11 ku ijana by'ubwandu bushya.

Ingingo ya 212 y'igitabo cy'amategeko ahana ishobora kubera inzitizi abatanga serivisi

Ingingo ya 212 ihana icyaha cyo gufasha, guhagarikira no kurengera uburaya. Iyo ngingo ivuga ko "Umuntu wese, ku buryo ubwo ari bwo bwose, ufasha, uhagarikira cyangwa, urengera abizi uburaya bw'undi cyangwa ureshya abo ashaka gushyira mu buraya, ahanishwa igifungo kuva ku mezi atandatu (6) kugeza ku myaka ibiri (2) n'ihazabu y'amafaranga y'u Rwanda kuva ku bihumbi magana atanu (500,000) kugeza kuri miliyoni eshatu (3,000,000).

Uburyo ingingo ya 212 y' igitabo cy'amategeko ahana yumvikana muri rusange bishobora gutuma imiryango yita ku buvuzi n'ikumira rya Virusi itera Sida ikurikiranwa. Uko kuba yakurikiranwa bituma abatanga serivise zigenewe abakora umwuga w'uburaya zigabatazitanga kubera gutinya gukurikiranwa.

Guhana abakora umwuga w'uburaya bituma abagore barushaho kugarizwa n'ihohoterwa

Nk'uko bivugwa mu irangashingiro ry'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003, nk'uko ryavuguruwe mu mwaka wa 2015, Abanyarwanda "TWIYEMEJE kubaka Leta igendera ku mategeko, ishingiye ku iyubahirizwa ry'uburenganzira bwa muntu, ku bwisanzure no ku ihame ry'uko Abanyarwanda bose bareshya imbere y'amategeko n'iry'uburinganire hagati y'abagore n'abagabo". Uko kwiyemeza kunagaragarira mu itegeko nshinga ndetse no kuba Leta y'u Rwanda yaragiye yemeza burundu amasezerano mpuzamahanga nayandi yo mu Karere arengera uburenganzira bwa muntu. Bityo Umunyarwanda wese afite uburenganzira bwo kurindwa ivangura, uburenganzi ku buzima bwiza, uburenganzira ku mibereho bwite, ubwigenge n'umutekano, uburenganzira bwo kujya aho ashaka, kurindwa imirimo y'agahato, imirimo ikoreshwa abana no kubacuruza, n'ubundi burenganzira bwa muntu.

Leta y'u Rwanda yemera inshingano zayo zo kubahiriza, kurinda, kugera no guteza imbere uburenganzira nk'uko bukubiye mu Itegekonshinga n'inyandiko z'amasezerano ku burenganzira bwa muntu yashyizeho umukono. Iyo umwuga w'uburaya umwuga w'uburaya, bituma abagore n'abagabo bayikora barushaho kwibasirwa n'ihohoterwa ry'uburenganzira bwa muntu kurusha igihe abakora ~~imibonano~~ mpuzabitsina yishyurwa n'abakiriya babo badahanwa n'amategeko. By'umwihariko, ingingo ya 205 y'Igitabo cy'Amategeko Ahana ~~kiriho~~ ubu nticyubahiriza:

- Uburenganzira ku gaciro ka muntu, gushyiriraho abagore ingamba zo kubagenzura bituma uburenganzira bwabo ku buzima bwite buhungabana;

- Uburenganzira bwo kurengerwa ku buryo bungana n'amategeko n'uburenganzira bwo kudakorerwa ivangura, kubero ko itegeko rigena inshingao ndetse n'ibintu bibujijwe uwahamwe n'icyaha cy'uburaya, nyamara ibyo bihano ntibihabwe abakiriya babo cyangwase abandi bahamwe n'ibyaha bishingiye ku bitsina harimo nko gusambanya abana ~~ku gahato~~, gufata ku ngufu cyangwa se gukoresha imibonanno mpuzabitsina ku gahato uwo bashyingiranywe.

- Uburenganzira bwo kurengerwa n'amategeko ku buryo bungana, Kubera ko itegeko ritagaragaza ko uwukekwaho gukora icyaha agomba kubanza guhamwa n'icyaha bikozwe n'urukiko rubifitiye ububashya mbere yo gushyiririrwaho ingamba z'igenzura no gutegekwa kwivuza;

- Uburenganzira bwo kudahungabanywa ku mubiri, kubera ko aba bagore bugarijwe n'ibibazo bakomeza kugira ibyago byinshi byo gukorerwa ihohorera rishingiye ku gitsina nko gufatwa ku ngufu, bikoze n' inzego za polisi, abakiriya babo, abahisi n'abagenzi ndetse n'abandi;

- Uburenganzira bwo kwishyira ukizana n'umutekano bya muntu, Kubera bitu aba bagore byugarijwe n'ibibazo bafatwa nta mpamvu ndetse bakanafungwa mu buryo butubahirije amategeko

Gukuraho amategeko abana abakora umwuga w'uburaya: Intambwe mu guhasya Virusi itera Sida

Abashyigikiye ko abakora umwuga w'uburaya bahanwa bashobora kuvuga ko bihashya bikanakumira uburaya. Nyamara, byagaragajwe ko kudahana abakora uyu mwuga bitongera umubare w'abakora umwuga w'uburaya.

Gukuraho amategeko ahana abakora umwuga w'uburaya bishobora kuburizamo ubwandu bushya bwa Virusi itera Sida ku kigero kiri hagati ya 33 na 46%

International modeling yerekanye ko Gukuraho amategeko ahana abakora umwuga w'uburaya bishobora kuburizamo ubwandu bushya bwa Virusi itera Sida ku kigero kiri hagati ya 33 na 46%, bisobanura kogukuraho amategeko ahana abakora umwuga w'uburaya bishobora kugira inyungu bigatuma abaturage barushaho kugira ubuzima bwiza muri rusange. Byongeye, gukuraho amategeko ahana abakora umwuga w'uburaya bituma habaho uburyo bwiza bufasha abagore bakora umwuga w'uburaya gushobora kuvuga nta bwoba ibyaha by'ihohoterwa rishingiye ku gitsina birimo no gufatwa ku ngufu, bigatuma abako ihohoterwa bakurikiranwa.

Imyanzuro n'ibyifuzo

Nk'uko twabigaragaje, guhana abakora umwuga w'uburaya hamwe n'abakiriya babo ni ikibazo gihangayikishije ubuzima bwiza rusange bw'abaturage n'uburenganzira bwa muntu. U Rwanda ni igihugu cyishimira ibyo kimaze kugeraho mu iterambere, uburin-

ganire bw'abagabo n'abagore no mu buzima bwiza n'uburenganzira bwa muntu. Mu rwego rwo gukomeza muri uyo murungo, Leta y'u Rwanda yashyize mu byihutirwa abagore umwuga w'uburaya ndetse n'abakiriya babo nk'itsinda ryihariye ry'abaturage bagomba kwitabwaho mu guhangana n'ubwandu bwa Virusi itera Sida- Gahunda y'ingamba z'igihugu zo kurwanya Virusi itera Sida ya 2013-2018 igaragaramo ibikorwa byinshi byibanda ku bagore umwuga w'uburaya n'abakiriya babo. Bigaragara ko Leta y'u Rwanda idashaka gushyiraho inzitizi mu ugukumira Virusi itera Sida.

Imiryango Health Development Initiative (HDI), Great Lake Initiative for Human Rights and Development (GLIHD), na Ihorere Munyarwanda (IMRO) irahamagarira Leta y'u Rwanda gusuzuma ingingo zikurikira mu gihe izaba ivugurura Igitabo cy'Amateko Ahana gikoreshwa ubu:

- Gukuraho amategeko ahana igikorwa cyo guhuza ibitsina hatanzwe ikiguzi ndetse no gukorana imibonano n'umugore ukora umwuga w'uburaya, havugururwa ingingo ya imbere ubuzima bwiza rusange bw'abaturage n'uburenganzira bwa muntu mu Rwanda.

- Kuvugurura ingingo ya 207 n'iya 212 z'Igitabo cy'Amategeko Ahana ku buryo zidashobora kuba inzitizi cyangwa imbogamizi ku batanga serivisi zigenewe abakora umwuga w'uburaya n'abakiriya babo mu mu nzego z'ubuzima.

- Gushyiraho amategeko ahana ubucuruzi bw'abantu, guhahisha uburaya no kwangiza imyanya ndangagitsina y'abana.

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11 Ingingo ya 14(2) na (C) y'Amasezerano y'inyongera ku Burenganzira bwa Muntu n'ubw'Abaturage yerekeye Uburenganzira bw'Abagore muri Afurika

12 Ingingo ya 23 y'Itegeko Nshinga n'ingingo ya 17 y'Amasezerano mpu-

zamahanga ku Burenganzira mu by'imbonezamubano na politiki

13 Ingingo ya 15 y'Itegeko Nshinga n'ingingo ya 26 y'Amasezerano mpuzamahanga ku Burenganzira mu by'imbonezamubano na politiki n'Ingingo ya 3 (2) y'Amasezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage

14 Ingingo ya 16 y'Itegeko Nshinga n'ingingo ya 2(1) y'Amasezerano mpuzamahanga ku Burenganzira mu by'imbonezamubano na politiki; Ingingo ya 2 (2) y'Amasezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage

15 Ingingo ya 14 y'Itegeko Nshinga n'ingingo ya 7 y'Amasezerano mpuzamahanga ku burenganzira mu by'imbonezamubano na politiki; Ingingo ya 5 y'Amasezerano Nyafurika ku Burenganzira bwa muntu n'ubw'abaturage burenganzira bwa muntu n'ubw'abaturage, ingingo ya 3 (4) y'Amasezerano Nyafurika ku Burenganzira bwa Muntu-n'ubw'abaturage yerekeye uburenganzira bw'abagore muri Afurika (Amasezerano y'inyongera ya Maputo)

16 Ingingo ya 24 y'Itegeko Nshinga n'ingingo ya 26 y'Amasezerano mpuzamahanga ku Burenganzira mu by'imbonezamubano na politiki n'Ingingo ya 6 y'Amasezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage

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