

**ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS OF
UNDERAGE GIRLS IN SEX WORK IN KENYA.**

BY

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of the Degree of Master of Arts in Human Rights at the University of Nairobi**

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DECLARATION

DECLARATION BY CANDIDATE

I declare that this Research Project is my original work and has not been submitted to any other university for an academic degree award. It is submitted in partial fulfillment of the requirement for the award of Master of Arts in Human Rights at the University of Nairobi. The work contains no copied sections either in whole or in part except with detailed, complete and accurate referencing.

Signature:



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DECLARATION BY SUPERVISOR

This Research Project Report has been submitted for examination with my approval as University Supervisor.

Signature:



Date 15th November 2022

Prof. Peter Wasamba

DEDICATION

I dedicate this work to my family members, especially my mother, Purity Mukami Ngure, for their support and understanding when I was not there for them while working on this study. I also dedicate this work to my colleagues in the office (UHAI EASHRI) for their support and encouragement during the course. for proofreading and brainstorming ideas when I called on them.

Also i dedicate this work to my friends Joash Diemo Sigu and Bro Robert Omondi who were there to brainstorm on my thoughts and ideas and finally review this work. I would also like to save this work to many girls involved in sex work for one reason or the other.

Finally, I dedicate this work to my supervisor Professor Wasamba for his invaluable guidance and support.

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First and foremost am grateful to God for giving me the strength to undertake this body of work.

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ABSTRACT

This research seeks to address access to sexual and reproductive health and rights of underage girls in sex work in Kenya.

The study evaluates the status of girl's involvement in sex work and the extent to which they access SRHR services. The study focuses on under girls in the urban informal habitats. It also examines the extent to which the current legislations and policies address SRHR challenges faced by this cohort. Statistics indicate that a significant population of underage girls are involved in transactional sex. The categories of underage and gender emerge as key determinants of inaccessibility and low quality of sexual reproductive health services among underage sex workers. This is in spite of the significant number of organizations offering these services. This disparity reveals that there is a significant relationship between the inaccessibility and low quality of sexual reproductive health services for underage sex workers and high prevalence of adolescent and teenage pregnancies in Kenya. It is also justifies the claim of a strong correlation between sexually transmitted infections (STIs), increased incidences of unsafe abortions among underage girls and structural unresponsiveness of sexual and reproductive health rights programs in Kenya.

This study utilized two complimentary theories; the feminist theory and intersectionality theory. The feminist theory adds a female perspective to how gender-based structural discrimination impacts on the fundamental rights of under-age girls. The intersectionality theory helped in examining how the vulnerability of underage girls in sex work is also an outcome of the interplay between gender and other variables. The study uses desk review to collect data from secondary sources.

This study found out that underage girls' involvement in sex work is on the rise. The age of entry into sex work for girls is as low as ten years. Holmstrom et al. (2019), argues that most people's first experience of selling sex happens during their teens. This is indicative of an institutional failure beginning from the African culture and extending to national laws and international law and policy frameworks. This study notes that poverty, child-headed families, illiteracy, unemployment, drug and substance abuse, and dysfunctional families are factors that predispose underage girls to engage in sex as work. The study further established that the existence of elaborate international, regional and national legislations and policies on SRHR have not guaranteed access to SRHR services for underage girls in sex work. This research recommends the harmonization of SRHR laws and the related policies with the existing operational programs. The designing of policy and legal framework should further give

primacy to serving the interest of girl children. It should also address the drivers pushing underage girls to sex work. Finally, there is a need for a collaborative approach by all duty bearers to ensure that these girls have access to adequate information about SRHR services.

ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immunodeficiency Syndrome
CCSE	Commercial Child Sexual Exploitation
CSE	Comprehensive Sexuality Education
CRC	Convention on Children's Rights
ILO	International Labour Organization
NCCS	National Council for Children Services
NGOs	Non – Governmental Organizations
OVC	Orphans and Vulnerable Children
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children’s Fund
UNFPA	United Nations Population Fund
WHO	World Health Organisation
ECPAT	End Child Prostitution & Trafficking
HIV	Human Immunodeficiency Virus

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CHAPTER 1: General Introduction

1.1 Background of the Study

Commercialization of sex is a practice that goes back to the period of Herodotus and was a sacred practice in the ancient world. The global trend of increasing numbers of young girls' involved in sex work is a concern. Previous studies have concentrated on sex work among consenting adults, creating a gap on information on underage girls. The International Labor Organization (ILO, 2015) estimates that about 1.8 million children globally are undergoing sexual exploitation and another 1.2 million children are trafficked. Holmstrom et al. (2019) suggests that, globally, most people's first experience of selling sex usually happens during their teens. In the United States, about one-third of runaway youths resort to prostitution within the first 48 hours. Each year, about 300,000 children are vulnerable to sexual exploitation (USA Department of Justice, 2007).

In Africa, experiences of commercial sexual exploitation of underage girls is rife but vary significantly in extent and context. Many women in Africa experience different forms of sexual exploitation as children, including trading sex for gifts, necessities, or money. According to the Africa Child Policy Forum (ACPF) (2019), in Uganda and Zimbabwe, 19% of females between 18-24-year-old reportedly had transactional sex before the age of 18. The report further argues that these children experience sexual exploitation, which comes from exchanging sex for material support or other help. In 2013, Africa had the highest prevalence of teenage pregnancies in the world (ACPF, 2019), a clear indication of the magnitude of sexual exploitation among teenage girls on the continent.

In Kenya, The National Council for Children Services (2013-2017) reported emergence of new trends such as child pornography and online child sexual exploitation which have contributed to enormous commercial exploitation of children. The National AIDS and STI's Control Programme (NASCOP, 2018) estimates that there are 3,415 girls in Nairobi who are in sex work. This represents 23% of underage girls involved sex work in Kenya.

Covid 19 pandemic lockdown brought with it a level of shock, anger, disbelief as well as lack of food and idleness. When schools finally closed down there was an outcry that the rate of teenage pregnancies in 2020 went up. Nairobi county was reported to be leading with 11 795 teenage pregnancies.

End Child Prostitution & Trafficking (ECPAT, 2007) notes that vulnerabilities caused by political conflicts, poverty, HIV and AIDS pandemic exacerbate the involvement of children in sex work in Africa. They also observed that orphan hood as a result of HIV/AIDS make the child vulnerable to commercial sex within two to three years parents' death. According to Cobbina and Oselin (2011),

most girls involved in sex work in Africa often start as domestic workers where they endure sexual violence at their place of employment before turning into prostitution. Considering that the number of girls involved in sex work is increasing rapidly due to multiplicity of factors, it is imperative to examine the extent to which the existing interventions are appropriate and effective in protecting the rights of this vulnerable category in society

1.2. Statement of the Problem

In Kenya, girls as young as ten years are involved in transactional sex. Since they are children, they often do not enjoy the full benefit of sexual reproductive health services, despite the existence of many organizations offering Sexual and Reproductive Health and Rights (SRHR) services. It is estimated that about 378,397 adolescent and teenage girls became pregnant in Kenya between 2016 and 2017 (Otewa, 2018). Statistics also indicate that about 33% of new HIV infections are among adolescent girls and young women (NACC, 2017).

COVID 19 pandemic destabilized the society, leading to various violations of human rights for example, rise in cases of gender-based violence. This also led to the rise of teenage pregnancies in some sub-counties in Nairobi. Kahurani (2020), in their verification of the data and facts of data presented by the Kenya Health Management Information System, recorded that as much as there was a public outcry to the spike, the spike was not registered because the number of teenage pregnancies has always been on the rise. In 2019, Nairobi reported 11,410 while in 2020 it was 11795. Kakamega was ranked second a slight difference in margin (AFRIDEP, 2020). Data by AFRIDEP paints a picture of the reality of adolescent's pregnancies and how this has been a significant problem.

Girls in sex work face numerous risks, including physical injuries, psychological disorders, trauma, depression, sexually transmitted infections (STIs), drug and substance abuse, and death resulting from unsafe abortion, among others (UNFPA, 2013). The duty to respect, protect, and fulfil human rights is well enshrined in international human rights law and obligates state parties to ensure citizens enjoy their human rights indiscriminately. Despite all these things girls are still not able to access SRHR services because of many factors. Factors that range from culture, religion, legal and policy framework. This study therefore, intends to investigate the extent to which underage sex workers in Kenya access SRHR within the existing legal and policy frameworks.

1.3 Research Questions

The study seeks to answer the following questions:

1. To what extent are underage girls involved in sex work in Kenya?
2. To what extent are underage girls involved in sex work able to access quality SRHR services in Kenya?
3. In what ways do existing policies and legislative frameworks address SRHR challenges facing girls in sex work in Kenya?

1.4 Objectives of the Study

The study seeks to meet the following objectives:

1. To evaluate the status of girl's involvement in sex work in Kenya.
2. To assess the extent to which underage girl-sex-workers access quality SRHR services in Kenya.
3. To assess the extent to which existing policies and legislations address the SRHR challenges faced by underage girls involved in sex work in Kenya.

1.5. Justifications of the Study

Adolescent girls face various sexual and reproductive health issues that affect their human development. This is despite the existence of many SRHR programs as well as policies and laws that are meant to protect and promote these rights. Scholarly work on the magnitude of girls involved in sex work and the related access to SRHR in Kenyan urban slums is limited. This makes legislative, policy and programming decisions concerning SRHR interventions for girls in sex work very difficult. This study will interrogate the existing legal and policy frameworks with a view to establish their suitability to adequately address the SRHR needs of girls in sex work in Kenya. It will also provide suitable recommendations on SRHR interventions for girls in sex work that is beneficial to SRHR policy makers, programmers and the academia.

1.6 Scope and Limitations of the Study

This study seeks to understand the magnitude of girls 'involvement in sex work in Kenya, especially in urban slums. Given the general risks involved in the sex industry, this study will explore in details whether girls in sex work in Kenya have sufficient access to SRHR services to enhance their protection and general wellbeing. It will further take into account the existing policy and legal frameworks and assess the extent to which they promote, protect and ensure full enjoyment of SRHR services among underage girls in sex work.

Due to the COVID – 19 pandemics, whose main form of transmission is through social contact, the study will confine itself to desk review. This is in keeping with the Government protocols emphasizing on social distancing and discouraging social gatherings.

1.7. Definition of Concepts

Children: A child is defined under the Children Act, No 8 of 2001, as any human being under the age of eighteen.

Mature minors: Those individuals who are 15 years of age or older, living apart from their parents or guardian, with or without their consent for any duration, and managing their financial affairs, regardless of the source of income (MoH, 2018).

Consent: occurs when one person voluntarily agrees to the proposal or desires of another means actively agreeing to be sexual with someone (Oxford Dictionary). Consent may be understood differently in many contexts, Case example children or people with mental disorders cannot consent to sex among other.

Sexual exploitation of children: Includes taking undue advantage of children by engaging them in prostitution. This is defined under Article 2 of the Optional Protocol to CRC on the sale of children, child prostitution, and child pornography as “the use of a child in sexual activities for remuneration or any other form of consideration. (MoH, 2018)

Underage girls in sex work: Refers to females below the age of 18 who engage in commercial sexual exploitation

1.8. Literature Review

1.8.1 Introduction

Girls in sex work frequently face numerous risks, including physical injuries, psychological disorders, and trauma, depression, sexually transmitted infections (STIs), drug and substance abuse, and death resulting from unsafe abortion, among others (UNFPA, 2013). The duty to respect, protect, and fulfil human rights is well enshrined in international human rights law and obligates state parties to ensure citizens enjoy their human rights indiscriminately. Despite all these things girls are still not able to access SRHR services because of many factors. Factors that range from culture, religion, legal and policy framework

This section focuses on the scholarly works reviewed by the study. The reviewed articles are aligned and organized thematically according to the research objectives. These include; status of underage girls into sex work, SRHR interventions among underage girls in sex work in Kenya, and

the impact of policy and legislative frameworks on SRHR programming for underage in sex work. In this assessment, key topics to be addressed in the literature review based on existing publications. The literature review will be organized thematically as guided by the research objectives. This section shall look into the status of girls in sex work as well as the existing SRHR interventions from a global, regional national and local perspective. In addition, the section will look at the existing policies and legislations and their influence on access to SRHR for girls in sex work.

1.8.2 Status of Girls in Sex work

The moral and legal aspect of sex work is a controversial topic the world over, the involvement of underage girls elicits further controversy. These differences are weighted differently from one jurisdiction to another. A country such as Iceland, for instance, decriminalized the selling of sex in 2007 but went ahead to criminalize the purchase of sex in 2009 (Holmstrom et al., 2019). Countries in Africa, including Kenya, have criminalized some aspects of sex work. There remains a division as to whether transactional sex among consenting adults can be considered legitimate. It appears difficult for the lawmakers when confronted with the idea that the sex workers deserve against labor exploitation (Distiller, 2001). The position has been in contention among several stakeholders. These include public health practitioners, abolitionists and pro-sex workers feminists in their effort to mitigate stigma and discrimination on access to health for sex workers, On the other hand, however, sexual activities with minors is considered exploitative and criminal in most jurisdictions with minor variances with regards to age. As such, it is punishable by law.

Despite these punitive measures, commercialization of sex among minors is evidently on the rise. The Urban slums in developing countries like Kenya constitute areas of particular concern. Minimal attention is however given to this subject by scholars, policy makers and programmers. Servian et al. (2015) observes that "the current wave of interest in human trafficking and the commercial sexual exploitation of children has exposed a lack of knowledge about vulnerabilities and pathways leading to underage girls' entry into sex work." The dominant subject of interest is twofold: namely, the morality and legality of conceptualizing sex as work and whether minors are morally and legally qualified to engage not just in any type of remunerable work but precisely so in the health implications of work that involves transacting sex.

Servien et al (2015), argue that the subject transacting sex ought to be a competent moral agent with the capacity to choose and enter into relational agreements whose outcome is economic gains. This is a position sharply contested by abolitionists and radical feminists such as Farley Melissa (2003) who posit that sex work cannot be considered as legitimate work. They point out that, due to the

exploitative nature of the industry, sex as work essentially dehumanizes women. As such, and any debate to legitimize sex work is insensitive to the power imbalance existing between the parties involved. They contend that sex work is a form of enslavement, where a woman's body is subjected to men dominance as embedded in patriarchal systems and structures. Goldenberg et al. (2012) define sex work as the "selling or trading of sex for money, drugs, or other goods and services. Based on such definitions alone, one can already see challenges that might confirm the earlier assertions made by abolitionists. A legal contract can only be arrived at on the basis of free will without coercion or undue influence. The signatory to such a contract must be of sound mental standing. The extent to which this can be said of sex work, particularly among girls remain questionable. This is because, based on Goldenberg et al. (2012) definition, it could be argued that a person selling sex in exchange for drugs cannot be said to be acting on a free will. But rather, this could be a possible problem of addiction, which in itself negates choice.

The World Congress against Child Commercial Sexual Exploitation (WCCCSE), condemns the involvement of minors in sex work (ILO, 2015). They argue that, by virtue of their age, minors do not qualify as moral agents. They, therefore, lack the moral and legal competency to engage in morally gainful work. They are equally physiologically unprepared for the new health implications and risks associated with sex work. The risk associated with children's commercial sexual exploitation explains why the WCCCSE defines underage sex work as sexual exploitation.

It is a concern that despite many conference condemnations, policy papers and programs, the problem of girls 'involvement in sex still persists. Silvermann (2011) estimates that between 20 - 40% of females start engaging in commercial sex work as adolescents. Silvermann further observes that, despite such worrying trends, their problems are not well understood or adequately addressed. This is more so in Kenyan urban slums where despite the growing number of underage girls 'involvement in sex work, SRHR programs are not well tailored to meet their needs.

Girls involvement in sex work in sex work may be due to several factors. These include; dysfunctional families, history of abuse, and neglect among others.. Important to note, however, is the rapid disintegration of traditional social structures which provided safety nests for vulnerable members, including orphans and widows. Tanga (2013) observes that capitalism, which promotes individualistic values, coupled with the increase of HIV/AIDS pandemic have worsened the situation for orphans. Many orphans now have to double up as children but also as family heads, often with dire outcomes. End Child Prostitution & Trafficking (ECPAT) (2007), points out that orphan hood due to

HIV/AIDS makes a child more likely to engage in commercial sex. Often the loss of a parent means a loss of the economic source of livelihood for many children who are left to take care of themselves.

Cobbina and Oselin (2011) assert that most girls involved in sex work in Africa often start as domestic workers where they endure sexual violence at their place of employment before turning into prostitution. This confirms assertions by ECPAT (2007) that economic vulnerability, either as a result of orphan hood or mere poverty, drive underage girls to look for alternative sources of income and thereby end up as sex workers. Cobbina and Oselin (2011) further assert that other pathways that lead underage girls into sex work are victimization, economic marginalization, and substance abuse. They observe that many underage girls run away from home due to sexual molestation, only to find themselves on the streets that welcome them into the world of prostitution for survival in order to survive. While these studies investigate the causal factors leading girls into sex work, they do not address SRHR needs for underage girls in sex work. In addition, the focus of these studies does not focus on slum areas that are characterized by multiplicities of deprivations.

WHO (2015) notes that some underage girls make a deliberate choice to engage in sex work to to meet financial responsibilities and support their families in instances where viable livelihood opportunities may be limited. These may include rural areas and urban slums, where the majority of residents live from hand to mouth. The argument presented by WHO makes it necessary to look at the plight of underage girls from the perspectives of their agency, health, and choice. While this is the position of WHO a global agency, there is a need to look at the plight of girls in the developing world comprehensively capturing girls selling sex in urban slums like Kasarani in Nairobi. This is to ensure that their vulnerabilities are taken into perspective in order to inform policy and programming.

1.8.3 SRHR Interventions among underage girls in sex work

UNFPA (2003) defines SRHR as a situation where an individual enjoys complete physical, mental and social well-being and it does not merely means the absence of diseases relating to the reproductive system and its functions and processes. This definition requires that healthcare systems, including services and infrastructure remain capable of providing comprehensive SRHR services to the wider population. Urban slums in developing countries such as Kasarani in Kenya lack the most needed basic services and infrastructure. The healthcare systems available in these slums fall short of meeting the growing need for SRHR among girls, especially those in sex work. This ought to take into consideration the particular needs of vulnerable groups such as girls in sex work.

The SRHR risks of girls in sex work is arguably greater compared to the rest of the population and requires a more deliberate attention. This is because adolescence, which is the stage in which many

of these girls are, is characterized by many social, physiological, and cognitive changes, including those related to sexual reproductive health (Woog, 2017). It is the stage where human beings actively begin to explore their sexuality and engage in intimate sexual relations. At this stage, girls in sex work are at a higher risk of having sexual reproductive health problems because of their multiple sexual encounters with multiple partners. These include unsafe abortion, sexually transmitted infections, including HIV, sexual coercion, and violence. This requires a more comprehensive and deliberately targeted approach to SRHR.

An evaluation of the "most at-risk adolescents" conducted by LVCT and UNICEF (2018) in Kenya, recorded that individuals aged between 15 and 24 years account for 35% of new HIV infections across the globe. The report observes that most of the HIV programming is limited to behavior change and biomedical interventions while largely ignoring structural interventions addressing livelihood. The report recommends, among other measures, the rolling out of health HIV and SRH education models in schools. However, this recommendation fails to sufficiently address sexual reproductive health risks associated with out of school adolescent girls, especially underage girls in sex work. Bruce, Judith, and Kelly (2008), in their study entitled "Reaching the Girls Left Behind," laments the overemphasis of school-based SRHR programming that cuts out the most at-risk adolescents from services. Instead, they advocate for an "informational, social support, and asset – building strategies" (Bruce, Judith, and Kelly, 2008) that go beyond school curricula. However, this study was based in London and does not take into consideration the unique context of Kenyan slums. The extent to which this study is applicable to the unique socio – political, economic and legal dynamics in Kenya remains unclear.

According to Woog (2017), there were an estimated 777,000 births among young adolescent girls in 2016, 58% in Africa. A worrying concern since adolescent pregnancies may contribute to high maternal and child mortality risks. Mutea et al. (2019) observe that about 13,000 girls drop out of school in Kenya annually due to early and unintended pregnancies. Woog (2007), in their study, attributes the high prevalence rate of teenage pregnancy to lack of inadequate access to SRHR services and recommends a comprehensive sexuality education (CSE). Olena (2018) observes that, SRHR knowledge and awareness among adolescent girls are shallow.

Nevertheless, Woog (2007) recommendation does not adequately address the problem of access to quality SRHR services by adolescent girls, nor does it take into account the uniqueness of each country. Mutea et al. (2019), however, argues that despite the National Adolescent Sexual Reproductive Health Policy's existence, the implementation of such guidelines remains weak and

uncoordinated. The need for an enabling legal and policy and coordinated SRHR programming is critical.

In their report, Bernstein (2003), "Making 1 Billion Count," explores why sexual reproductive health rights are essential, especially for adolescent girls. It addresses itself to the fact that a comprehensive SRHR is an appropriate response to challenges faced by adolescents. These include early marriages, gender-based discrimination, trafficking for sexual exploitations, unintended pregnancies, and unsafe abortion, HIV, drug use, among others. The report highlights the threats and risks that adolescent's face. The study acknowledges an integrated approach to SRHR services and cautions against a disintegrated and homogenous approach. UNFPA (2013) acknowledges that the lack of adequate data on adolescents poses significant challenges. It observes that data on 10 to 14 years olds are very scanty, making decision-making on SRHR programming difficult. This strengthens the course to conduct more studies on the efficiency of SRHR interventions, especially among most at risk underage girls.

1.8.4 Impact of Policy and Legislative Frameworks on SRHR Programming

The state has an obligation to fulfil and promote citizens' human rights. This duty is not only embedded in international treaties but also regional and national legislations. Therefore, the State is legally bound to guarantee access to quality healthcare to its citizens, including children. According to Article 24 of the United Nations Convention on the Rights of a Child (UNCRC), children are entitled to the highest standard of health and healthcare, including family planning, education, and services (OHCHR, 1989). This is reiterated in Article 14 (1) of the African Charter on the Rights of the Child, which advocates for enjoyment of physical, mental and spiritual health (OAU, 1990). Article 43 (1) (a) of the Constitution of Kenya, 2010, provides that every person has the right "to the highest attainable standard of health, which includes the right to health care services, including reproductive health care (Government of Kenya, 2010).

Generally, the international, regional, and national legislative frameworks broadly entrench health and healthcare services as a right to be enjoyed by all people. However, the specificity required to enhance access to reproductive health care services by underage girls in sex work remains inadequately unaddressed. These legislative frameworks, while having progressive provisions for safeguarding children, also contain drawback clauses that undermine access to reproductive health services by underage girls in sex work. It is possible that these limitations may be ideological and therefore worth further interrogation. The notion of rights as comprehended in global south countries such as Africa and those of the North may be different in substance. Countries of the South tend to

look at rights from a collective, communal point of view whereas the Northern countries may lay emphasis on individual rights. These ideological differences may have implications on the uptake and provision of SRHR services. Contemporary African societies, for instance, looked at children as wealth, something that may be in contrast with SRHR interventions. It is imperative, therefore, that the existing SRHR policy and legislative frameworks be interrogated within a cultural context with the view to establish their socio - cultural implications and suitability.

According to WHO (2015), the criminalization of sex work in many countries, including Kenya, discourages young commercial sexual workers for fear of legal sanctions. The UNCRC, ACRWC, and the Children's Act of Kenya, 2001, defines a child as any human being below 18 years. This legal definition is necessary to enhance the protection of children from abuse and exploitation. However, it largely ignores the socio-cultural dynamics that define maturity and shape sexual behavior across different societies. Dixon - Mueller (2008), in her study, "How Young is Too Young? Comparative Perspective on Adolescent Sexual, Marital, and Reproductive Transitions" grapples with the question of sexual transitioning among adolescent males and females. She alludes that sexual, marital, and reproductive transitioning is mostly dependent on the individual's physiological maturity and cognitive capacity. In her argument, she asserts that 15 - 17-year-olds are not necessarily classified as children in other international treaties such as the ILO, which does not restrict the age of employment to 18 years. In developing countries, employment at age 15 may not be considered child labor, for instance, under ILO (Dixon - Mueller, 2008).

The age-based definition of children as those below 18 years creates legal dilemmas for health practitioners and institutions offering sexual reproductive health services to underage girls in sex work. The law presumes that underage girls cannot consent to sex and thus treats this as sexual exploitation, which is criminalized. Article 27 (1) (a) of the ACRWC prohibits any "inducement, coercion or encouragement" of children to engage in sex (African Union, 1990). It also obligates States parties, in Article 27 (1) (b), to protect children against sexual exploitation, especially "prostitution or other sexual practices." Many health practitioners may refrain from offering sexual reproductive services to underage girls in sex work, especially where mandatory reporting is required. This may also occur for the mere fear of being seen as abetting the sexual exploitation of children. In Kenya, laws and policies that address human reproductive rights for adolescents in some cases are not in sync with each other, making their actualization almost impossible.

Religious groups such as Muslims and Christians in Kenya have also teamed up in opposition to SRHR legislative processes. This is due to predominant fear that these may subtly permit promiscuity among adolescents besides legalizing abortion, which, according to them, contradicts the

law of nature of the right to life and natural death. As a result, efforts to legislate and harmonize SRHR laws, policies and programs have become highly polarized. This has brought a legal and social conflict in providing adolescents with SRHR services. The existing laws and policies are conflicting on the consent age when a child can receive SRH services. SRHR services include access to contraceptives, HIV counselling, and testing, safer sex commodities, abortion where legal. The gap in the law and policies brings confusion as to when and how underage girls can access services or even information; this leaves the discretion to health care providers who, in most cases, impose their attitudes and cultural beliefs on people below 18 years demanding access to SRH services.

In some countries, the WHO (2015) also observes that parental or guardians' consent may be a prerequisite to access SRH services. In particular, below 18 years of age. This legal requirement may be an impediment to girls below 18 years accessing SRHR services.

1.9. THEORETICAL FRAMEWORK

This study will employ a combination of the feminist and intersectionality theories to explain the drivers that push underage girls into sex work. Using these theories, the study will analyze various interventions and responses in relation to the protection of underage girls and the advancement of their sexual and reproductive health and rights.

1.9.1. Feminist Theory

The feminist theory has evolved over different historical periods from as early as the 1800s. Proponents of this theory such as Dorothy Smith, Simone de Beauvoir, Patricia Hill Collins, Nancy Chodorow, Judith Butler, and Betty Friedan, among others Jones and Budig, (2008), observe that the oppression of women is a phenomenon that cuts across history and in all societies. Feminist theory emerged as a counter-response to increased marginalization and discrimination of women. The theory takes a keen look at gender determinants of social inequalities between men and boys, women, and girls. In using multiple lenses, the feminist theory looks at how gender has shaped and defined the understanding of roles, experiences, and values of individuals (Miriam, 2005) within an institutional, economic, social, cultural, and political worldviews. It argues that this creates biases that deny women their fundamental rights.

According to Jones and Budig (2008), the feminist theory explores gender inequalities from different perspectives such as liberal, Marxist, socialist, or radical feminism. Feminist theory also has a geographical scope based on cultural, religious and political ideologies of various geographies. Liberal feminism, for instance, looks at the institutionalization of women's oppression through socio-political, legal, and economic spheres and asserts the need for women's right to participate in these spaces.

On the other hand, radical feminism argues that sexuality is the primary source of women's oppression. Proponents of radical feminism advocate for the eradication of patriarchy to address disparities between men and women. They argue that gender oppression can only be eradicated by granting women total control over their bodies, especially their sexuality. Marxists and socialist feminists' root gender inequalities in capitalism. They argue that women's reproductive labor is often "unappreciated" and unpaid compared to men's "productive" labor (Jones and Budis, 2008). Radical abolitionist feminist work to end sex work by "saving them" women regardless of their autonomy and agency in choosing the trade. The radical abolitionist feminist school of thought relies more on social desperation and in this case, they question the authenticity of consent. They look at sex work as violence and oppression perpetuated to women and girls. Abolitionist "cannot fully explain the private

choices that individual women and girls make in the context of conditions of social oppression and economic desperation, their account only argues from a sexuality focus without acknowledging the other aspects of women's lives that shaped their choices to perform sex work (Cavalierly, 2011).

Whereas there are many schools of thoughts on feminism and with their limitations, this study will limit its interrogation on the liberal feminist school of thought. Attention will be given to how this school of thought shapes the pathways that leads underage girls 'entry into sex work. This study will also interrogate the environment in which these girls access quality sexual and reproductive health and rights programs. Finally, the mind-set that plays a role in shaping the programming and the legal policy framework of these vulnerable girls' access to quality SRHR services will also be subjected to a critical analysis.

The feminist theory is best suited to discuss the underlying structural and systemic injustices that push underage girls into sex work. It looks at how socially constructed norms disempower girls, rendering them economically and socially vulnerable. The theory also looks at the need to address women's and girl's marginalization and disempowerment from a right-based approach. This theory does not conceptualize other factors other than gender that disempowers women like age, social, economic status, class among others. It fails to bring out how these factors, among others, intersect to bring about inequalities and marginalization of underage girls in sex work. This study will take a more African dialogical perspective such as that advanced by Sylvia Tamale (2011) rather than the radical view of the abolitionists or radical Western feminists. Tamale (2011), for instance, challenges the view in many African cultures such as Uganda in which women's sexuality is valued as service of men, particularly in marriage. This prescriptive behavior demands that married women present themselves in public as angels (Malaika) and prostitutes (Malaya) while in private (Tamale, 2011). Either way, they continue to suffer from gender related physical and sexual violence. She therefore calls for a woman who can exercise her sexuality freely without prejudice. While feminist theory brings about the gender perspective in interrogating this topic, it leaves out other identities that bring about oppression of women and girls. There are other variables that comes into play and that affect the girls and women, shaping their entry into sex work or in accessing quality sexual and reproductive health rights when they are in the trade. These factors range from age to labelling which have a demeaning impact on sex work. The outcome is that that girls and women in sex work becoming targets of stigmatization and discrimination

1.9.2. Intersectionality Theory

This refers to a theoretical approach that builds on the earlier works of feminism theory that is fundamental to women and gender studies. The theory was coined by Kimberly Crenshaw. It recognizes that there are more components to one's identity and social analysis (Harrison 2012). Rogers and Kelly (2011) view “intersectionality as a complex process by which peoples' positions of race, class, gender, and sexuality leads to inferior social status”. Therefore, “intersectionality approach explains the multiple [facets] of inequalities and power structures that create roles of dominance and subordination under the context of race, class, gender, and sexuality" (Rogers and Kelly, 2011). As Nash (2008) observes, Crenshaw's intersectionality perspective has a quintessential bias on race and gender. This study adopts a conceptual convergence with Crenshaw's theorization on the subject of gender.

Intersectionality theory provides a framework to probe beyond the dominant discussions of looking at human experiences of marginalization and discrimination from a single perspective of either gender or race. It acknowledges how difference operates within and outside of a particular group (s) contributes in shaping their experiences. For instance, what are the conditions of privileges and oppression that hinder the development of a particular group? In most cases, the dominant argument when discussing commercial sexual exploitation by programmers is protecting the victims of sex work by cutting the demand and suppressing the supply (Phillips, 2015). This has been a dominant approach in which CSE has been offered. This perspective of a single narrative has been challenged by the intersectionality theory that looks into various other identities that creates a broader picture of the underage girls.” The dominant exploiter – victim narrative obscures the economic and social realities that serve as pathways into sex work" (Phillips 2015). Crenshaw argues that it is essential to look at various identities of a person because, in many instances, one identity is treated as a dominant social power that supports exclusion or marginalizes those who are different (Harrison, 2012).

It is crucial to think of the intersection of multiple inequalities that affect underage girls in sex work. Gerassi (2015) asserts that feminists who are proponents of intersectionality framework posit that gender or class alone cannot exhaustively understand a woman’s oppression and the impact of sexual exploitation on her. Crenshaw's idea of intersectionality is also critically linked with issues of power. Power is the capacity to influence other people’s behaviour, the course of events and the ability to direct one's own life (Colfer et al., 2018). Understanding power play is essential in interrogating various factors that lead to inequalities, discrimination, and oppression of women and girls engaged in sex work. Colfer (2018) further asserts that power creates social ranks and also reinforces social constructs. Therefore, it is imperative to understand the power dynamics and their role in bringing

about inequalities. There is a need to examine how power is produced and reproduced in society to bring about resistance and oppression of some populations.

The intersectionality theory is critical in examining the interplay between multiple social and economic variables that discriminate, marginalizes and render underage girls in sex work vulnerable. It assesses the extent to which these variables emerge as essential drivers of sex work among underage girls. The theory helps broaden the discussions beyond gender limits to include other social and economic marginalization categories. For instance, girls from poor households in slums may be more vulnerable due to their age and social status. These vulnerabilities could be probable outcomes of deep-seated systemic and structural issues that sustain social inequalities and stratifications. The slum social environment may also expose underage girls to more risks of sexual and gender-based violence. These and other psychological considerations emanating from deprived love and affection may not be easily overlooked. Girls are considered vulnerable, especially during their teenage hood, and often need intense love, support, and patience. If girls fail to find love at home and within their family circles, they may seek this affection outside. This can result from orphanhood, neglect, or experiences of sexual and gender-based violence (Los Angeles, Star Court, 2014).

The intersectionality theory will help the study look at how multiple social identities affect access to SRHR by underage girls in sex work. It will look at the intersectionality of gender, age, economic status, and power relations and how they affect the lives of underage girls in sex work. All these components, if not addressed, may result in further exploitation and inequalities.

1.10. METHODOLOGY

1.10.1. Introduction

This section contains a discussion of various components of the research methodology applied in the study. These include research design, methods of data collection, and analysis.

1.10.2. Study Design

A qualitative study will be adopted to examine the full extent of the relationship between pathways and drivers that drives girls into sex work, their access to quality sexual and reproductive health rights interventions and the related outcomes among underage girls in sex work.

1.10.3. Data Collection Method

The study will rely on a desk review to collect data from various secondary sources. This will include books, institutional and Government reports, international, regional and national policy documents and legislation, case studies, academic journals, conference papers, published articles, periodicals, and court proceedings.

1.10.4. Data Analysis

The available literature shall be thematically organized and analyzed. The intersectionality and feminist theories will be used in the analysis to unearth the underpinning root causes of marginalization and discrimination of women and girls, either on the basis of sex, social status or patriarchy with a particular emphasis on their right to SRHR.

1.11. Conclusion

This section has looked at the background of the problem on access to SRHR services by underage girls in sex work. With a particular focus on girls from the urban slums. It has looked at how the situation is within the Kenyan context; it also has tried to articulate the research's problems. The section has also offered the theoretical framework which the study will use in framing its arguments. Finally, the research methodology that has provided the methods that the study has utilized in terms of getting the data as well as on how the data analysis will be done.

CHAPTER 2: EXAMINING UNDERAGE GIRLS ENGAGEMENT IN SEX WORK IN KENYA

2.1 Introduction

This chapter provides an overview of child sex work in Kenya. It interrogates the nature, prevalence and associated risks of underage sex work in Kenya. It examines how multiple factors intersect to compound the involvement of girls in sex work and subsequent denial of their SRHR. To have an in-depth investigation on underage sex work in Kenya, this chapter opts for studying case reports extracted from Kenya Sex Workers Alliance and the National Crime Research Centre (NCRC). This study further looks at case reports from several newspaper reports and a booklet compiled by Sarah Nduta and Wanjiru Mukoma of Liverpool VCT on child-narrated perspectives on underage sex work in Kenya (LVCT, 2011). Finally, this study will focus on the ANPPCAN (2012) report on Sexual Exploitation of Children in Travel and Tourism (SECCT).

2.2 Prevalence of Sex work

Understanding the prevalence of sex work is a complex venture due to different scholars' interpretations of sex work across various disciplines. Kingston & Sander (2010) posits that "sex work" is more diverse and varied than prostitution, [because] it is limited not just to the act of 'sex', but also to various forms of direct and indirect sexual activities. They enumerate other forms of sex work to include and are not limited to lap dancing, phone sex and dominatrix. It also consists of the indirect activities that support the 'sex as leisure' industry, for example, maids, managers and sex shop assistants (Kingston & Sander, 2010). Adding to this complexity is the ever-changing nature of power relation as well as sexual boundaries (Kingston & Sanders, 2010). Therefore, to give depth to this analysis, it is important to disaggregate the components involved to tease out the subtle distinctions and intricate interrelationships therein.

It is vital to point out that the theme of child sex work in most studies comes out as a subsection within other broader themes, such as the rights of workers (Decker et al., 2015, Fida, 2008) and the ethics of sex as work (Spanger and Skilbrei, 2017).

2.2.1 A Global Perspective of Sex Work

Sex work is deemed illegal in many countries and is often practiced covertly (Kempadoo, 1998). Therefore, gathering accurate information is challenging. UNAIDS (Key Population Atlas) provides data for HIV and sex work population estimates. It is curiously noticeable from this database that both the United States and Canada have no indicative data on the sex work population. Nevertheless, both countries have detailed data on HIV prevalence, whose causes are intricately related

to sex work. This could, at face value, represent a lack of incidences of transactional sex in this zone. A study by Paz-Bailey et al. (2016) shows a correlation between sex work and public health.

Furthermore, UNAIDS Key Population Atlas shows that of the 20 countries in Latin America, only the Republic of Venezuela and Chile lack official sex work population estimates. Only 7 out of 27 countries in the European Union have statutory data on sex work population estimates. At the same time, Russia and China in Eastern Europe and Asia, respectively, also lack statutory data on sex work population estimates. Conspicuously, only four countries in Africa do not have UN-based data on sex work population estimates. Therefore, the absence of direct data on sex work does not necessarily imply the prevalence of sex work.

It is worth noting that the data found in UNAIDS Key Population Atlas is likely to be subjective since most of this research is primarily funded by USAID/PEPFAR, Global fund and CDC (UNAIDS, Key Population Atlas). Therefore, the conceptual framing of this research is likely to be skewed towards alignment with US health policies which have non-recognition of transactional sex as work proper.

Therefore, cases of sex work involving minors will appear more in police reports as incidences of criminal offences and not an infringement of the human rights of workers who are minors. While the data from Key Populations Atlas shows HIV trends, it lacks some data on sex work, especially in countries that share the idea of non-recognition of transactional sex as ‘work’.

The absence of data notwithstanding, Fondation Scelles presents the Global estimated size of sex work at 40-42 million people (European Union, 2014). With a population size estimate of 1.9 million sex workers (kpatlas.unaids.org), Brazil has the most significant population size estimate of sex workers and the highest demography in South America. However, this does not mean that a country with a higher population demography has a higher number of sex workers. For instance, India has a higher population demography than Brazil but fewer sex workers (0.67million).

2.2.1.1 A labour Right Perspective on Global Sex Work

According to ILO (2012), sexual exploitation is treated as a form of modern slavery. It further explains that in 2011, 3.8 million adults were victims of forced sexual exploitation while 1 million children were victims of commercial sexual exploitation. These data focus on the role of policy in mapping out the nuances in trends and dynamics of sex work. 4.8 million out of 40-42 Million sex workers were forced into sexual exploitation from a labour perspective. This implies that the criminalisation of sex work influences the global and regional distribution of sex work.

However, these figures do not bring the relationship between voluntary engagement in sex and statutory legal policies. This data does not also qualify how the subject of consensual engagement in sexual work would relate to the involvement of minors. This is because, regardless of the philosophical

leanings of the policy, age status does not allow for consent considerations. It is noteworthy to mention that while the data in reference here is valid, it is an outcome of desktop research. Therefore, there are limitations in further interrogation of its methodologies and the framing of crucial variables.

2.2.1.2 A Gender Perspective on Global Sex Work

Analysing the prevalence of sex work through the gender and age lenses reveals another perspective. According to ILO (2012), 98% of sex workers are female, and 21% are estimated to be less than 18 years of age. This demonstrates a significant population of women, specifically underage girls, globally involved in sex work. However, the ILO data does not show the role of the different actors in the chain of the sex work industry. The predominance of heterosexual prostitution in the sex industry opens up a space to interrogate the role of men and women in the supply-demand dynamics of transactional sex.

The abolitionist approach to sexual exploitation is designed to target the buyers of sex services with an assumption that buyers are often males seeking sexual acts. Propounded by the feminist school, the belief is that males are the architects, perpetrators and beneficiaries in the sex industry. However, there are instances like lap dancing and phone sex involving an all-female intra-gender transaction of sex services. Here, women equally emerge as astute "sexpreneurs" who understand the inner intricacies of fellow women's feminine worldview and vulnerabilities. In these transactions, the power differential exploited is not just sexual identity also but a combination of age and economic status. Therefore, by age, gender and economic power, vulnerable girls become easy targets in the sex industry.

2.2.2. Mapping Out the Regional Prevalence of Sex Work

The UNAIDS data (UNAIDS Atlas, 2020) shows that the Great Lakes region has the highest prevalence of national estimates of sex workers, with DR Congo leading the pack with 0.35 million. This significant number is associated with conflict and poverty. Somalia, the epitome of a fragile state, has a lower population size estimate of sex workers (3,700). It is worth noting that the variable of political instability and need-based causes are equally important determinants of sex work. Despite the widespread poverty and instability, it has fewer sex workers, which is highly attributed to the strict Islamic law. From both Nigeria and DR Congo, it is worth noting that there is a direct correlation between high population with sex work.

Additionally, countries predominantly dominated by Muslims have fewer sex workers. Still, this argument cannot be conclusive due to the culture of fear and secrecy surrounding sex work in these countries. Furthermore, countries like Sierra Leone and Liberia, which have undergone political instability and governance breakdown, register many sex workers.

2.2.3 Sex Works in Nairobi, Kenya

Kenya is situated within a geopolitical region in Africa where sexual exploitation is growing exponentially (UNAIDS, Un). Two key studies on sex work that this part shall focus on are ANPPCAN (2015), and NASCOP (2012) reports. The relevance of these studies lies in their country-specific focus on Kenya, with a particular reference to Nairobi. Both studies also focus on female sex workers, specifically looking at children as a key study population.

Approximately 167,940 female sex workers (UNAIDS) in Kenya. In its study, the Geographic Mapping of Most at Risk Populations targeted an estimated sex workers population of 103,298 geographical spreads on what used to be the eight provinces before the promulgation of the 2010 Constitution in Kenya. With a population estimate of 27,620 female sex workers, Nairobi has the highest number of female sex workers in Kenya, which justifies the focus area of this study. There were 2539 female sex workers spots, including bars, entertainment, and streets (NASCOP, 2012).

Among the administrative division within Nairobi, the number of sex spots in the constituencies is distributed as Starehe, 530; Embaksi, 367; Kasarani 366, Lang'ata, 277; Dagorreti, 274; Makadara 238; Westlands, 231; Kamukunji, 256. The high number of sex spots in Starehe is attributed to its proximity to and inclusion of the Nairobi central business district as part of the constituency (NASCOP, 2012).

This data is only demonstrative of female sex workers (FSW) who frequent hotspots, thus failing to reflect the varieties of other sex workers. The information also excluded underage sex workers below the age of 15. With time, the recognition of the under 18 sex workers has started to receive the attention that will help in programming for their SRHR. Going by the above data, it is clear that there are no precise estimates of the prevalence of underage girls in Kenya and what is there is scarce. Clayton (2013) argues that this area of research is underdeveloped and uneven. ANNPCAN (2015) agrees with Clayton that it is clear that it is hard to get reliable data on underage girls in sex work. Due to the invisibility of children involved in commercial sex work, they are at the most significant risk of sexual exploitation. They are also subject to harassment and violent attacks.

2.3 Disaggregating Underage Sex Work in Kenya

Sex work cannot be understood as a homogeneous phenomenon. It needs to be critically analysed and unpackaged according to its various manifestations. Joanna Busza (2006) disaggregates 'sex work' into three categories: sex work proper, transactional sex, and survival sex. Underlying this categorisation is the assumption that sex work as treated here is confined to commercialised

heterosexual sex-based services. This does not preclude the prevalence of other sub-typologies or categorisation of sex work. Instead, this study chooses to focus on a specific population of study that fits the profile mentioned above. The below sections will borrow their arguments from narratives of other works that have been done on underage girls in sex work in Kenya.

2.3.1 Sex work proper and underage girls in Kenya

Sex work proper is a full time or part-time occupational venture. It constitutes sexual exchange premised on financial arrangements where a client pays a sex worker an agreed fee for sexual services (Joanna Busza, 2006). The pillars of this category of sex work constitute substantial time investment, high professionalism, sophistication organisational structure, and specificity of both market niche of the clientele targeted and service providers. It is framed, operated and modelled from a business framework with an intentional strategy to comply with the accepted statutory and legal demands. However, this category is also very adept at concealing crucial aspects of the sex industry that is highly profitable yet grossly inconsistent with the established statutory and legal standards. The people who control the commercialisation of sex in this category target the elite clientele. Their wealth and dominance in social and political circles can influence policy through lobbying. Their elite clientele can also be handy in business negotiation and business protection. Finally, by their connections, the elite can facilitate access to some government services, especially on health matters, and assist in covert access to particular legal representation. This section has worked with excerpts of documented stories from the field of sex work proper.

A news report by Aisha (2017) shows how this elite linkage appeals to girls due to the money earned and the connection.

“It is a big-money business as the pimps get paid from about Ksh 150,000 to Ksh 300,000 for delivering the girls. The girls get about Ksh 20,000 for a ‘job’, and most of the time, the tips from clients count the most. With a generous client, one can pocket up to about Ksh 50,000.... I have met several prominent people through this, and I am using this kind of network to benefit myself.” (Chunji Malaika (2018))

From a sex broker’s Perspective

To factor in the role of sex brokers in underage sex work, this study presents the following story—a blog published by Bars Hostess describing the recruiting strategies and how they are used within the trade. However, the story is much skewed to the age of consent, an indicator that there is much that needs to be done in documenting cases of underage girls who are pimped into sex work.

“I am a sex worker, and I pimp girls. A guy comes to me; he wants a girl; I have approximately 22 girls, call one of them and negotiate the payment. I get a commission out of the negotiations, but it will only depend on how much the girl gets”. (BHESP, 2016)

The targeted population for this category is girls in the upper teen ages (above 15years). Due to the market niche of the clients, some level of adaptability to professional standards is required. Therefore, this group also targets girls with a level of developmental vibrancy with a robust emerging voice and persona. Jean Brooks-Gunn (2006) defines vibrancy as a state of mental health that denotes acceptance of self, especially among young adolescents with mature bodies. These demands will show that reaching out to girl children targeted for this category involves planning and strategies which require a significant financial investment. Children from upper lower class and lower-middle-class girls become high targets.

Underage migrant sex workers

Another illuminating category is the underage migrant workers. These predominantly involve sex communities, especially from Ethiopia, Eritrea and Somalia. They are recruited because they fit a particular sex market demand for a specific race and ethnic business. The women's E-news thus reports:

“There have been many foreigners joining the trade. The most prominent are the Ethiopians and Eritreans. However, there are also those of Somali origin. From a business Point of view, we, the ‘locals’, dislike them; we feel they give us unfair competition” (Women E-news, 2011).

Due to the covertness of this trade, coupled with the immigration status, it is hard to get disaggregated information on migrant sex workers. IOM (2010), in their study, observed that “a potentially large population of Somali, Sudanese, Ethiopian, and other migrant women are engaging in transactional sex in areas of Nairobi. Although they are a highly marginalised at-risk population, no data is available.” This issue was also reported by the US Department of State (2015), which noted girls and women of Somali and India origin are in Nairobi to engage in commercial sex work.

Their migration status, age, and Semitic Cushitic ethnic extraction increase their marketability. Their migrant status also exposes them to numerous vulnerabilities and diminishes their economic bargaining power. Moreover, conflicts among sex workers due to competition are highly experienced, and immigrant sex workers cannot seek legal arbitration due to legal vulnerabilities.

2.3.2 Power relations and the girl child involvement in sex work

Between 20 and 40 % of female sex workers (FSWs) began sex work before age 18 (Paercesepe, 2016). This cohort is expected to be in primary or secondary school in Kenya. To demonstrate the dynamics of power relations and the girl child involvement in sex work, KESWA

presents the following case report of a 16-year-old girl living in Nairobi County. The girl was introduced to sex work by her aunt after her parents died. She narrates the violence she has encountered and does not report such cases due to lack of redress. Below is a part of the excerpt;

“I am 16 years old, and I sell sex. When my parents died, we went to stay with my aunt. When I was 14 years old, she taught me about sex. My aunt would bring men to her house to sleep with men, taking all the money. I realised that she was using me, and I moved out. I work at a club called Spikes; sometimes, I work as a waitress; spike is also my hotspot. I usually charge depending on what the client wants. There was a time this year a client badly beat me because I wanted to use a condom, and he did not want to. When we finished having sex, he refused to pay me, and when I confronted him, he beat me up and left me by the side of the road. I did not report the matter because it happens often, and those I have seen reporting nothing is ever done. I know many people who do what my aunt does, and they are never arrested, and if they are, they just pay their way out (KESWA, 2018).

Ordinarily, underage girls are presumed to lack the experiential, organisational and financial skills to engage in sex as work professionally. They, therefore, cannot venture into sex work as equals to their adult counterparts. Different actors operate at different power hierarchies in the subliminal but complex structure of the sex industry network. For adults sex workers, access to SRHR does not necessarily depend on the availability of free and public government services. There are connections to these services through privileged, powerful proxies within their networks, making them accessible.

In most cases, proprietors are economically stable women with strong grassroots connections. By their placement in the economy of the sex trade web, they relate to girl sex-worker both as ‘patronising’ feminine figures and investment matriarchs. There is, therefore, a patron-client relationship. Consequently, the girl children are indirect ‘clients’ to the primary service provider and intermediary sex brokers. They are also direct service providers to male clients who are the ultimate consumers of sex services. The intermediaries could either be male or female, depending on their networking ability to link the primary sex service providers and the qualified tertiary sex service providers. The age category in the sex industry places the girl child not just as an essential group in itself but as a constituency that brings in a value-added component in the sex industry.

While girls are a ‘premium product’ in the sex industry in Kenya, their direct human rights claim on SRHR is well known but often muted or voiced by second parties. The combination of age and gender identities in the sex work industry raises legitimate questions on the legality of their very involvement in ‘sex as work’. A consequence of this legal challenge is a complication of conceptualising, designing and mainstreaming the rights of girl sex workers in existing health policies and service delivery mechanisms.

2.3.3 The “legit” and hidden spaces of sex work

NASCOP and NACC's (2012) research demonstrates a covert but thriving universe of a non-institutionalized sex industry in Nairobi and Kenya. The hidden space of underage sex work is driven mainly by rules of commercial gains. In these spaces, the assumption is that the girl sex worker is a free agent exercising her freedom to economic advancement in a liberal market economy by gainfully participating in sex work. Therefore, she willingly engages in a ‘liberal market whose core commodity is sex as a free subject.

The corollary to this assumption is that the girl sex worker exercises a ‘relative consent ’proper to her status. This consent is justified as deriving from her freedom of choice, her right to privacy and body autonomy, and her right to associate with the primary sex providers ’network. The end rationale is that her age notwithstanding, both sex proprietors and the girl sex worker share a common goal: to optimise the gains from sex service. However, given that the hidden justification in the sex industry does not find a correlated affirmation in the legit legal structures in Kenya, it is practised as a secret venture. This means that regulation regarding how it can fit into a public health policy on sexual reproductive health will remain a challenge to the extent that the girl child is a key component of sex work as an industry.

Due to their entry point into sex work, a girl sex worker in this category is relatively more ‘protected’. The protection she enjoys is not derived from her dignity as a worker. Instead, it is derived from the existing connection with the economically powerful adults in the sex industry network, implying a high likelihood of better access to SRHR by association. The girl sex worker, therefore, is not treated as a bona fide right holder but a recipient of a privileged opportunity as a highly-priced participant in the sex business. The risk involved here is that her profit potency predicts the value of the girl child. As a result, if she does not adapt to a different market niche in the sex industry, the more she grows older, the more likely she will fall outside the margins of the marketable age range within this category. This will limit both her income, protection and access to SRHR.

Profit optimisation and marketability of youthful femininity are key drivers of underage girls ’ involvement in sex work. It makes a viable claim to correlate proximity to affluent urban centres and the thriving sex work industry. Hence Nairobi, Kisumu and Mombasa could be the commercial hubs for underage girls ’involvement in sex work. Within Nairobi, the activities supporting this category of sex work take place in more exclusive and protected affluent residential and entertainment sex work spots (NASCOP, 2012). This justifies the choice of Nairobi as the focus of this study. This further provides the rationale for exploring Nairobi’s less affluent slum habitats as the most vulnerable sex workspaces in Nairobi.

2.3.4 Underage girls and transactional sex in Kenya

The second category of commercialisation of sex, according to Joanna Busza (2006), involves transactional sex. This category involves “the exchange of sex for material support of some kind, including cash, gifts, and economic assistance such as rent payments or school fees” (2006). Unlike sex work proper, it involves financial arrangement within other relationships, often characterized by friendship, affection, or romantic attachments. It instead refers to a financial arrangement within other relationships, often characterised by friendship, affection, or romantic attachments.

The underage girls in the transactional sex population consist of mainly those in somewhat stable family backgrounds and secondary schools. However, due to personal lifestyle choices or real economic challenges within the family, girls seek out emotional support in a way that can simultaneously capitalise on gainful engagements through the exchange of sex. Unlike the sex work proper category, most girls in this cohort are mainly Kenyan citizens at the secondary school level who double as sex workers (Kipkemoi Ng’enh, 2017).

2.3.4.1 Monetizing emotional capital in transactional sex

The critical component in this category of sex work is the mutual exchange of affection between the girl sex worker and the client. However, an additional vital element to affectivity is its connection to securing specific basic needs through monetising the sexual services deriving from this affection. In Kenya, this has been branded as ‘sponsor culture’, which draws an attractive young woman into a sexual relationship with a wealthy old man for monetary benefits (Oyunga, 2018). So, while there is asymmetry of power in terms of affectivity, the age differential between the girl child and the client would still grant the client economic-relational control over the girl child. Apart from affection and age disadvantage, need-based pressure would place the girl child at the losing end of power symmetry. There is, therefore, an interplay between internal emotional relationships and external financial needs. This relationship is exploitative because of the girl child's vulnerability and the client's economic power.

With partner fluidity being so high and economic capacity relatively low, exposure to health risks and capacity for quality health services access is highly compromised. The fluid nature of this category, though, granted the girl sex worker significant bargaining power in transaction negotiations. However, this same negotiation power is also based on emotional attachments, making it unreliable. The only health risk that both parties are keen on is pregnancy. This is because, in popular perception, regardless of the age, pregnancy changes the status of a girl to motherhood and subsequently to a ‘perceived adult’. Chemists could obtain most of the items needed to avoid pregnancy, and therefore there is no cause for alarm in accessing specialised adolescents' sexual health services.

However, the secrecy and stigma surrounding these relationships would make a mere attempt to seek sexual health services extremely difficult. Besides, access to SRHR information and age-appropriate comprehensive sexuality education is seldom available. Whenever available, it is framed from a fundamentally moral lens of abstinence. For girl child sex workers, abstinence is not a value as it would inhibit the very foundation on which girl sex work is premised. However, the lack of youth-friendly facilities for SRHR renders even the available and accessible SRHR non-usable.

2.3.5 Underage girls and survival sex in Kenya

The last category consists of survival sex. It is the use of sexual exchange to alleviate extreme poverty. The core driver is the pressure to meet subsistence or immediate needs. Lowther. M (2015) explains that survival sex implies trading sex for money, shelter, food, or protection and is undertaken out of desperation to ensure survival. Therefore, this category of sex exchange is likely to be more sporadic, opportunistic, and unplanned and tends to be reported in situations of instability and deprivation.

To demonstrate the dynamics of underage girls 'involvement in survival sex, Nduta and Mukoma (2011) present the following case report of Jackinine, an 11-year-old girl living in Nairobi County:

Sex work is my only job and source of money. I have been doing it for about one year now, and it has helped me a great deal because now I have money to sustain us. My mother asked me where I had gotten the money, and I told her that I had started sex work. She was happy and encouraged me to continue working to provide for the family. My sister does not know where I get money from or the kind of work I do. Nduta.S and Mukoma W, 2011 PG 1

In Nairobi, survival sex operates mainly in the lowest-income living zones; informal settlements are characterised by poor social protection systems, weak family structures, and instinctive survival skills. The lower an individual's social-economic hierarchy, the more vulnerable they become.

2.3.6 Association between non-regulated spaces and survival sex

According to NASCOP (2012), there is a correlation between the environment and sex work. Informal urban settlements are characterised by poor planning, irregular spaces, and crowding patterns. With narrow passages and poor spacing, house crowding creates irregular bends and dingy or closed non-uniform spaces. These serve as enablers of sex as work in general. They also play as a reinforcer to the need for secrecy and invisibility, which are supportive conditions for underage sex work practice.

In the informal settlements of Nairobi, three spaces serve as viable spaces for sex work. These are streets, bars, sex dens and homes. For this reason, underage sex work can be street-based, home-based, sex dens-based, and entertainment spots-based. The very nature of informal settlements in Nairobi allows for the existence of spontaneous structures which strategically thrive on the principle of non-regulation. Non-regulated spaces in informal settlements support informal and sometimes non-legal income-generating activities, which explains why survival sex among underage girls thrives in informal settlements.

2.3.7 Association between 'ungoverned spaces and survival sex

High population density within small irregular spaces in informal settlements creates a disproportionality in the 'space to administrative structures ratio. This affects state capacity for governance enforcement and delivery of public service. The further these centres are to human populations, the bigger ungoverned spaces there are, which allows for the emergence of alternative means of survival. (Ngunyi and Katumanga, 2014). Informal settlements have high poverty and birth rates and a bulging population of people below 18 age groups. With a male to female ratio of 1.03 in favour of females, a significant population of the under 18 will be girl children. Thus, as informal settlements are fertile ground for underage sex work, girls 'in this area become the most vulnerable group.

Due to harsh conditions in the informal settlement that is highly non-regulated and ungoverned, the girl child is forced into sex work to survive. The survival skills in the informal settlements make the girls cautious and fear the regulated and governed spaces where service delivery, including SRHR, are found.

2.4. Pathways leading underage girls into sex work

Many dynamics contribute to the involvement of girls in sex work in Kenya. It is important to investigate the components and traits which shape and influence their entry into sex work. It is also vital to study the possible intersectionality inherent in these components and traits, as this will be helpful in the conceptualisation, designing and programming of policy frameworks.

In order to understand the plight of underage girls in sex work and in developing their interventions, one must understand the dynamic of pathways and vulnerabilities to create effective programs. While studies by development partners like ILO (2015), ANNPCAN (2011) and ECPAT International (2014) tend to suggest a linear causal effect on transnational sex, it is essential to understand that there are complex intersectional factors that are involved in as far as entry into sex

work for girls is concerned. These are dependent on many factors, including geographical, cultural, religious, economic, rural or urban setting, educational, gender disposition, and political leanings.

2.4.1 The Sex-Positive feminism and Prohibitionist schools

The first categorisation of pathways is founded on the two concepts of liberty (Bentwich, 2012), namely positive and negative liberty. While positive liberty presupposes the autonomy and choice to fulfil one's potential, negative liberty is about external interference in attaining one's potential. In this line, involvement in sex work is further categorised in terms of voluntary and involuntary entry. Mian Muhammad Ahmad Iqbal, (2013) asserts that volunteers include women who start due several factors such as poverty, hunger, illness and family pressure while involuntary include those who enter sex work by force like kidnapping, coercion and trafficking.

This categorisation finds its continuation among proponents of positive feminism and abolitionist schools. Sex-positive feminism or sexually liberal feminism holds that women are free subjects capable of voluntarily engaging in transactional sex (Gerassi, 2015). To them, therefore, sex work is a valid proposition. Involuntary sex work, women and girls perceive sex as an opportunity for a two-fold realisation of their total vocation as human beings (Das, 2009). One is hinged on human freedom related to their capacity to freely express their feminine resourcefulness, including and not limited to sex for their development. The other is about the functionality and instrumentalisation of sex for their economic upliftment.

On the other hand, the prohibitionist school contends that sex and trade are mutually exclusive terms. Therefore, sex work negates the conceptualisation of volition in work and is thus outrightly victimising and dehumanising. Given that the prohibitionist school reject the idea of volition in transactional sex, they sustain that all sex work activities are fundamentally involuntary. They thus argue that those that join sex work involuntarily are coerced. Therefore, they qualify prostitution, sex trafficking, pimping, and all accessory activities in the sex industry as derivatives of coercion and violate basic human rights principles.

The legal situation of sex work in Kenya is complex. While the constitution is silent on sex work, the penal code takes a prohibitionist position. Sections 153 and 154 of the Penal Code (1963) categorically state, it is illegal to live, aid, compel or incite prostitution. This law was later adopted in the Nairobi County by-laws rendering sex work in all its forms illegal. While both schools of thought are valid when the subject of sex work is child, I argue that this opens up serious ethical questions. While a child is a moral being, in terms of ethical considerations, human development and law, a child has not reached the maturity levels to own up to the full consequences of indulging in sex. Thus, the

child can neither legitimately engage in sex nor legally be recognised as a worker. This means that the child cannot be a sex worker.

Aware that this argument could imply that age is the only determinant of engaging in transactional sex, I also vouch for a pragmatic approach given real-life situations where girl children have been left to fend for themselves and assume adult responsibilities. In such cases, children are compelled to assume adult-like adaptive survival skills. Even when such skills would amount to unethical and illegal practices, unbearable real-life situations leave them with little alternative than to opt for the necessary evil of sex work as a viable pathway to self-sustenance. Therefore, the subject of child sex workers presents a practical moral dilemma when subjected to a case-by-case analysis.

2.5 Push and Pull Factors in the involvement of girls in sex work

Involvement in sex work does not happen in a vacuum. Certain conditions provide the driving forces to sustain sex work. The conditions that make sex work appear lucrative and attractive provide the pulling effect that leads to girls' entry into sex work. Conversely, there are conditions whose repulsive force elicits a pressure that drives otherwise unwilling actors from their normal lifestyles into sex workers. These forces can either be structural, psychological/behavioural or rational choices.

2.5.1 Structural drivers in sex work

Girls' vulnerabilities in the sex trade are due to multiple structural factors. These include economics, politics, demographic characteristics, gender-based discrimination, armed conflicts, natural disasters and child migration (ECPAT International, 2014). This part will focus on only four structural elements: economics, social-cultural, political, and religion.

Jackeline Monroe (2008) argues that there is a correlation between sex work and the economy. She argues that street prostitution is related to poverty. This implies that economically disadvantaged persons are more likely to resort to transactional sex as a source of economic sustainability than economically stable persons. The study by NASCOP indicates that of the 138 420 population estimate of female sex workers (FSW) in Kenya, Nairobi leads with 27,620 female sex workers. (NASCOP, xii). The economic inequalities in Nairobi push girls and women to engage in sex work. The informal housing zones that are the abode of most Nairobi residents are also poverty hubs and are thus areas where cases of sex work are high. Given that females are disproportionately affected by impoverished, illiteracy and marketable skills, girl children in the city slums are thus disproportionately vulnerable to entry into sex work.

In Kenya, it is estimated that 250,000-300,000 children live and work on the streets, with more than 60000 of them in Nairobi UNICEF (2018). Living on the streets exposes girls to susceptibilities of being in sex work. To get food and clothes, girls resort to prostitution. Cronley et al. (2016) argue that women who have been homeless as children enter prostitution very young. They look at sex work as the only way to earn an income. Street girls are also said to enter into sex work due to the increased feminisation of poverty (Chikoko et al. (2015). Women in the streets face extreme poverty; in most cases, these women will traffic their daughters or even pimp their girls early into the sex business to earn an income (Kange'the, 2012).

2.5.1.1 Tourism -poverty nexus as a structural driver to sex Work

Subliminally undergirding the economic tourism model is the unspoken but thriving sex industry. ECPAT International (2014) reports that about 1 million people fly for sex tourism alone. ECPAT further asserts that according to UNICEF, in the East African Region, Kenya remains a major hotspot for child sex tourism, including for offenders from the region. Children as young as 12 to 14 years of age, particularly in Malindi, Mombasa, Kilifi and Diani, are lured to be sexually exploited in hotels and villas.

Given that tourism is a key foreign income earner in Kenya, children are raised within a media environment and economic structure that strategically promotes the Caucasian race or *mzungu* as the prime economic category. This noble strategy inadvertently elevates the Caucasian race as a viable financial venture, even in children's eyes. The blend between the high standard of living, access to entertainment opportunities and tourism gives the sex industry an intensive pull-power. Although Kenya has passed several legislations to curb child sexual exploitation and trafficking, it has still found itself placed in tier 2 of the US Department of State's watch list for trafficking for failing to make serious efforts to combat crime.

2.5.1.2 Culture as a driver in sex work

Culture is a significant determinant of how sex is perceived; it also sets precedence for women's and girls' place in society. Harmful misogynistic and objectification of traditional practices that women and girls are subjected to are customarily performed for the benefit of men. A case in point is the "debt-settlers" role of girl children through sex which has become an acceptable practice in the slums of Nairobi. Just like in Malawi, where parents give off daughters to pay off debts or [as appreciation to men who have done charity in an area] (ECPAT Malawi, 2017).

In a context where gainful employment is hard to come by, young girls from poor slum households who are already culturally socialised as inferior and sex objects are easily transformed into the medium through which rent arrears and shop debts are paid. In slum areas where land is scarce, the girl child quickly buys into the cultural logic to assume the feminine role of co-provider by turning herself into an extension of the 'household farm' from which she can source basic needs and food security. This manipulated cultural notion of women normalising child engagement in sex as a valid contribution of the girl child into the household economy.

In Africa, about 60% of the urban population lives in informal, underserved and frequent slums and squatter settlements generally headed by single mothers or child-headed households ECPAT International (2014). The up-rootedness from the protective structures of home in the migration process does not allow girl-children to develop the requisite adaptability skills to take care of their

essential needs. Since many of them have no stable source of shelter and livelihood on arrival, they often engage in the sex trade as a source of income. It is the same framework that sustains the selling of young girls to wealthy people as sex items.

2.5.2 Psychological/behavioural drivers in sex work

Dysfunctional families breed behavioural disorders and vice versa. Coupled with sexual violence and gender inequalities, they increase the push factors for girls from families into sex work. UNICEF (2019) asserts that globally, over 1 billion children are victims of sexual, physical or emotional violence annually.

Women and girls drawn or forced into prostitution are emotionally vulnerable and are victims of sexual and physical violence. ACPF (2018) report asserts that about a third of females in Kenya experience sexual violence before they turn 8 years old. Children from unstable families and those who experienced sexual violence are likely to join sex work.

Childhood sexual victimisation plays a significant vulnerability role in sex trafficking. According to a study by Welf (2014), most rape survivors engaged in sex work to regain self-esteem by limiting access and commercializing sex. The powerlessness of having been sexually abused as a child may be related to the frequent discussions of control and power by women selling sex. Farley M (2003) explains that children abused at home by close relatives could feel more empowered when getting money from selling sex outside to strangers.

On the other hand, the family is the heart of child development since it is a social institution for the upbringing and protection of children (Lukman et al., 2011). He further argues that three factors in a dysfunctional family predispose children to sex work; the dysfunction deprives a child's psychological and emotional development, leading the neglected child to look for love, care and affection from people outside the family. The emotional and psychological vulnerability predisposes them to prostitution and sexual exploitation from opportunistic adults. Secondly, broken families are often abusive and violent. Abused children may run away from home to the streets, subjecting them to prostitution for survival or making them easy prey for trafficking (ibid, 2011). Thirdly, dysfunctional families may lead to child neglect hindering the monitoring or observing whom the children relate to. This could teach the neglected children to influence their peers and join sex work (ibid, 2011).

2.5.3 Rational choice as a driver of sex work

Rational choice compares actions according to their expected optimum outcomes for the actor and postulates that the actor will choose the action with the optimum outcome (Coleman and Feraro, 1992). Sanders, O'Neill and Pitcher (2018) posit that "some women make an informed 'rational

choice 'to work in prostitution, rather than a 'free choice', available to few individuals in a society structured hierarchically by race, sex and class". While many countries, including Kenya, define a child "as an individual who has not attained the age of eighteen years (Constitution of Kenya 2013), it is clear that the age of consent ranges from 16-to 18. In essence, the subject of consent does not have a homogenous meaning. Some girls within the 16 to 17 age brackets, while legally children, would regard themselves as 'contextually mature 'to engage in consensual sex given the prevailing life circumstances. This further implies they have a relatively high capacity to make rational choices relative to their context and status on the subject of sex.

In the context of Nairobi, Kenya, many of these girls are school-going. However, as Tom Odula (2020) found out in the height of the effects of the Covid 19 pandemic, schoolgirls became sex workers primarily to helpn their parents with household bills. Their discussion with Odula indicates that they are aware that they are not legally and morally supposed to engage in transactional sex. Still, transactional sex accords them a short pathway to high survival chances given the prevailing circumstances. The girl sex workers are acutely aware that "where they come from, they were some sort of role models" (Odula, 2020) and that though "they think their chances of returning to class are remote, they hope they will not be doing this for the rest of their lives" (Odula, 2020).

In this context, mature minors are constrained by their circumstances. They can rationalise what pathway would present them with the optimum survival option in their judgement. The health risks, illegality and morality of engagement in transactional sex notwithstanding, they opted for sex work as a stop-gap measure to a momentary self and family survival, hoping that the benefits accrued would sustain them past their prevailing challenging situation. Morally this would be dehumanising and self-degrading, yet pragmatically, this would be the only viable option of self-sacrifice to support the family.

2.6 Conclusion:

The understanding of sex work is variedly broad as viewed from different lenses. However, sex work and its multiple manifestations are realities that cut across other societies and cultures. Understanding how sex work manifests itself is key in unearthing how the trade operates. The exploration explains various factors that interplay in recruiting and sustaining the trade irrespective of the country's solid laws and policies that protect the children. A growing trend in child sex work, particularly involving adolescent girls, is necessitated by a multiplicity of intersectional factors of systemic and or structural marginalisation, discrimination and inequalities that render underage girls vulnerable to sexual exploitation. Understanding how these factors shape the pathways of girls '

involvement in sex work is critical for any realistic, deliberately targeted and long-lasting SRHR policy and programme interventions.

CHAPTER THREE: APPRAISING SEXUAL REPRODUCTIVE HEALTH RIGHTS FOR GIRLS IN SEX WORK

Introduction

This chapter provides a comprehensive discussion on SRHR for girls in Sex Work. The chapter is divided into six main sections providing thematic areas of discussions regarding SRHR. To begin with, the chapter provides an overview of human sexuality as a basis upon which SRHR is founded. Secondly, it traces the historical footprints of SRHR discourse to appreciate its evolution over time. Attention is also given to the political dimensions of SRHR, which have a significant implication of policy development, financing and programming. Fourthly, the chapter looks at the comparative cultural and religious perspectives that influence social attitudes and behaviour regarding SRHR. The fifth section discusses the SRHR Interventions for girls in sex work in Nairobi and finally looks at the barriers that limit access to SRHR for girls in Sex Work in Nairobi.

3.1 Overview of Human Sexuality

All human beings are endowed with the natural capacity of Sexuality. It thus constitutes a complex web of biological, psychological and cultural components often manifested in human interactions. However, throughout history, these interactions have often been overshadowed, if not suppressed, by a biased overemphasis on the biological dimension of sexuality. The reductionist perception of sexuality can be traced to the medieval period as the Church was a significant player in conceptualising, determining, and regulating public affairs. St. Augustine, for instance, insisted on the view that human sexuality is exclusively biological, often expressed through sexual intercourse with the sole purpose of procreation and not pleasure (Ogumbanjo, 2015). In this case, sex was only permissible between two consenting adults, a man and a woman, in a marital union. According to the Vatican, *"experience teaches us that love must find its safeguard in the stability of marriage if sexual intercourse is truly to respond to the requirements of its finality and those of human dignity"* (Voughn, 2016).

This understanding of human sexuality predominated in the medieval years with significant ramifications on people's religious, political, moral and legal beliefs, attitudes, norms and behaviours. Notably, the contemporary discourses on human sexuality are still enmeshed in similar conventional undertones, which tend to muzzle any progressive debate on sexual and reproductive health and rights (SRHR).

A closer look at this essentialist's view of human sexuality as an exclusively biological function, however, not only finds it insufficient but also lacking in merit. The idea that human sexual

behaviour only constitutes a morally significant goal of procreation seems inadequate. This study argues that sex between two informed and consenting adults is in itself intrinsically valuable. Pleasure, other than procreation, maybe its intended purpose and is therefore morally neutral. Goldman maintains that sex is just “plain sex” and has no greater goal other than itself (Voughn, 2016).

To view human sexuality as an exclusively biological function fundamentally fails to acknowledge the significance of the psychological and sociocultural manifestations of human sexuality, especially within African cultural traditions. Tamale (2014) rightly opines that “as Africans, how we “do” and experience sexuality is largely influenced by society and culture.” This is a position also held by Okechi (2018), who argues that in African traditional societies, individuals were initiated into concepts and acts of human sexuality through well-organised processes consistent with their appropriate developmental stages. It is difficult, if not impossible, to delink human sexuality from the acquired sexual characteristics that are infused through learning; and, often expressed in thoughts, feelings, emotions, ethical norms, beliefs, laws, values, attitudes, and rituals.

Exposure to sexual knowledge and content; for example the legal, religious, political and cultural beliefs and practices that define one’s social context have a significant bearing on individual experiences and expression of sexuality. “Social constructionism,” as defined by culture, religion, politics, ethics, and the media, has a far-reaching influence on an individual’s sexuality with regards to their perceptions of meaning, skills, values and attitudes, as rightly pointed out by Grebe and Drea (2018). For instance, it may not be a reasonable expectation that girls living in the slums of Nairobi should exhibit similar perceptions, values, attitudes and behaviours regarding their sexuality as those living in rural Nigeria. Is it not expected that their sexual experiences may significantly vary depending on the extent to which they identify with their ethnic traditions and or have exposure to cultural or economic pluralism? This may equally apply to different contexts such that girls who are educated and born of wealthy families may also exhibit other sexual behaviour compared to poor and uneducated girls. This confirms the assertion by Feinsten et al 2006 that those with education are likely to have better health, social well-being as well as health behaviours.

Human sexuality, therefore, embodies the “total experiences, systems, attitudes, and behaviour that characterises the sexual sensation, reproduction, and intimacy”, as observed by Grebe and Drea (2018). Greenberg, Bruess and Conklin (2014) reiterate this; they assert that human sexuality is a multidimensional manifestation that includes our “physical, emotional, and spiritual responses, thoughts and feelings.” This broader understanding of human sexuality as including the “anatomy, physiology, and biochemistry of the sexual response system; identity, orientation, roles and

personality; and thoughts, feelings, and relationships” (ibid, 2014), is critical to the understanding of sexual and reproductive health and rights (SRHR).

3.2 Historical Development of Sexual and Reproductive Health and Right (SRHR)

SRHR, as an emerging discourse, has a long historical footprint that has generated many divergent views. Throughout history, deep-seated socio-political, religious, legal, ethical, and cultural dispositions have shaped the contextual interpretation and understanding of human sexuality, particularly regarding sexual and reproductive health and right (SRHR). Discussions surrounding the nature, purpose, and expressions of human sexuality have continued to dominate human history and evolve with time. Central to these debates has been fertility and birth control, particularly regarding contraception use and abortion, critical components of SRHR.

Until the nineteenth century, there were hardly any formal regulations restricting the use of contraceptives or abortion. As Greenberg, Bruess and Conklin (2014) observe, Egyptian and Persian women used contraception more than 4000 years ago as part of their tradition. Persian women, for instance, inserted lemon-soaked tampons in the vagina to prevent pregnancy, while Egyptian women used tampons soaked in a mixed solution of pounded acacia tips and honey (ibid, 2014). Maguire (2003) contends that knowledge of contraception was also widespread among the Jewish, Greek and Roman societies who used coitus interruptus, pessaries, portions, and condoms. Abortion and infanticide were also common practices, albeit to a limited degree (ibid, 2003). In many traditional African societies, prolonged lactation was also used as a means to control childbirth.

It was not until the mid-nineteenth century when formal regulations regarding contraception and abortion began to appear. In 1930, Pope Pius XI issued a marriage encyclical called *Casti Connubii*. This encyclical marked a critical point in which the Roman Catholic Church adopted an official position condemning both contraception and sterilisations as against nature. Abortion was also criticised as a sin against life (Maguire, 2003). Until then, however, a certain degree of moral tolerance existed as far as the practice of abortion was concerned. Ogumbanjo (2015) contends that abortion was indeed able to a certain limited extent, usually within the first forty to fifty days of conception. This duration was believed to be the period before the infusion of the soul to the fetus, as taught by Aristotle and other Church Fathers. At this time, it is clear that advancement in science was limited and thus, the uncertainty surrounding the exact time when life began along the continuum. Today, there is a consensus that life starts at conception, but debates on the precise moment of personhood remain largely contested. These arguments will be revisited later in the chapter, especially about the abortion debate.

The UNFPA (2019) views SRH as "a state of complete physical, mental, and social well-being in all matters relating to sexuality and the reproductive system." This definition is further broadened through the resolutions adopted by the International Conference on Population and Development (ICPD) of 1994 held in Cairo. The conference marked a critical paradigmatic shift in the contextual understanding of sexual and reproductive health (SRH). It boldly departed from the general perception of SRH as merely about programs intended to fulfil fertility and population control to an understanding of SRH as a fundamental human right enjoyable by all (UNFP, 2019). The conference anchored SRH as an integral part of the "right to the highest attainable standard of physical and mental health" (ibid, 2019) as enshrined in ICESCR Article 3 and 12, CEDAW Article 12 and CRC Article 24. This was considered a significant milestone, especially for adolescents and key populations, who have consistently faced widespread discrimination and barriers in accessing SRHR interventions. Anchoring SRHR discourse within the right-based framework makes it an entitlement claimable by all, including key populations and girls involved in sex work. A move that cannot be taken lightly as it bears such significant repercussions as to obligate states to implement SRHR in its entirety.

The move to anchor SRHR on a rights-based framework, is welcomed but faces several justiciability/enforceability challenges. While human rights are universal, independent, interrelated and indivisible, certain aspects of SRHR are yet to gain universal acceptability among many societies. Depending on a different school of thought, one would argue that some components of SRHR contravene human rights law. For instance, it could be argued that if SRHR is about the "right" to the highest attainable standard of physical and mental health, how then does its justification of safe abortion not a contradiction to international law, which also provides for the right to life? What about the duty of the State, which includes the responsibility to provide quality health care and protect life and children from sexual exploitation? Does promoting SRH services such as contraception to girls in sex work contradict the state responsibility to protect them from abuse in the first instance?

However, on these accounts, the SRHR discourse borrows heavily from the liberal school of thought that asserts that indeed, the killing of an innocent person is wrong and should not be permitted, but, at the same time, rejects the notion that the unborn is a person with full moral rights. It does not consider abortion murder and asserts that this is not an infringement of the freedom to life, as this chapter discusses. Regarding contraception for girls in sex work, the SRHR discourse posits that these girls are already exposed to risks. On the contrary, therefore, SRHR does not justify underage girls' involvement in sex work; instead, sexual reproductive health services aim to protect them from risks they are already exposed to.

According to Liliane Foundation (2019), SRHR underpins an individual's rights and ability to explore alternatives and derive personal decisions regarding their sexuality and reproduction. The foundation contends that SRHR affirms the individuals' right to freely reproduce and regulate their fertility and make life-informed choices regarding their sexual relationships. It further argues that the individual's freedom to define their path freely guides their decisions in choosing life partners, having family, and determining their children's timing and spacing. However, this liberal view of human sexuality, particularly the overemphasis on individual reproductive liberties as advanced by the Liliane Foundation, faces several challenges within many contemporary African cultures. Whereas most Western cultures emphasise individual rights, cultures within the southern hemisphere emphasise community rights. This may be a problematic area in the implementation of SRHR.

Despite the infusion of modern characteristics within contemporary African cultures, the majority still value communitarianism, especially on sexuality and reproductive health (Okechi, 2018). Coupled with a predominantly patriarchal culture, an individual's free will, especially women and girls, to determine their reproductive pathways always finds limited expression within many African societies. Reproductive health decisions are therefore not always entirely free from community influence, myths and expectations.

Many traditional African communities still treat women and girls as second-class citizens whose words and decisions do not count. SRHR awareness in many African cultures is still deficient, thus the need for increased sensitisation so that individuals, men, women, boys and girls, can access scientifically accurate and reliable information free from misconceived myths, attitudes, and stereotypes. Addressing the disproportional power imbalances and inequalities between men and women, boys and girls in Africa must be a central focus of SRHR if individual choices on sexual reproductive health matters are advanced.

3.3 The Political Dimensions of SRHR

Agenda setting in public policy is a political process that can never be underestimated. Politics determines how resources are allocated; how public laws and policies are developed, and their subsequent execution. The SRHR discourse is shrouded with various political underpinnings that influence its interpretation, implementation, and financing. The United States (U.S) government is a major actor in promoting family planning interventions and SRHR in general, both in the U.S and in other developing countries. However, the politics of the U.S have changed considerably since the year 2002 when the Republican Party occupied the White House and controlled both the U.S House and the Senate (Greenberg, Bruess and Conklin, 2014). The party openly opposed women's right to

abortion and expressed reservations in supporting LGBTQ rights. Instead, the party opted to finance other alternative educational programmes that support abstinence as a major way to control sexually transmitted infections (STIs) and pregnancies.

While this political standpoint may look insignificant at face value, it has had far-reaching consequences on enacting SRHR policies, including the financing and executing related SRHR programmes within and outside the U.S. On the contrary, the majority of Nordic countries such as the Netherlands continue to invest financial resources towards promoting SRHR interventions including contraception, LGBTQ rights, and safe abortion. What remains uncertain is why many Nordic countries seem so readily supportive of SRHR as opposed to Asian and or African countries. This is arguably, partly due to the diminishing influence of conservative religions in these countries, which are often opposed to SRHR and a changing value system among the populations. Other factors also include declining population in these countries, economic advancement and human rights centred donor support philosophy.

During the Universal Periodic Review of Kenya in 2020, the majority of the Schengen countries, including Denmark, Belgium, Malta, Norway, Iceland, Sweden, Finland, Netherlands and Estonia, made specific recommendations to Kenya relating to SRHR. In their many recommendations, they urged the Kenyan government to either adopt, enact or implement policies and programmes that ensure non – discriminative access to SRHR services, including comprehensive sex education, especially for adolescent youth. Similar recommendations were also made by New Zealand and Canada (UNHRC, 2020). It is worth noting that, none of the African, Middle East and Asian countries made similar recommendations on SRHR to Kenya. Instead, they focused their recommendations on other economic, social and cultural rights such as the right to education, protection of children and People Living with Disabilities (PLWD), women empowerment, general health care and the right of refugees (ibid, 2020).

In 2019, during the Universal Health Coverage political declaration discussion and adoption in New York, the paragraph on SRHR became highly contested. 33 countries led by the US issued a statement on the adoption day to denounce the SRHR paragraph. Kenya abstained from taking any position, making it difficult to know the country position on SRHR issues. Abstaining from such matters of international significance is not only curious but may also create uncertainty. Abstaining could have been as a result of maintaining a good relationship and especially on SRHR funding with the Nordic Countries as well as the US government that funds almost 80% of the HIV response in Kenya. Conversely, a non-decision in public policy is still a decision.

Abstaining from such critical decisions, the country took a politically safe position but one that technically failed to proactively advance the course for SRHR. This is arguably in keeping with

President Uhuru Kenyatta's sentiments expressed during the official visit by former US President Barak Obama in July 2015. President Uhuru termed LGBTQ discourse as a "none issue," This shows the not buying in on human rights issues that are termed as foreign or non-conformist to the culture by the ruling regime. These contests on SRHR have continued to play out on multiple occasions. On 14th November 2019, when the US government, together with Brazil, Belarus, Egypt, Haiti, Hungary, Libya, Poland, Senegal, St. Lucia, and Uganda; through a joint statement, distanced themselves from the general resolutions adopted during the Nairobi Summit ICPD – 25.

"We are also concerned about the content of some of the key priorities of this Summit. We do not support references in international documents to ambiguous terms and expressions, such as sexual and reproductive health and rights (SRHR), which do not enjoy international consensus, nor contemplate the reservations and caveats incorporated into the Cairo outcome. In addition, the use of the term SRHR may be used to actively promote practices like abortion. There is no international right to abortion; in fact, international law clearly states that "everyone has the right to life" (e.g., Article 3 of the Universal Declaration of Human Rights). We cannot support a sex education that fails to adequately engage parents and which promotes abortion as a method of family planning. But we support "proper regard for parental guidance and responsibilities" [E73] and giving young people the skills to avoid sexual risk". (US Joint statement on SRHR, 2020).

In their statement, these countries contested that SRHR was an ambiguous term that did not enjoy international consensus and it may be used as an avenue to allow abortion, which they argued had no basis in international law. In October 2020, the U.S government, together with other thirty-three (33) countries; fourteen (14) which were African states including Kenya, reaffirmed this position by emphasizing that "in no case should abortion be promoted as a method of family planning" and that "the child needs special safeguards and care, before as well as after birth."

This position probably explains why African, Middle East and Asian countries opt for silence, staying clear of making similar recommendations touching on SRHR during the UPR for Kenya, 2020. The majority of African and Middle East countries have continuously expressed reservations on certain aspects of SRHR, especially on safe abortion. In their view, these are pro-western – foreign ideologies that do not find resonance with their traditional cultures. Such declarations as expressed in the US-led joint statement during the Nairobi Summit ICPD – 25; the reservations of African and the Middle East countries as well as the position of the Nordic countries are clear indications of the power of politics

in influencing uptake and implementation of SRHR interventions. These political dynamics are important as far as policy decisions, programming and resource allocation for SRHR are concerned.

Lack of political goodwill and an enabling legal and policy framework makes the implementation of SRHR interventions for adolescent girls in sex work difficult. In Kenya, attempts to introduce the Sexual Healthcare Bill, 2019, as a way of providing a legal framework for the implementation of SRHR services faced heightened political and religious opposition. It was argued that the bill intended to legalize abortion and provide uncensored access to sexual information to children, which would in turn promote sexual promiscuity. Those in favour of this position maintained that SRHR programming is loaded with anti – African ideologies that are difficult to embrace. These assertions, however, cannot be taken at face value and needs further exploration to ascertain their merit. According to Amadiume (n.d), these assertions cannot hold due to the ambiguity exhibited in contemporary African cultures, which at best, is a mishmash of the remnants of post-colonial, Christianity and Islamic legacies. It is, therefore, necessary to further interrogate how the interface between culture and religion contribute to shaping the SRHR discourse in Africa, particularly in Kenya.

3.4 Comparative Cultural and Religious Perspectives on SRHR

Africa is a very diverse continent, both in terms of its people and cultures. In spite of these diversities, the African people are said to share one common trait; which is their religiosity. Mbiti (1969) stresses that the African people are notoriously religious. Their doing and being are intrinsically religious. In Africa, religion deeply permeates the social, economic, cultural and political life of the people. It defines, to a larger extent, their sexual experiences, attitudes and behaviour. Religion, therefore, plays an essential role in shaping the SRHR discourse and can never be overlooked.

However, this study holds that it is difficult to pin down the SRHR discourse within a purely African cultural context. Noteworthy, traditional African cultures have significantly transmuted over the years, mainly as a result of globalisation and the aftermath of colonial invasion. Leclerc-Madlala (2007) agrees that contemporary African societies are deeply infiltrated with Christian and Islamic worldviews which have a significant influence on people's lived experiences. Islam and Christianity constitute 86% (Tamale, 2014) of the dominant religious groups in contemporary Africa. These are distributed differently in different geographical locations. The interplay between traditional customs, law and religion forms the bedrock of structured morality (Tamale, 2014) and hence establishes societal values, attitudes and behaviour.

Christianity, Islam and African Traditional Religions (ATR) have considerable sway on perceptions regarding SRHR in Africa. However, it is noteworthy to mention that neither Christian

nor Islamic perspectives on SRHR are homogeneous. They vary significantly across different denominations and intra-religious persuasions. Contraception within the Catholic teachings is seen as impeding the natural potential to create life, contrary to the primary intention of marriage. Contraception is therefore seen as a violation of the natural law of God. As a result, the Roman Catholic Church and other fundamentalists Pentecostal Churches have forbidden all forms of unnatural birth control methods, including chemical and barrier methods, as well as abortion and emergency contraception (Srikanthan and Reid, 2007).

The aforementioned views are of particular concern to the SRHR discourse, which strongly sanctions contraception use and safe abortion as a fundamental human right. While there seems to be a general consensus that life begins at conception, the interpretation as to when that life becomes a person remains highly contentious. On the one hand, the conventional view as held by the Catholic and other Pentecostal Churches argue that the potential for personhood is present at the point of conception and thus, irrespective of the developmental stage of the zygote or foetus, all rights accorded to a person must equally apply to it. This argument, however, merits some reflection. For instance, does the potential to be something the same as having the same status as that thing? Liberals would certainly argue against and assert that one cannot accord the same status of a person to a foetus that is yet to acquire that status despite its potential. Indeed, a foetus cannot be said to have life; a foetus and especially when they are below 27 weeks are just masses of cells that cannot even be referred to as human medically. The carrier of the foetus who is the enabler and one who is in a position to enjoy the rights and freedoms 'health in that case becomes the first priority.

According to Mary Anne Warren, to qualify to be a person, one must first possess the faculties of conscience, reason, communication, self-concept, self-awareness, and motivation (Voughn, 2016) without which one cannot be said to be a person. The foetus, arguably, does not possess this status and therefore cannot be said to have the full moral right to life. This argument, however, does not seem to settle the matter but raises further arguments instead. For instance, does a newly born baby possess or is fully capable of exhibiting all of the aforementioned traits to be qualified as a person? What about the unborn, two to three hours before birth? What about adults whose faculties are impaired due to terminal illness or accidents? Do they still possess the right to life as persons? Using birth as a point at which personhood is determined as it is claimed by liberalists, to whom SRHR finds solace, is defeatist.

Nonetheless, the strict application of Church doctrines and biblical interpretation is however devoid of the reality that many people engage in sexual intercourse, not for purposes of procreation, but for pleasure and as an expression of love and affection. These Church positions are also too

idealistic and fail to address the lived reality that a significant proportion of adolescent girls become pregnant and even die due to unsafe abortion or childbirth complications. Furthermore, the position held by these denominations only lays emphasis on the physiological aspects of human sexuality while ignoring the psychological, economic and social determinants of sexual relations.

On the other hand, mainstream Protestant Churches do not strictly prohibit the use of contraception and have adopted a more liberal approach to abortion. According to Srikanthan and Reid (2007), decisions regarding unwanted pregnancies are often left to the discretion of the woman, whereas abortion due to threat to the mother's life is generally permitted. The Presbyterian Church of the USA, for instance, during its General Assembly in 1983, affirmed the "woman's right to follow her conscience concerning childbearing, abortion and sterilisation" (Maguire, 2003). Notwithstanding, this assertion presupposes that the conscience is pure - the transcendent faculty of reasoning, discernible of moral judgments of right and wrong. However, it pays little attention to the possibility of a troubled conscience, which may not necessarily be an act of free will. Fear, shame, avoidance, self-defence, individual's cultural, political and economic underpinnings may impact individuals' conscience. It remains difficult to ascertain whether a troubled conscience can be capable of discerning moral questions of right and wrong, good and evil, and or just and unjust, especially on life matters. While these are moral debates beyond the scope of this study, what is more apparent is that the Christian perspective on SRHR cannot be generalised as either prohibitive or permissive as these vary significantly across different denominations.

Similarly, Islamic views on contraception are also varied. A section of conservative Muslims still holds that contraception violates Allah's intention. Yet, Islamic teachings generally permit contraception use within marriages except for irreversible sterilisation and abortion (Srikanthan and Reid, 2007). Unlike Christianity, opposition to contraception use and abortion within Islam is seen as more political than a theological inclination. Most conservative Muslims believe that contraception is a Western conspiracy to reduce the Muslim population and curtail its power (Roudi-Fahimi, 2004). In Islam, contraception use is seldom considered sinful as in Catholicism and conservative Christian Protestants.

Unlike in the Abrahamic religions, ATR does not have a specific dogmatic position on contraception use and abortion. Nevertheless, varied birth control practices have been exhibited throughout African cultures, such as prolonged lactation, periodic abstinence and withdrawal methods, as noted by Amadiume (n.d). He further contends that in ATR, sex education was a common practice, provided through rites of passage, contrary to the opposition on comprehensive sex education as advanced by the Catholic Church and other conservative Protestant denominations in Kenya.

Amadiume (n.d) asserts that traditional Masai of Southern Tanzania, for instance, “elongated the labia through massage and taught girls ’sexual movements to heighten sexual pleasure.” He further argues that older women manipulated girls ’sexual organs using phallic objects and their fingers to educate them about sex in Zambia. However, Amadiume (n.d) argument may be seen as insensitive and clawing, reflecting on the current child protection developments, especially from sexual exploitation. This may feed into the existing fears that SRHR liberalises sex among children and may fail to counterbalance reproductive health needs and the legal requirements of child protection.

The varied religious perspectives on contraception and abortion reveal morality’s relativity and subjective nature, which cannot be blanketed across all cultures and religions. The argument, therefore, that SRHR is both anti-religious and anti-African cannot be conclusively substantiated as expressed in different Christian, Islamic and African Traditional Religions perspectives.

3.5 SRHR Interventions for Girls in Sex Work in Nairobi

An overview of the global, regional and national practices reveals that the full realisation of SRHR is still a challenge as envisaged in the ICPD – 1994 Plan of Action, especially for underage girls in sex work. Globally, about 222 million women (50 million below the age of 25) have unmet contraceptive needs, according to Marie Stopes International (2012). This is despite the increasingly high number of adolescent and teenage pregnancies, especially in developing countries. Due to the unavailability of contraception, about 7.4 million unplanned pregnancies among adolescent girls are reported globally, 60% in sub-Saharan Africa. According to the African Union Commission (2006), Africa records about 400 maternal deaths per 100,000 live births, mainly due to blood pressure, unsafe abortion, obstructed labour, and excessive bleeding during childbirth.

Nevertheless, Africa still has the fastest population growth in the world. Demographic data indicate that the rates of natural increase in Africa are about 2.4%, of which 20.5% are young people between 15 to 19 years old (African Union Commission, 2006). Notwithstanding, SRHR services are largely inaccessible to a big number of young Africans.

In Kenya, the implementation of SRHR for adolescents and youth remains a challenge, with significant consequences to their overall psychosocial and physical development. Adolescence is a critical phase in life when most people begin to explore their sexuality and form intimate relationships, thus needing much attention. Holmstrom et al. (2019) observe that adolescence is when most people also begin their initial experiences of selling sex. Noteworthy, this seldom happens in the traditional arena of prostitution. Sex work among girls in Nairobi is discreet and often out of the limelight. As noted by Swaner et al. (2016), working with girls in sex work can be overwhelming. This is partly due

to the difficulties associated with locating them and their reluctance and sometimes resistance to services. The discreet nature of sex work involving girls in Nairobi often means that they are cut out of mainstream SRHR interventions. Consequently, they remain highly susceptible and exposed to SRHR related risks than most categories of other vulnerable groups.

Adolescent girls and youth are generally vulnerable to early or unintended pregnancies, unsafe abortion, and childbirth and pregnancy complications. They remain exposed to sexual and gender-based violence, HIV and AIDS and other sexually transmitted infections. (KNCHR, 2012). According to WHO (2006), pregnancy-related complications are the leading cause of death among adolescents aged 15 to 19 years old in developing countries. Young people below the age of 25 account for at least 60% of all unsafe abortions and have a higher prevalence caseload of curable STIs (ibid, 2006). The risk exposure for girls in sex work is further exacerbated by the environmental circumstances surrounding the sex industry in general. Preventive measures such as contraception, including negotiating for protective sex, are weaker among girls in sex work due to differential power relations. These girls are often ill-equipped with life skills and comprehensive information on SRHR, including HIV and AIDS. Marie Stopes International (2012) notes that as high as 60% of adolescents have an unmet need for contraception. They also note that condom use among adolescents and youth in sub – Saharan Africa generally remains low.

To improve access to SRHR services for adolescents and youth, especially girls in sex work in Nairobi, UNFPA (2019) affirms the need to enhance equity by making services affordable and available without discrimination. It also emphasises the need to improve the quality of care through integration of services and ensuring that commodities and facilities are suitable and delivery of services is undertaken safely, timely, and efficiently. UNFPA (2019) articulates the need to tailor services to the right holders 'demands and embrace transparency and accountability. This underscores the need for a people-centred facility that puts the adolescents and youth interests first. In addition, Marie Stopes International (2012) also insists that for SRHR programming to be successful, it needs to integrate Comprehensive Sexual Education (CSE) as a school-based curriculum and through other community avenues. Ibid (2012) observes that adolescents and youth, particularly girls in sex work, are sensitive to cost, confidentiality, efficiency, and time, which needs to be prioritised.

The establishment of youth-friendly facilities and outreaches for SRHR programming, especially for girls in sex work, remain a farfetched dream in Kenya. Liliane Foundation (2019) posit that comprehensive and integrated SRHR services are critical in facilitating access to "safe, effective, affordable and acceptable contraception methods." In Nairobi, several non – governmental organisations such as LVCT, HOPE World Wide, Marie Stopes, and WOFAK, among others, have

made efforts to establish programmes in response to the diverse SRHR needs of the general population, some of which are tailored to the specific needs of adolescents and youth. These services include HIV screening, prevention, care and treatment; antiretroviral therapy (ATR) to enhance viral load suppression; information and counselling through toll-free lines and digital platforms; psychosocial support services; pregnancy crisis counselling; emergency contraception; post-abortion care; nutritional educational support; menstrual hygiene management; STI diagnosis and treatment; and other methods of Family Planning (Marie Stopes International, 2012). However, these efforts often face several constraints due to lack of political goodwill, unsupportive cultural attitude, prohibitive laws and limited Government support, which affects their full operationalisation.

3.6 Barriers to SRHR Services for underage girls in Sex Work in Nairobi

The implementation of SRHR policies and programmes in Africa sail on very turbulent waters. Most African countries are yet to operationalise the Maputo Plan of Action of 2006, which intended to operationalise the continental policy framework on SRHR (Oronje et al., 2011). A review of this plan of action reveals that despite many African states having developed their SRHR policies, these policies have mainly remained un-implemented.

Generally, the SRHR programming has had an icy reception in Africa, and its operationalisation continues to face challenges. Oronje et al. (2011) observe that the framing of SRH as a “right” remains highly contentious, and comparative experiences drawn from Nigeria, Botswana and Kenya seem to confirm the same. In Botswana and Nigeria, the rights approach to SRH does not enjoy Government support and often face public opposition. In Nigeria, for instance, the operationalisation of the “Family Life HIV Education” as an SRH curriculum in schools faced heightened opposition from parents until it was redesigned to remove some SRHR components for it to be accepted. The adolescent SRHR programme designed by the Botswana National Youth Council also faced initial opposition from parents and had to be redrafted to remove such components as masturbation before it was accepted (Ibid, 2011). Similarly, attempts to reintroduce the Sexual Healthcare Bill, 2019, in Kenya faced heightened opposition from politicians, religious leaders and a section of citizens because it intends to liberalise sexuality, especially among adolescents and youth. Programmes such as comprehensive sex education have therefore been outrightly rejected in Kenya. Standards Newspaper, Ureport (2018) reported that nominated senator Judith Achieng Sijeny a bill seekinmg adolsecents to have access to comprehensive sexual education and confidential services, the senate as well as the ministry of education opposed the bill.

Other constraints to the operationalisation of the SRHR policies and programmes in Africa include that homosexuality and abortion are outlawed in most African countries (Oronje et al., 2011). These are often viewed as foreign ideologies that are both unnatural and un-cultural. As a result, developing policies and programming on safe abortion SRHR targeted interventions to the LGBT community becomes difficult. Similarly, it remains difficult to develop SRHR policies and outreach programmes for girls in sex work in Kenya for the mere fact both prostitution and sexual relations with minors are criminalised and punishable. The Children's Act (2001) and the Sexual Offenses Act (2006) outlaws any form of sexual engagement with minors. Prostitution is also prohibited under the penal code. As such, girls involved in sex work in Nairobi often find themselves in conflict with the law and therefore feel afraid to seek SRHR services even when they deserve them. They would rather solicit unprofessional services from scrupulous vendors than run the risk of arresting or exposing their clients.

Besides legal and policy setbacks, other constraints undermining the operationalisation of SRHR interventions for girls in sex work in Nairobi include social stigma and discrimination, lack of sexual knowledge and a lack of awareness of services (Thongmixay, 2019), as well as institutional bottlenecks. Mutea et al. (2019) emphasises that a gap in adolescents' access to SRHR services and information leads to inadequate access and utilisation of SRHR services among adolescents. Adolescent girls may exhibit shyness and feelings of shame due to negative cultural attitudes to premarital sex. They may fail to seek services due to guilt of being seen to procure sexual and reproductive health services.

Interventions relating to SRHR are not prioritised in Kenya and across other African countries. The African Union Commission (2006) observes that low national budgetary allocations towards health, and by extension SRHR, is a common phenomenon among most African countries. This is reiterated by Oronje et al. (2011), who observes that governments either do not fund SRHR issues or only allocate insufficient budgets. (Ibid, 2011) also notes the challenge of limited donor funding towards SRHR as a significant impediment to the operationalisation of SRHR interventions.

The negative framing of SRHR (Oronje et al., 2011) as alien to Africa also impedes policy development and programming for SRHR in Kenya. This, coupled with the immorality tag pegged on abortion, homosexuality and prostitution, makes it challenging to provide SRHR for minority groups such as girls in sex work. Remarkably, the policy and morality discourse in Africa, including Kenya, is often framed from the perspective of a predominantly patriarchal society that fails to appreciate women's rights, especially those relating to SRHR. This limits resource allocation and an enabling environment that is critical to the operationalisation of SRHR interventions.

Finally, poor logistical and institutional weaknesses also delay access to SRHR for girls in Nairobi. The African Union Commission (2006) points out that poor infrastructure and equipment relevant to addressing SRHR demand and inadequate technical capacity among practitioners are severe setbacks to providing quality SRHR services. The WHO (2019) affirms that health systems sometimes make it difficult for girls in sex work to access services due to several factors such as distance, lack of confidentiality, unfriendly attitudes among the professionals and restriction issues to users. The disposition of health practitioners is usually critical in the provision of SRHR services.

Lack of preparedness among health practitioners and a negative attitude perpetuated by religious and cultural beliefs often become a significant impediment to access to SRHR services. Godia et al. (2013) observe that in many instances, healthcare workers display feelings of inadequacy and discomfort when working with adolescents due to limitations of language and communication. Most girls in sex work in Nairobi use “ghetto” language, popularly known as “sheng.” Many healthcare workers do not adequately comprehend this language, whose terminology tends to change quite rapidly. Patience, good listening and a non-judgmental attitude when working with girls in sex work can therefore not be emphasized enough.

3.7 Conclusion

The understanding of human sexuality has continued to evolve over the years, shaped through history, culture and intergenerational changes. This evolutionary process negates the understanding that human sexuality is exclusively a biological function whose end means procreation. Human sexuality, therefore, not only constitutes our physiology, but also the psychological and sociocultural dimensions of human experiences as clearly demonstrated in the chapter.

As argued in the chapter, the experiences of human sexuality across different historical periods and cultures depicts an overwhelming human desire and continuous struggle to control and or expand individual choices as far as sexual and reproductive health rights is concerned. What is clear, however, is that throughout these struggles, traces of the SRHR discourse can be found in all human societies and cultures, albeit in different manifestations.

The political and religious views that depict SRHR as anti-African foreign ideologies therefore lack credence as historical evidence speaks to the contrary as demonstrated in the chapter. As argued in the chapter, different political regimes hold different views on SRHR. Unlike the developed countries of the West, African and Asian countries have shown to be less enthusiastic towards SRHR. This, however, has little to do with culture as clearly demonstrated in the chapter. It rather speaks to

the reality that the majority of the African and Asian countries are yet to fully embrace human rights in general.

Similarly, the chapter establishes that both Christian and Islamic, which are the most dominant religions in Africa, cannot be said to be homogeneous and therefore their perspectives on SRHR vary according to different groupings and denominations. Christian and Islamic fundamentalists tend to hold the view that SRHR contradicts the natural order while the more liberal groups such as evangelical churches in the Christian tradition hold a contrary view. The bottom line therefore is that religion cannot be used as a basis for dismantling SRHR. Nevertheless, it is clear that political, religious and cultural perspectives cannot be easily ignored in the SRHR discourse. They play a key role in the shaping of human experiences, especially, the lived reality of day-to-day life.

Finally, the chapter underscores the importance of establishing youth-friendly SRHR services. The chapter argues that political goodwill, improved capacity and attitude of health practitioners, proper prioritization, budgeting, and resourcing of SRHR interventions are critical in overcoming access barriers, especially for girls in sex work. This, coupled with an enabling legal framework, is essential in the advancement of SRHR. The laws protecting children are generally derived from a protectionist approach and harm the girls' access to SRHR services and information in the long run. Confused and restrictive policy contexts often lead to confusion in law enforcement, and the interpretation is left to the service providers.

As previously stated, the full realisation of SRHR is still a challenge as envisaged in the ICPD – 1994 Plan of Action. Human sexuality, not only constitutes our physiology, but also the psychological and sociocultural dimensions of human experiences. SRHR programming has had an icy reception in Africa, and its operationalisation has faced legal and policy setbacks, other constraints include, stigma discrimination from religious groups and lack of political and donor support. Others include negative attitude from healthcare workers and lack of preparedness among health practitioners and a negative healthcare workers attitude, poor logistical and institutional delays and structural challenges

It is worth noting that legal interpretation is done from a moralistic lens and hence jeopardizing access to SRH services for girls in sex work or adolescents in general. Often laws that provide for or against SRHR are not effectively applied but are merely used by the laws enforcement or service provider to act as a block to the provision of SRHR to underage girls. The legal policy environment will be discussed in detail in the next chapter.

In conclusion it is worth repeating and emphasising that beside cultural and legal setbacks, the components of Christian and Islamic religions are the most dominant in Kenya and need to be harmonised since they are not homogeneous, has been the basis for dismantling SRHR and can also not be ignored as barriers to accessing SRHR in Kenya.

CHAPTER FOUR: EXPLORING LEGAL FRAMEWORKS ON SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

4.1 Introduction

This chapter explores the legal framework for the safeguarding of SRHR. It examines how different international and regional treaties affect SRHR and their limitations. Secondly, the chapter looks at national legislations that apply to SRHR within the context of girls involved in sex work in Kenya. It also examines law enforcement agencies such as the police and the judiciary in implementing the laws and policies. Finally, it looks into the law enforcement agencies' conduct as duty bearers in ensuring respect, protection and the fulfilment of SRHR for girls engaged in sex work in Kenya.

4.2 Application of International and Regional Legal Framework on SRHR

Kenya is a signatory to several treaties that champions respect for SRHR. These include, among other things, the International Covenant on Economic Social and Cultural Rights (ICESCR); Convention on Elimination of Discrimination against Women (CEDAW); United Nations Convention on the Rights of the Child (UNCRC); the African Charter on Human and People's Rights (ACHPR); and the African Charter on the Rights and Welfare of Children (ACRWC). These international and regional legal instruments once ratified form part of Kenyan laws. In principle, these instruments are legally binding to the state as articulated in Article 2 (6) of the Constitution of Kenya, 2010.

Over the years, child protection has become a central focus in the international arena. Of great focus has been the protection of minors from sexual exploitation. The UNCRC, ACRWC, the Stockholm Agenda and Call for Action Against Commercial Sexual Exploitation of Children 1996, expressly forbid children's involvement in sex work. Despite these extensive legislations, there are rising number of girls joining sex work across the globe and are increasingly becoming vulnerable

once exposed to sex work. criminalisation of commercial sexual exploitation of girls alone does not seem to provide the desired deterrence. Odeku (2013) observes that criminalisation of sex work usually targets girls and women, not men. This discriminates unfairly against girls and women who are mostly the victims and are made more vulnerable. Due to this phenomenon, there is a need to integrate SRHR interventions as enjoyable rights for girls in sex work to broaden their protection and safety measures. International human rights law obligates States to ensure the full realisation of SRHR is connected to the right to healthcare.

Nonetheless, the application and enforceability of the international treaties to SRHR remain problematic. This is increasingly so in the majority of the developing countries where cultural dispositions and attitudes remain resistant to SRHR. The difficulty in implementing these treaties is further exacerbated by the inconsistencies within the laws themselves, especially as applicable to SRHR for girls in sex work. There is an apparent conflict between legislative clauses that seek to enhance the protection of minors against sexual abuse versus those intended to advance SRHR for girls in sex work.

The emphasis placed by UNCRC on the age of consent limits the ability of girls in sex work to make independent decisions and seek SRHR services. The claw-back clauses introduce two types of challenges. One, they downplay a child's place as a subject of rights, capable of personal views and decision-making capabilities rather than an object of rights merely in need of protection. Secondly, they make it difficult for the State and other non-state actors to act on SRHR requirements promptly. It is difficult to ascertain whether providing SRHR services for girls in sex work may construe condoning its illegality.

In many developing countries, adolescent youth do not fully enjoy SRHR as enshrined in Article 24 of UNCRC, especially if unaccompanied by an adult. The UNCRC establishes that a child below 18 years cannot consent. This means that youth below 18 years cannot access SRHR services unless in the company of their parents or legal guardians. The secretive nature of sex work hinders girls from accessing SRHR.

Consequently, the non-compliance to this requirement means that these girls often miss out on essential SRHR services unless they falsify their identities. This is inconsistent with the principle of "child". Consistent with this principle, girls involved in sex work should be acknowledged as active participants in decision making rather than passive objects of rights.

Article 12 (1) of CEDAW emphasises the need for State parties to ensure access to healthcare services, including family planning. Similarly, the ACHPR and the Maputo Protocol emphasise the need to protect women from discrimination, violence, and harmful gender stereotypes. The Protocol explicitly emphasises the right of girls and women to access SRH services, including safe abortion. The African Union (AU) further adopted the Maputo Plan of Action, and the heads of states endorsed the African Youth Charter for the operationalisation of SRHR. Despite the ratification of these instruments by African states, their implementation remains a challenge.

The ratification of these instruments by the African States demonstrates the political goodwill for supporting SRHR at the regional level. The ratification also comes with a lot of concern. State commitments at the regional level do not reflect the realities of their nations. It is essential to ensure that ratification of international instruments is not mere diplomatic gestures intended to save face while expressing no local commitment.

It is also imperative to note that as much as Kenya ratified the Maputo Protocol, it entered reservations on Article 14 (2) (c), which relates to the medical termination of pregnancy (Wafula, 2015). The protocol outlines the circumstances under which safe abortion can be procured. Such grounds may include rape, incest, sexual assault, and instances where the pregnancy endangers the mother or fetus's life. The reservations entered by Kenya on safe abortion mean that this clause lacks State support. It also means that girls engaged in sex work may not seek professional assistance for safe abortion on the grounds laid by the protocol. As a result, the only option will be to procure these services on the back street, away from State regulation and supervision, which further endangers their lives. The enforcement of international treaties requires political goodwill and the State's commitment to domesticate them into local legislation.

4.3. National Legislative Frameworks on SRHR

Kenya has several legislations and policies that are relevant to SRHR. However, this study will only focus on selected laws directly applicable to the advancement of SRHR for girls involved in sex work. These include the Constitution of Kenya, 2010; The Children's Act, 2001; The Sexual Offenses Act, 2006; The Counter Trafficking in Persons Act, 2010; and the Penal Code, 1963.

4.3.1. The Constitution of Kenya 2010[2]

Chapter 4 of the Constitution of Kenya, 2010, provides a comprehensive bill of rights in line with international human rights law. It provides, in Part 3, a particular application of rights to groups

of persons who need extra care and protection. These include children and youth (Government of Kenya, 2010).

As acknowledged by the Constitution, girls engaged in sex work require special attention to address their needs holistically. This includes providing SRHR services to caution them against STIs, unsafe abortion, and HIV and AIDS. Article 43 (1) (a) of the Constitution of Kenya, 2010, provides that all persons have a right to health care services, including reproductive health care. While a lot of effort has been made to fulfil these provisions' requirements, there remains a lot to be done.

Contrary to the provisions in the constitutions, girls' access to health care services as sex workers remains a tall order. Provision of SRHR services remains unavailable, unaffordable, inaccessible, and unacceptable for girls in sex work. This includes instances where emergencies services are required, resulting from unsafe abortion and other pregnancy complications. Courtesy of devolving health services, access to healthcare has increased, especially family planning options in public health facilities.

Notwithstanding, the challenge of insufficient medical facilities (UNOCHA, 2020), including a limited supply of drugs and equipment, inadequate staff and capacity gaps in the provision of comprehensive, youth-friendly SRHR services is still evident. Cases of go-slow and industrial action by healthcare workers (UNOCHA, 2020) have predominated the health sector, bringing most essential services to a near halt. In 2017, doctors declared a 100-day strike, quickly followed by a nurses' strike for 150-days (KEMRI, 2020). Unless these issues are appropriately addressed, the provision of SRHR services will continue to get inadequate attention, contrary to the requirements of the Constitution. According to a situation report by UNOCHA (2020), between March and June 2020, contraceptive uptake declined by at least 30.5% compared to the year 2019.

Article 43 (3) of the Constitution provides that the State shall provide appropriate social security to persons who cannot support themselves and their dependents (GoK, 2010). However, lack of monetary resources still denies girls involved in sex work access to essential SRHR services. Inadequate income, and lack of knowledge and information on critical Government programs deny girls in sex work the opportunity to benefit from crucial Government programs. These include Government-led cash transfer programs and medical schemes such as National Health Insurance Fund (NHIF). This is contrary to the provisions contemplated in Article 43 (3) of the Constitution of Kenya, 2010.

Setbacks in implementing SRHR services in Kenya include the lack of clarity in the Constitutional provision on abortion. Article 26 (4) prohibits abortion unless on emergency treatment and instances where the pregnancy endangers the mother's life. This has to be based on trained health professional opinions (GoK, 2010). The complexity in interpreting this component in the constitution hinders health care providers from offering SRH services, especially to girls in sex work. Therefore, there is a need for other enabling legislation to be developed to provide more clarity on the matter, as articulated in Article 26 (4) of the constitution. This provides that abortion can be acceptable "if permitted by any other written law" (Gok, 2010). However, it must be noted that attempts to introduce the Reproductive Health Care Bill, 2019, drew many controversies and had to be abandoned.

4.3.2. The Children Act of 2001

According to a study conducted by UNICEF in 2010, violence against children is prevalent. According to UNICEF (2012), youth between 18 and 24 years have experienced various forms of violence in their childhood years. The report indicated that 32 and 18 per cent of females and males, respectively, reported having undergone sexual violence (UNICEF, 2012).

The enactment of the Children's Act of 2001 marked an important milestone in responding to increasing violence against children. The Act has domesticated the provisions of the UNCRC (1989) and defines a child as a person below 18 years. The Act defines child abuse and outlines several rights and responsibilities of a child. It also establishes parental responsibilities and relevant institutions for child protection, including the Nation Council for Children's Services; the Children's Court, among others (Government of Kenya, 2001).

However, as the principal Act addresses children's issues, the Children's Act does not provide for SRHR. It also restricts children's ability to consent to SRHR services by maintaining that anyone under 18 years cannot consent. Consequently, persons under the age of 18 may not seek SRHR services unless with the approval of or in the company of their parents or guardians. Sexual matters in many Kenyan communities are private, and many parents have trouble discussing such issues with their children. This makes it difficult for their children and teenagers to freely disclose their sexual experiences with their parents or guardians. As a result, they may not freely express their need for SRHR services, leave alone seek their parents' approval or accompaniment.

The requirement for accompaniment also makes it difficult for orphaned or unaccompanied children and teenagers to access SRHR services, as is often the case with many girls in sex work. The Children's Act of 2001 fails to contemplate situations where children who are displaced, for instance,

may need to access SRHR services. In cases of displacement, children end up in the streets, orphaned and completely uprooted from their families. In addition, many of them also experience both sexual and physical violence, and some end up getting pregnant. Unfortunately, this shatters their dreams and hopes as their chances of getting a better education become thwarted. An amendment to this Act may be long overdue. It may be necessary to integrate SRHR services for children, including comprehensive sexual education and access to SRHR information and services.

4.4.3. Sexual Offences Act

The Sexual Offences Act of 2006 is important legislation that has attempted to consolidate all sexual offences under one law. Contrary to the Children's Act, 2001, this Act places the minimum age of sexual consent at 16 years old for girls. The Sexual Offences Act of 2006 provides an extensive range of criminalised sexual offences in Kenya. This includes; incest, rape, defilement, sexual harassment, gang rape, aiding rape, child pornography and prostitution, deliberate infection of STIs, and child trafficking for sexual exploitation (The National Council for Children Services, 2013). This law provides a very positive step toward addressing the sexual violence that has become rampant.

However, when it comes to SRHR, the Act poses several limitations, especially for girls involved in sex work. Okwatch (2019) argued that the complete criminalisation of sex among persons below 18 years is progressive. Still, it poses several challenges regarding girls' access to sexual and reproductive health services in sex work. The Act, in specific, prohibits sexual activities with girls below 16 years old. The fear that girls engaged in sex work may be required to disclose their clients when seeking SRHR services may be inhibiting. This is due to fear that their clients could be subjected to criminal prosecution for defilement (Okwatch, 2019). However, if well implemented, SRHR services can provide an important avenue for netting and reprimanding sexual offenders, especially those preying on girls. Therefore, girls involved in sex work need to be well informed and encouraged to seek SRHR services without fear. Otherwise, they are likely to suffer double victimisation, first as victims of sexual exploitation and secondly as persons denied access to SRHR services through legal bottlenecks.

4.4.4. Penal Code and County By-Laws

The Kenyan Penal Code provides sentences for different criminal offences, including living off the proceeds of prostitution. It defines two types of crimes concerning sex work, "living on the earnings of prostitution" and "soliciting or importuning for immoral purposes" (KELIN, 2016). Sex work is criminalised under Section 153 (1) (2) and 154. It further prohibits any person from keeping, managing or assisting within the management of a brothel or leasing a house to be used as a brothel under sections 155 and 156.

However, these provisions are often complicated to prove, making them hard to implement. Nonetheless, sex workers continue to face increased discrimination in the public's eyes and violence at the hands of police officers and County Enforcement Officers. Sex workers suffer physical and sexual violence during arbitrary swoops conducted by the police and County Enforcement Officers (KNCHR, 2012). However, as much as the penal code has not been used to prosecute sex workers, the county by-laws, in many instances, have been used to arrest and charge sex workers (Kelin, 2016). In Nairobi, for example, Nairobi County council by-laws (2007) state two punishable offences "any person who, in any street, loiters" or "importunes for purposes of prostitution," while in Kisumu and Mombasa, the by-laws criminalise loitering and soliciting for prostitution. In Kisumu, the by-law also has the addition of indecent exposure. What constitutes loitering or indecent exposure is left to the discretion of the law enforcers. Law enforcers and the courts use the by-laws to prosecute sex workers and to justify the arbitrary swoops under the guise of loitering for prostitution (FIDA Kenya, 2018).

The stigma, criminalisation, stereotyping, and discrimination associated with sex work hinder sex workers from reporting mistreatment meted against them, either by law enforcers or their clients. Seeking professional SRHR services equally becomes difficult due to self-stigma and fear of being reprimanded. This is notably worse for girls involved in sex work.

4.4.5 SRHR Bill and the Contestation

The Constitution of Kenya 2010 provides for the enjoyment of healthcare rights by all citizens, including reproductive health care. However, no law provides how this right should be advanced and protected to ensure access to SRHR by adolescents and women, Nakuru Senator Hon. Susan Kihika tabled an SRHR Bill but was defeated after it was labelled an abortion Bill, Jervin, 2020.

Religious and cultural beliefs hindered the passing of the SRH Bill in parliament. Those opposed to the Bill argued that it would make pregnant women go to any health facility to ask for an abortion and increase promiscuity among adolescents. Despite these arguments, scholarly findings and reports indicate that Kenyan teenagers are sexually active. This can be seen through the high number of teenage pregnancies and huge HIV infections among adolescents. According to Kenya Data and Health Survey (2014), 1 in every 5 girls between 15 and 19 years is either pregnant or already a mother. As of 2019, the latest statistics from Global Childhood, Kenya has the third-highest teen pregnancy rate, with 82 births per 1,000 births (Muturi, 2021). If the bill went through and accented to law, it would improve access to SRHR services for adolescents and young women and make them more accessible. It will also avert many ill health and deaths resulting from inadequate access to SRH services in Kenya.

4.5 Law Enforcement and SRHR in Kenya

Having good pieces of legislation alone without the right attitude and behaviour is insufficient for enhancing respect for law and human rights promotion. In this regard, the role of the Police is critical in ensuring that law and order are maintained. The police are often the first responders to crime or unlawful disorder incidents in many instances. These include human rights violations perpetrated against private citizens, including sex workers. According to the Chief Police Officer in Nairobi, the positive relationship between the police and sex workers has significantly improved. He observed that unlike the past, sex workers are nowadays reporting cases and they are treated like any other person (Aidsfonds, 2020).

Nevertheless, in Kenya, incidences of shaming and discrimination against sex workers by citizens and polices are high. A study by Aidsfonds (2020) established that more than 6 out of 10 sex workers responding to the survey had experienced either economic, sexual, or physical violence by the police. This is also confirmed by a recent case in which more than 100 sex workers were arbitrarily arrested in Nakuru through a well-organized swoop involving the County *Askaris* and the Police under instructions of the Governor (Musasia, 2021). The sex workers reported being brutalised during the operation and badly mistreated in the Police cell. Ms Achieng, the Chairlady of one of the sex worker lobby groups in Nakuru, was reported as saying that the County *Askaris* and police keep harassing and arresting them yet they are trying to earn a living through sex work (Musasia, 2021).

In most instances, both the police and County *Askaris* use County by-laws to enforce arrests of sex workers. Aidsfonds (2020) noted that the by-laws relied upon are often those that generally deal with public nuisance such as loitering, importuning for sex, and indecent exposure. Left at the discretion of the Police and County *Askaris*, these by-laws become weapons unleashed in the arbitrary violation of sex workers' and other citizens' human rights.

Sex work criminalisation in Kenya makes it easier for law enforcers to justify their maltreatment, harassment, arbitrary arrest, and extortion of sex workers (Aidsfonds 2020). Platt L. et al. (2020) reiterates that policing practices in the contexts of criminalisation institutionalise violence against sex workers. Cases of Police and County *Askaris* inflicting physical pain, sexual violence, and or demanding bribes in lieu of arrest against sex workers are commonplace. Mbote et al. (2020) noted that the onslaught of sex workers is often heightened in situations where the “legal system and policing culture does not provide accountability for misconduct.” Efforts to institute police reforms by establishing institutions such as the Independent Police Oversight Authority (IPOA) are yet to bear the desired fruits in curbing police misconduct. This renders many citizens, especially sex workers, victims of excessive police power, violence and impunity.

The correlation between police violence and the health outcomes of sex workers is evident. According to Mbote et al. (2020), police violence against sex workers often lead to hurried condom negotiations and reduced chances of sex workers carrying condoms. This heightens the risk of contracting HIV and AIDS, among other sexually transmitted infections, and unplanned pregnancies. This is in direct contravention to the letter and spirit of the Constitution of Kenya, 2010, whose aspiration is to enhance respect, enjoyment, and fulfilment of human rights by all citizens without discrimination.

Therefore, the need to enhance human rights training among the police and institute accountability measures to curb police misconduct against sex workers cannot be overstated. Good policing improves access to justice and police assistance by sex workers and other citizens, as noted by Aidsfonds (2020).

4.6 Conclusion

Sexual and Reproductive Health and Rights (SRHR) is well provided for under international human rights law, including other regional laws and policies, Kenya being a signatory. The Constitution of Kenya, 2010, and other national policies also provide for SRHR under various statutes. However, the legal framework at international, regional, and national levels is neither comprehensive nor provides enough clarity on how SRHR is to be implemented by the States Parties.

In addition, the different pieces of legislation that refer to SRHR also lack harmony with other protection clauses that safeguard minors from sexual abuse and other forms of violence. While protecting children from sexual violence is essential, the need to also integrate access to SRHR for children and adolescents should be prioritised under the law. The laws emphasise the prevention and protection of children and adolescents from different forms of abuse; but fail to provide how children and adolescent youth, especially those involved in sex work, can access SRHR services due to their increased vulnerability. Many pieces of legislation, especially at the national level, hinder girls engaged in sex work to seek SRHR services for fear of legal consequences. The laws need to balance the need for protection and enhanced access to SRHR, which are also fundamental rights of children and adolescents.

SRHR is a crucial element in healthcare and constitutes a vital component for realising gender equity and safeguarding the rights of women, and promoting women's rights. SRHR gives women the ability to decide on their sexuality and bodies. Kenya needs to ensure that women and girls lead healthy, safe and dignified lives. This can be achieved by domesticating the international and regional

policies and legislation advocating for SRHR services. Many European countries have implemented SRHR services, and Kenya needs to borrow a leaf.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

Several recent studies on Sexual Reproductive Health Rights and sex work have been conducted. These studies mainly focus on sex work among consenting adults. This study set out to investigate issues surrounding sexual reproductive health rights among underage girls in sex work. Moreover, scholarly work on underage girls being involved in sex as work is limited. The research endeavoured to fill intellectual gaps and to contribute new knowledge on this subject area. Cognisant of the role of feminist perspective highlighting this theme, this study used Feminist theory as a foundational framework. To bring out the complex and overlapping nature of social categorization involved, this work was guided by intersectionality theory. This inquiry has explored the global, regional, national and local prevalence of girls' involvement in sex work. The study has also explored different pathways and vulnerabilities that make girls engage in sex work.

Additionally, the research has evaluated the relevance of sexual reproductive health rights interventions to girls in sex work. The research has also assessed the roles of different actors in providing SRHR services to girls in sex work globally, regionally nationally and at the local level. Furthermore, the research has discussed some barriers that hinder access to SRHR by girls in sex work in Kenya. The study further examined the relevance and effectiveness of existing policies and legal frameworks on SRRH that promote and protect the health rights of underage girls in sex work. The study further gives recommendations on the interventions needed to improve access to SRHR by girls in sex work.

The findings of this study were arrived at through an analysis of qualitative data and results from secondary sources. The findings are consistent with the theoretical frameworks used in the study. The research found out the soaring cases of underage girls involved in sex work. . Despite this being

the case, minute investigations have been undertaken on intricate dynamics of underage girls' involvement in sex work in Kenya. The age of ten emerges as the noticeable entry point of underage girls' participation in transactional sex. Neither the African culture nor national laws allow the involvement of his age category in sexual activities. This is an indicator of the breakdown of cultural safeguards and unresponsive legal and policy framework concerning of the safeguarding of the girl child.

Several factors, including systemic and structural marginalisation, discrimination and inequalities, poverty, dysfunctional families, sexual and gender-based violence, teenage pregnancies, child-headed households and gender Inequalities, all predispose these girls to sex work. Because they are children, girls in sex work do not access sexual reproductive health services despite many organisations offering SRHR services.

This study found that poverty, among other vulnerabilities, leads girls to sex work. Kenya has experienced population growth, leading to rural-urban migration. Many urban dwellers live in informal settlements or slums, whose single mothers head and some are child-headed households. Most of these households are struggling to meet their basic needs. The struggle is a result of poverty, illiteracy, and unemployment and drug abuse. Such factors in life push young girls to sex work. Since most urban dwellers and street families do not have meaningful and regular income-generating activities, young girls are susceptible to sex work as a means of sustenance. This study also found out that dysfunctional families push girls to engage in sex work. Family is a crucial component for child growth and development. Children coming from dysfunctional families are highly vulnerable to be deviant and engaging in antisocial behaviours. Dysfunctional families deny a child to develop psychologically and emotionally, leading the abandoned or mistreated child look for love, and care from non-family members Such an action makes a child vulnerable and an easy target by opportunistic adults. The child may be persuaded and tricked to join sex work.

Additionally, dysfunctional families are, in most cases, abusive and violent. Due to the abusive parents, children may run away from home to the streets that predisposes them to prostitution. The study found out that dysfunctional families may lead to childhood neglect. Child neglect hinders the parents from nurturing, monitoring or observing their children. Neglected children, in most cases, are easily influenced by their peers to join sex work.

One of the most crucial responsibilities of the state is to ensure that it provides healthcare to its citizens. The state is obligated to safeguard human rights and must adhere to many international, regional, and national legislation, that ensures the enjoyment of rights by its citizens. Some of these international and regional commitments are policies and legal frameworks. As much as they don't

legally bind the state to ensure access to quality healthcare for its citizens, they compel the state to do so.

This study found out that although sex work is criminalised in Kenya, many girls are in sex work. Sex with minors invites legal penalties in many jurisdictions; even though legal penalties exist, sex work among young girls is rising in Kenya. Various stakeholders such as the policymakers and scholars have paid little attention to sex work among underage girls. Inadequate healthcare systems in the country, coupled with a hostile environment, particularly in the slums, make it hard for the girls in sex work to access SRHR services, which predisposes them to poor sexual and reproductive health services. They risk procuring unsafe abortions or contracting sexually transmitted infections, among other SRHR issues that include suffering from mental health.

Despite the existence and pronouncements of various legal frameworks and policies that states that healthcare services are rights enjoyable by all citizens, girls in sex work cannot access reproductive healthcare services. The legislative frameworks have consequential provisions for safeguarding the rights of all people, including children. Still, some have drawback clauses that hinder the access of reproductive healthcare services in sex work. For instance, in the global south, access to sexual and reproductive healthcare rights services is a tall order for women and even near-impossible for underage girls in sex work. Socio-cultural practices and religious beliefs in the global south hinder underage girls in sex work from accessing SRHR services. Some of the international and regional policy and legal frameworks inhibit the uptake and provision of SRHR services.

5.2 Recommendations

Girls involved in sex work face many challenges, for example unsafe abortions and vulnerabilities to sexually transmitted infections such as HIV & AIDS. Despite these challenges, underage girls are usually ignored by society, and this worsens their situations. Girls in sex work do not access reproductive healthcare rights services, thus endangering their lives. Therefore, to respond to girls in sex work current and future reproductive healthcare needs, this research recommends establishing healthcare facilities that offer targeted sexual and reproductive health services to girls in sex work, particularly in the slums.

The Government needs to make a deliberate effort to ensure a robust approach in addressing issues of SRHR and particularly on vulnerable adolescent girls. A multi-pronged approach that not only looks at the point of SRHR from one angle but one that looks at the issues from all angles of vulnerabilities. Ensuring that the drivers of girls in sex work are very intersectional and are

addressed—having the Government balance the culture, religion reality on the ground, and what is in the adolescent's girls' best interest in fulfilling their sexual and reproductive needs.

Socio-cultural practices and religious beliefs are the primary issues that have hindered access to SRHR. . This research recommends bringing all stakeholders to a common understanding of what sexual reproductive health rights mean. This will avoid varied interpretations by various stakeholders. SRH in Kenya needs standardization to avoid conflicting interpretations.

Although the Constitution of Kenya 2010 argues that all Kenyans have equal rights to healthcare, including reproductive health care, the reality on the ground says otherwise. The Constitution allows abortion to be carried out under certain circumstances, but this is not the reality. Due to the controversy surrounding abortion, healthcare providers are not trained to administer safe abortions. Additionally, health care providers do not want to procure or aid abortion since there is no clarity; some fear that there might be legal penalties if they procure safe abortions on girls in sex work. This research recommends the training of the healthcare providers to equip them with skills to help procure safe abortions.

Several policies and laws touching on sexual reproductive health rights exist. Lack of coordination is one of the factors that hampers the access to SRHR services. Legal and policy frameworks and guidelines exist, but a lack of coordination hinders their implementation. This research recommends coordination by SRHR activities. The study suggests monitoring and evaluating existing procedures and policies, encouraging the proper execution of SRHR services.

Law enforcement officers hinder the access of SRHR by girls in sex work. In most cases, they continue to harass, arrest and extort girls engaging in sex work and also health care practitioners.. Training law enforcers about the importance of sexual reproductive and health rights can correct the unlawful acts of human rights violations perpetrated. The Independent Policing and Oversight Authority (IPOA) should also investigate law enforcement misconduct and recommend harsh penalties for those guilty of violating girls' rights in sex work.

Finally, this study recommends a legal and policy framework that serves the children's best interest in providing, protecting, and participating (3 Ps). The state must provide for these children to address the drivers pushing them into sex work. It is also their right to protect these girls from abuse and being violated. This study found out that many girls end up in sex work after suffering physical and sexual violence at home or under guardianship of people supposed to be offering care. Finally, the third P is that these girls should be given a platform to decide on the issue that affects their SRHR. The

duty-bearers should ensure that these girls have access to information and are meaningfully involved in decisions around their body, physical and mental, emotional well-being.

Framing the sexual and reproductive language to depoliticize the reproductive health issue would go a long way in addressing the opposition posed by legal, social-cultural and religious leaders in addressing SRHR issues. Using the mass media to communicate the messages of SRHR would help demystify the language and reach out to the public on the unpopular SRHR controversial issues. This would mean engaging with the media, sensitizing the media deeply on SRHR issues, and helping them frame the content on SRHR.

Finally, the Government should ensure that laws and policies on SRHR are harmonized to serve the interest of the girls in sex work. Criminalizing aspects of adolescents and sex work perpetuates stigma, pushes these girls under and makes them shy about accessing SRHR services. Hence, a reason to have the Government review all the laws and policies that deter vulnerable adolescent girls from accessing sexual and reproductive health services. Have laws and policies that increase both the demand and the supply of SRHR services.

5.2.1 Future Research

This study has taken a general perspective and calls for further research on other specific aspects of underage girls in sex work. There is a need to generate information on families of underage girls in sex work and how such acts affect their relations. Further studies need to be undertaken to assess the impact of sex work on the development of children of sex workers. Some underage girls in sex work have children, and they often see their mothers engaging in sex work. Furthermore, future studies need to have a critical look at how sex work affects the development of children of sex workers.

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