

Taking Advantage of Political Processes to Challenge the Use of “Idle and Disorderly” Offenses to Police Sexuality in Uganda

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*Response to Anneke Meerkotter’s “Litigating to Protect the
Rights of Poor and Marginalized Groups in Urban Spaces.”*

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|-----------------------------------------------------------------------------------------------------|----|
| INTRODUCTION | 43 |
| I. “IDLE AND DISORDERLY” LAWS IN UGANDA..... | 44 |
| II. ENFORCEMENT OF THE IDLE AND DISORDERLY LAWS AGAINST SEX WORKERS AND LGBTI PERSONS..... | 47 |
| III. WHY THE “IDLE AND DISORDERLY LAWS” ARE POPULAR TOOLS FOR POLICING SEXUALITY IN UGANDA | 52 |
| CONCLUSION..... | 56 |

INTRODUCTION

In “Litigating to Protect the Rights of Poor and Marginalized Groups in Urban Spaces,” Anneke Meerkotter discusses how advocates use public interest litigation to change how many states in Africa currently enforce vagrancy laws.¹ She rightly points out that state enforcement of the vagrancy laws across Africa is rooted in “prevailing prejudices, including xenophobia, sexism, homophobia,

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¹ Anneke Meerkotter, *Litigating to Protect the Rights of Poor and Marginalized Groups in Urban Spaces*, 74 U. MIA. L. REV. CAVEAT 1, 22 (2020), https://lawreview.law.miami.edu/wp-content/uploads/2020/01/Litigating-to-Protect_Anneke-Meerkotter.pdf.

transphobia, and racism”² and are, therefore, aimed at propagating such prejudices by stifling all forms of dissent and lack of conformity. This Essay builds on this idea to discuss how vagrancy laws—commonly referred to as laws against “being idle and disorderly” in Uganda—are used by states to police sexuality, particularly against lesbian, gay, bisexual, transgender, or intersex (“LGBTI”) persons and sex workers. This Essay also considers Meerkotter’s observation that, even where litigation has been successful, states have not drastically changed their enforcement practices.³ Accordingly, this Essay highlights Uganda’s approach, which has primarily relied on political processes rather than strategic litigation to rally support for the decriminalization efforts.⁴ This Essay traces Uganda’s current framing of the “idle and disorderly” laws, their application in policing sexuality, and why law enforcement prefers these provisions as far as policing sex work and homosexual conduct is concerned. It then discusses the strategies advocates are employing towards decriminalizing these offenses, including strategic litigation, as well as the successes advocates have so far scored.

I. “IDLE AND DISORDERLY” LAWS IN UGANDA

Laws criminalizing being a “common nuisance,” being “idle and disorderly,” and being a “rogue and vagabond” have been on Uganda’s law books at least since 1930, when they were introduced into the legal system by the British as part of the colonial project.⁵ What this Essay refers to as “idle and disorderly” laws are the provisions under sections 160, 167, and 168 of the Penal Code Act, which criminalize being a “common nuisance,” “[i]dle and disorderly,” and “rogue and vagabond,” respectively.⁶ This is because these provisions criminalize conduct that is regarded as “annoying” to the more affluent sections of society.⁷ In essence, these provisions

² *Id.* at 4.

³ *See id.* at 10, 15, 26.

⁴ Human Rights Awareness and Promotion Forum, *The Implications of the Enforcement of ‘Idle and Disorderly’ Laws on the Human Rights of Marginalised Groups in Uganda* 1 (2016) [hereinafter HRAPF *Enforcement Implications*].

⁵ *Id.*

⁶ Penal Code Act, ch. 120 §§ 160, 167, 168 (2015) (Uganda).

⁷ HRAPF *Enforcement Implications*, *supra* note 4, at 22.

criminalize poverty, vulnerability, and any conduct that affluent sections of society consider annoying, immoral, or socially unacceptable.⁸ They operate on the presumption that persons who are poor or generally regarded as socially undesirable are largely idle or potential criminals.⁹

Section 160 creates the offense of being a common nuisance.¹⁰ It criminalizes anyone who does “an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights”¹¹ The punishment for violating this law is imprisonment for one year.¹²

Section 167 creates seven offenses under the umbrella of being an idle and disorderly person: being a prostitute and behaving in a disorderly or indecent manner in any public place;¹³ wandering or placing oneself in any public place to beg or gather alms or causing, procuring, or encouraging a child to do so;¹⁴ playing at any game of chance for money or money’s worth in any public place;¹⁵ publicly conducting oneself in a manner likely to cause a breach of peace;¹⁶ publicly doing any indecent act without lawful excuse;¹⁷ soliciting or loitering for immoral purposes in any public place;¹⁸ and wandering about and endeavoring to obtain or gather alms by the exposure of wounds or deformation.¹⁹ These offenses are punishable by a three-month prison sentence, a fine of three thousand Ugandan shillings, or both.²⁰ However, for anyone who is “in any public place . . . loiter[ing] for immoral purposes,” or “a prostitute, behave[ing] in a disorderly or indecent manner in any public place,”

⁸ *Id.* at 22, 25.

⁹ *Id.*

¹⁰ Penal Code Act § 160.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* § 167(a).

¹⁴ *Id.* § 167(b).

¹⁵ *Id.* § 167(c).

¹⁶ *Id.* § 167(d).

¹⁷ *Id.* § 167(e).

¹⁸ *Id.* § 167(f).

¹⁹ *Id.* § 167(g).

²⁰ *Id.* § 167.

or “publicly do[ing] any indecent act,” the applicable penalty is a more serious prison sentence of seven years.²¹

Section 168 creates four different offenses of being a “rogue and vagabond:” being “convicted of an offence under section 167 after having been previously convicted as an idle and disorderly person;”²² “going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;”²³ being a “suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself or herself;”²⁴ and being “found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose”²⁵ The punishment for violating this law is imprisonment for six months for the first time and, for every subsequent offense, imprisonment for one year.²⁶

These laws originate in the United Kingdom of Great Britain and Northern Ireland’s Vagrants Act of 1824,²⁷ which is still in force today, but whose provisions have largely been repealed or amended to impose considerably lighter sentences.²⁸ The provisions of this Act, which at that time were in force as a statute of general application in England, were introduced to Uganda through the 1889 Africa Order in Council, which became applicable to Uganda upon the declaration of a nominal British Protectorate in 1894.²⁹ The 1902 Order in Council then gave powers to the Governor to make laws that apply to the protectorate.³⁰ Using these powers, the Governor passed the Penal

²¹ *Id.*

²² *Id.* § 168(1)(a).

²³ *Id.* § 168(1)(b).

²⁴ *Id.* § 168(1)(c).

²⁵ *Id.* § 168(1)(d).

²⁶ *Id.* § 168(1).

²⁷ Vagrancy Act 1824, 5 Geo. 4. c. 83 (U.K.).

²⁸ HRAPF *Enforcement Implications*, *supra* note 4, at 23.

²⁹ *Id.*

³⁰ The Uganda Order in Council, art. 12(1) (1902).

Code Ordinance in 1930 with these provisions, which later became part of the codified laws in 1950.³¹

Uganda's Constitution is the supreme law of the country, and as provided in Article 2, any law that is inconsistent with it is void to the extent of its inconsistency.³² Under Article 274 of the Constitution, the laws that preceded the Constitution must be interpreted "with such modifications, adaptations, qualifications and exceptions as may be necessary" in order to bring them into conformity with the Constitution.³³ Therefore, all laws that predate Uganda's 1995 Constitution are subject to the constitutional test. Chapter four of the Constitution protects a number of fundamental human rights such as the right to equality and non-discrimination,³⁴ right to life,³⁵ and the right to be free from cruel, inhuman, or degrading treatment or punishment.³⁶ The "idle and disorderly" laws largely do not live up to these rights and are, therefore, unconstitutional.³⁷ Furthermore, the implementation of these provisions occasions the violation of numerous rights of vulnerable minorities such as sex workers, people who use drugs, and LGBTI persons.³⁸

II. ENFORCEMENT OF THE IDLE AND DISORDERLY LAWS AGAINST SEX WORKERS AND LGBTI PERSONS

"Idle and disorderly" laws are generally used by governments to harass the poor and marginalized, including LGBTI persons and sex workers.³⁹ A study by the Human Rights Awareness and Promotion Forum ("HRAPF") found that some of the main victims of these offenses are sex workers and LGBTI persons, mainly because these

³¹ For a more detailed history of the Penal Code, see Adrian Jjuuko, *The Incremental Approach: Uganda's Struggle for Decriminalisation of Homosexuality*, in HUMAN RIGHTS, SEXUAL ORIENTATION AND GENDER IDENTITY IN THE COMMONWEALTH: STRUGGLES FOR DECRIMINALISATION AND CHANGE 381, 385–87 (Corinne Lennox & Matthew Waites eds., 2018).

³² CONSTITUTION OF THE REPUBLIC OF UGANDA, Sept. 22, 1995, art. 2.

³³ *Id.* art. 274.

³⁴ *Id.* art. 21.

³⁵ *Id.* art. 22.

³⁶ *Id.* art. 24.

³⁷ See HRAPF *Enforcement Implications*, *supra* note 4, at 26–30.

³⁸ *Id.* at 51–55.

³⁹ *Id.* at 11.

groups are poor and marginalized (on the basis of social and cultural acceptability or appropriateness, as defined by the majority heteronormative patriarchal society in which they live), thus making them vulnerable.⁴⁰ Police officers use these provisions to target the least protected and those considered objectionable on “moral” grounds.⁴¹ Some of the officers’ reasons for initiating an arrest included spending time in a lodge, walking at night, being found in a place “where opium is smoked,” and other such innocuous acts.⁴² Officers were particularly likely to arrest people committing these acts in areas where they reasonably expect to find such vulnerable people, like in slums.⁴³ At the same time, members of the elite and middle classes see these categories of persons as unwanted and immoral, a persistent threat to the established moral and social order, and thus encourage their arrest.⁴⁴ Not surprisingly, such arrests among sex workers have been focused on female sex workers exclusively,⁴⁵ despite the growing evidence of the prevalence of male sex work in different urban areas in Uganda.⁴⁶ These arrests also focus on transgender persons.⁴⁷

The laws criminalizing same-sex relations are found in sections 145, 146, and 148 of the Penal Code.⁴⁸ They criminalize having carnal knowledge against the order of nature, attempts to commit carnal knowledge against the order of nature, and acts of gross indecency, respectively.⁴⁹ The laws criminalizing sex work are found in sections 136, 137, and 139.⁵⁰ They criminalize living on the earnings of prostitution, operating brothels, and prostitution, respectively.⁵¹

⁴⁰ *Id.* at 51–55.

⁴¹ *Id.* at 24.

⁴² *Id.* at 33–34.

⁴³ *Id.*

⁴⁴ *Id.* at 2, 24.

⁴⁵ *Id.* at 18.

⁴⁶ URN, *Gulu Alarmed by Rising Number of Male Sex Workers*, THE OBSERVER (Aug. 20, 2019), <https://observer.ug/news/headlines/61707-gulu-alarmed-by-rising-number-of-male-sex-workers>.

⁴⁷ See generally Human Rights Awareness and Promotion Forum (HRAPF), *A Guide to the Normative Legal Framework on the Human Rights of LGBTI Persons in Uganda* (2d ed. 2019) [hereinafter HRAPF *LGBTI Guide*].

⁴⁸ Penal Code Act, ch. 120 §§ 145–46, 148 (2015) (Uganda).

⁴⁹ *Id.*

⁵⁰ *Id.* §§ 136–37, 139.

⁵¹ *Id.*

These sections are found in Chapter 14 of the Penal Code Act, which defines “Offences against Morality.”⁵² As a fundamental aspect of the non-derogable right to a fair trial protected in Article 28 of Uganda’s Constitution, every person charged with a criminal offense is presumed innocent until they are proven guilty.⁵³ Thus, the prosecution is required to produce strict proof of all the elements of the offenses of prostitution and having carnal knowledge against the order of nature. This is generally not easy to do as the prosecution must produce strong evidence pointing to the accused’s involvement in a prohibited sexual act.⁵⁴ Due to the difficulties involved in obtaining such evidence, the police rarely prefer these charges and, instead, look for alternatives readily available in the “idle and disorderly” laws.⁵⁵

The “idle and disorderly” offenses provide an easy solution for police officers seeking to arrest sex workers and LGBTI individuals since their framing is so broad that almost any conduct can be interpreted as prohibited based on individual officers’ observations of the conduct or the observations of those who carry out the arrests.⁵⁶ Section 168(1)(d) of the Penal Code Act, for instance, can be endlessly useful in its vagueness.⁵⁷ It holds criminally liable anyone “found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose,” a state that can be decided on at will by the observing officer, following no known objective standard.⁵⁸

The HRAPF has, for the past ten years, operated a specialized legal aid clinic that responds to arrests and other legal matters involving sex workers and LGBTI persons and monitors trends in arrests of marginalized persons on petty offenses.⁵⁹ Over the last three

⁵² *Id.* §§ 123–51.

⁵³ CONSTITUTION OF THE REPUBLIC OF UGANDA, Sept. 22, 1995, art. 28(3)(a).

⁵⁴ Penal Code Act §§ 136, 137, 139.

⁵⁵ HRAPF *LGBTI Guide*, *supra* note 47, at 28.

⁵⁶ *Id.*

⁵⁷ Penal Code Act § 168(d)(1)

⁵⁸ *Id.*; HRAPF *Enforcement Implications*, *supra* note 4, at 22.

⁵⁹ See Human Rights Awareness and Promotion Forum, *Annual Report 2019*, at 21 (2020), <https://hrapf.org/index.php/resources/annual-reports/148-20-05-22-hrapf-annual-report-2019-copy/file> [hereinafter HRAPF *Annual Report 2019*].

years (2017–2019), the HRAPF has observed that the law enforcement authorities rely heavily on these “idle and disorderly” laws to arrest LGBTI persons and sex workers where they have no grounds to arrest them on charges of having carnal knowledge against the order of nature, prostitution, or where they simply need an excuse to inquire into their sexuality and sex practices.⁶⁰

In 2017, the HRAPF responded to a total of 109 arrests involving LGBTI persons and sex workers,⁶¹ of which fifty-three (57.61%) were based on petty offenses like being “rogue and vagabond,” being a “public nuisance,” “unnatural offences,” and arbitrary arrests where no charges were preferred or persons were charged with non-existent offenses like sodomy or homosexuality.⁶² In 2018, the total number of arrests involving LGBTI persons and sex workers to which the HRAPF responded was 209,⁶³ and fifty-one (24.40%) of these arrests were based on petty offenses or were otherwise arbitrary,⁶⁴ of which twenty-two (43.14%) of them were prosecuted.⁶⁵ The trend continued in 2019, although there was a general reduction in arrests as compared to 2018 and an overall decline in arbitrary

⁶⁰ *Id.* at 28.

⁶¹ Human Rights Awareness and Promotion Forum, *Annual Report 2017*, at 19–25 (2018) <https://hrapf.org/index.php/resources/annual-reports/110-18-09-14-hrapf-annual-report-2017-final-version/file>.

⁶² *Id.* (twenty-nine arrests were associated with allegedly having been rogue and vagabond, six arrests were associated with allegedly having been a public nuisance, fifteen arrests were associated with unnatural offenses, two arrests were associated with sodomy, and one arrest was associated with homosexuality).

⁶³ Human Rights Awareness and Promotion Forum, *Annual Report 2018*, at 11–16 (2019), <https://hrapf.org/index.php/resources/annual-reports/111-19-08-21-hrapf-annual-report-2018-full-version/file>.

⁶⁴ *Id.* at 11–16 (twenty-two arrests were associated with allegedly “[h]aving carnal knowledge against the order of nature”, twenty-three arrests were associated with allegedly having been rogue and vagabond, three arrests were based on allegedly having been nuisances, one arrest was associated with allegedly having frequented a place used for smoking opium, two arrests were associated with allegedly having been engaged in prostitution, and one arrest was associated with allegedly having been “[i]dle and disorderly”).

⁶⁵ *Id.* (eleven people were prosecuted for “[h]aving carnal knowledge against the order of nature”, seven people were prosecuted for being rogue and vagabond, one person was prosecuted for being “[i]dle and disorderly”, two people were prosecuted for being nuisances, and one person was prosecuted for frequenting a place used for smoking opium).

arrests and arrests based on petty offenses as well.⁶⁶ The HRAPF legal aid clinic recorded a total of 82 arrests of LGBTI persons and sex workers in 2019,⁶⁷ with twenty-one (25.61%) of them being either arbitrary or based on petty offenses.⁶⁸

Due to the nature of these offenses, many of the persons the police arrest are poor, illiterate, or vulnerable for other reasons and, therefore, rarely have access to legal counsel for reasons of affordability.⁶⁹ Usually, the easiest option available to such persons is to plead guilty in the hope that a lesser punishment will be imposed, usually community service.⁷⁰ Female sex workers, particularly those who have children, favor this option as it frees them from the prolonged pre-trial and pre-sentencing remand periods that plague Uganda's criminal justice system.⁷¹ There is, therefore, a high conviction rate for these offenses.

The biggest mass arrest of LGBTI persons recorded so far in Uganda was based on charges of being a common nuisance in November 2019 when 127 persons were arrested in a gay-friendly bar in Kampala, and although all of them were formally charged, only sixty-seven of them were arraigned in court, with the rest having been released from police custody on arbitrary criteria.⁷² The COVID-19 situation brought to light a new offense, section 171 of the Penal Code, which penalizes negligent actions "likely to spread

⁶⁶ HRAPF *Annual Report 2019*, *supra* note 59, at 25–29.

⁶⁷ *Id.* at 25, 28.

⁶⁸ *Id.* (seven arrests involved allegedly having carnal knowledge against the order of nature, three arrests allegedly involved being a rogue and vagabond, one arrest involved alleged sodomy, six arrests involved alleged nuisance, one arrest involved alleged homosexuality, and three arrests involved allegedly frequenting a place used for smoking opium).

⁶⁹ HRAPF *Enforcement Implications*, *supra* note 4, at 34–35; Human Rights Awareness and Promotion Forum, *When Being Poor and 'Undesirable' is a Crime: Reflections on the Impact of the 'Idle and Disorderly' Laws on Marginalised Groups in Uganda*, at 6 (2016), <https://hrapf.org/index.php/resources/human-rights-advocate-magazine/102-fifth-issue-of-the-human-rights-advocate/file> [hereinafter HRAPF *Reflections*].

⁷⁰ HRAPF *Enforcement Implications*, *supra* note 4, at 44.

⁷¹ *See id.*

⁷² Lydia Namubiru, *Uganda Charges 67 After Raid on Gay Bar*, REUTERS, (Nov. 12, 2019), <https://www.reuters.com/article/us-uganda-lgbt-court-trfn/uganda-charges-67-after-raid-on-gay-bar-idUSKBN1XM2I8>.

the infection of any disease dangerous to life”⁷³ This was used to lock away twenty youths who were found at a shelter for homeless people a few days after the president had issued a directive on the control of COVID-19.⁷⁴ Although clearly arrested for homosexuality, the COVID-19 charge came in handy.⁷⁵ They spent fifty days on remand in prison, and the charges were later dropped by the Director of Public Prosecutions.⁷⁶ Just gaining access to them by their lawyers took a court order, which came forty-two days after they were sent on remand.⁷⁷

Although Ugandan law enforcement generally uses ‘idle and disorderly’ laws against all marginalized and poor communities across the country, especially in the urban centers,⁷⁸ they apply them with greater regularity to LGBTI persons and female sex workers.⁷⁹ There is little doubt that this focus is primarily borne of the state’s need to enforce conformity, particularly in matters of sexuality, to the established heteronormative and patriarchal social order.

III. WHY THE “IDLE AND DISORDERLY LAWS” ARE POPULAR TOOLS FOR POLICING SEXUALITY IN UGANDA

Since the laws criminalizing same-sex conduct as well as those criminalizing sex work rarely serve their purpose, as the offenses are difficult to prove,⁸⁰ the ‘idle and disorderly’ offenses come in handy

⁷³ Penal Code Act § 171.

⁷⁴ Neela Goshal, *Uganda LGBT Shelter Residents Arrested on COVID-19 Pretext*, HUM. RTS. WATCH (Apr. 3, 2020), <https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext>.

⁷⁵ *Id.*; Human Rights Awareness and Promotion Forum, *Statement on the Raid of the Children of the Sun Foundation Shelter for LGBT Youths in Uganda* (Mar. 31, 2020), <https://hrapf.org/index.php/resources/other-publications/131-20-03-31-hrapf-statement-on-the-arrests-at-the-cosf-lgbt-shelter-2-copy/file> [hereinafter HRAPF *LGBT Youths*].

⁷⁶ *See Uganda: Drop Charges Against 19 Homeless Youth*, HUM. RTS. WATCH (Apr. 3, 2020), <https://www.hrw.org/news/2020/05/11/uganda-drop-charges-against-19-homeless-youth>.

⁷⁷ Human Rights Awareness and Promotion Forum v. Attorney General, High Court Miscellaneous Application No. 188 of 2020 (Uganda) (arising out of Miscellaneous Cause No. 81 of 2020).

⁷⁸ HRAPF *Enforcement Implications*, *supra* note 4, at 34–35.

⁷⁹ *Id.* at 9.

⁸⁰ *Id.* at 2–3.

to serve the purpose that these other offenses would have served: persecution of LGBTI persons and sex workers and policing of sexuality. Whereas lawmakers draft the provisions themselves in such a way as to appear innocuous or even indeed useful for public security, their implementation serves to police the behavior of women, in particular female sex workers and LGBTI persons.⁸¹ As found in the HRAPF study, the prosecution need hardly do anything to prove these offenses once the victims are before the courts, as the victims will often plead guilty just to avoid the long pre-trial remand periods.⁸² The laws are vague enough to give almost unfettered discretion to law enforcement officers to arrest people at will for any behavior they may consider objectionable.⁸³

More so, this policing comes with a perk as “idle and disorderly laws” are the perfect avenue for extorting sex workers and LGBTI persons. Persons arrested under these provisions find it easier and more convenient to offer money to police officers in exchange for release.⁸⁴ The HRAPF study found that LGBTI persons and sex workers pointed out that paying bribes to police officers at the point of arrest is the easier way out compared with being taken to the police station and the courts of law.⁸⁵ Unfortunately, this encourages the police to actively hunt down LGBTI persons and sex workers with the expectation of making quick money. This is just one more reason why these sections of the law are popular with law enforcement and why, when directed to stop arresting persons under a particular provision, the police simply switch to the next one.

IV. EFFORTS SO FAR TAKEN TO DECRIMINALIZE “IDLE AND DISORDERLY” LAWS

Uganda’s approach to decriminalization of petty offenses has mainly been political rather than legal. Instead of focusing on the impact on LGBTI persons, sex workers, and other marginalized groups, Uganda has taken on more majoritarian sentiments, tallying

⁸¹ See JESSICA R. PLILEY, *POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI* (2014) (reflecting conservative attitudes toward women’s roles at home and their movements in public).

⁸² HRAPF *Enforcement Implications*, *supra* note 4, at 44.

⁸³ *Id.* at 26–30.

⁸⁴ *Id.* at 1–2, 33, 36.

⁸⁵ *Id.* at 35–37.

in with political processes.⁸⁶ Whereas Meerkotter emphasizes the role of litigation in challenging petty offense laws,⁸⁷ the downside of litigation, as she rightly points out, is that it cannot completely extirpate all problematic law, unless each law is challenged on its own, a rather long and uncertain route. This difficulty can be solved by the political or legislative processes, which can get rid of a whole law immediately or stop enforcement completely, as the case now is for the specific offense of “being idle and disorderly.”

Many actors in the criminal justice system have pointed out the danger of these laws and have already taken steps towards their repeal; one of these actors is the Uganda Law Reform Commission, which has recommended the repeal of “idle and disorderly” provisions.⁸⁸ The Justice, Law and Order Sector has also highlighted the dangers of enforcing the “idle and disorderly” laws and also called for their repeal because they are vague, overly broad, and discriminate on the basis of economic status.⁸⁹ The then-Inspector General of Police, Gen. Kale Kayihura, also acknowledged in 2015 that police officers use these laws for extortion.⁹⁰

The negative impact of these laws on the persons who fall victim to them has been acknowledged and recognized in Uganda at the highest political levels. In 2016, while on the campaign trail during the 2016 presidential elections, President Yoweri Museveni asked

⁸⁶ See *infra* notes 39–43 (discussing the President of Uganda’s political approach to stopping arrests under idle and disorderly laws).

⁸⁷ Meerkotter, *supra* note 1, at 22–25.

⁸⁸ UGANDA L. REFORM COMM’N, CONCEPT PAPER FOR THE QUICK PASSAGE OF CRIMINAL RELATED LAW REFORMS 6 (2019), https://www.ulrc.go.ug/sites/default/files/ulrc_resources/Concept%20Paper%20for%20the%20Quick%20Passage%20of%20the%20Criminal%20Related%20Law%20Reforms.pdf.

⁸⁹ JUST., L. AND ORD. SECTOR, A STUDY ON SENTENCING AND OFFENCES LEGISLATION IN UGANDA, 8 (2001), <http://www.commonlii.org/ug/other/UGJLOS/report/R5/5.pdf>.

⁹⁰ Dear Jeanne, *Police Officers Using Idle and Disorderly Law for Extortion – Gen. Kayihura*, UGANDA RADIO NETWORK (Dec. 9, 2015, 5:11 PM), <https://ugandaradionetwork.com/story/police-officers-using-idle-and-disorderly-law-for-extortion-gen-kayihura>.

the police to stop the enforcement of the law on being idle and disorderly, and he promised to work for its repeal.⁹¹ He later issued a directive in 2019, ordering the police to stop arresting people under this law.⁹² The presidential directive prompted Parliament to move towards repealing these provisions, and the Speaker of Parliament has since directed the Legal and Parliamentary Affairs Committee of Parliament to make recommendations to amend the Penal Code and remove these provisions.⁹³

From the civil society front, decriminalization advocates filed a petition in Constitutional Court seeking the declaration of parts of section 168 as unconstitutional, which is currently awaiting a hearing.⁹⁴ Additionally, a loose coalition of civil society organizations, individuals, and some government departments has been established to continue with advocacy on this matter both in and out of court.⁹⁵ This coalition was established following the HRAPF study, which revealed that there were many human rights violations occasioned by the enforcement of these laws.⁹⁶ Thus, research into enforcement came in handy, as Meerkotter advises.⁹⁷

While decriminalization advocates' main strategy has not been strategic litigation, advocates have litigated to buttress the political processes and take advantage of prevailing political winds. As such, even without a single court victory in favor of decriminalization,

⁹¹ Yasiin Mugerwa, *Museveni Vows to Scrap Idle and Disorderly Law*, DAILY MONITOR (Feb. 11, 2016), <https://www.monitor.co.ug/Elections/Museveni-vows-to-scrap-idle-and-disorderly-law/2787154-3071980-qtv67sz/index.html>.

⁹² Directive from Yoweri K. Museveni, President of the Republic of Uganda, to the Inspector Gen. of Police (Sept. 30, 2019), <https://www.yowerikmuseveni.com/directive-arresting-people-crime-idle-and-disorderly>.

⁹³ Olive Nakatudde, *Kadaga Summons Attorney General Over President's Directive on Idle and Disorderly Law*, UGANDA RADIO NETWORK (Oct. 3, 2019), <https://ugandaradionetwork.net/story/kadaga-summons-attorney-general-over-presidents-directive-on-idle-and-disorderly-law>.

⁹⁴ Francis Tumwesige Ateenyi v. Attorney General, Constitutional Petition No. 36 of 2019 (Uganda).

⁹⁵ *Uganda Launches Coalition to Decriminalize Petty Offences*, PETTY OFFENCES, <https://pettyoffences.org/uganda-launches-coalition-to-decriminalize-petty-offences/> (last visited Oct. 7, 2020).

⁹⁶ HRAPF *Enforcement Implications*, *supra* note 4, at 26–27.

⁹⁷ Meerkotter, *supra* note 1, at 22–25.

Uganda has already succeeded in stopping police arrests for the particular offense of being “idle and disorderly.” This, admittedly, changes little since the police just employ other offenses, such as common nuisance or being rogue and vagabond, to control marginalized populations. Nevertheless, it is a start and a promising one.

CONCLUSION

Although provisions criminalizing same-sex sexual relations and prostitution have been part of Uganda’s Penal laws for more than half a century,⁹⁸ law enforcement has been markedly reticent to use these provisions in order to curb the prohibited conduct, usually due to evidentiary challenges in proving these offenses.⁹⁹ This has, however, not deterred law enforcement from employing other provisions within the laws, particularly those creating petty offenses such as being idle and disorderly, to control the groups of people that police perceive as immoral or undesirable. These groups include ‘sexually deviant’ sex workers and LGBTI persons who have formed the primary focus for this campaign for the past two decades. Despite political statements calling for the repeal of these laws, there has been little progress towards decriminalization, which has continued to expose marginalized persons to severe discrimination on the grounds of socio-economic status as well as egregious violations of the rights to liberty and security of the person; dignity and freedom from cruel treatment; and the non-derogable right to a fair trial.¹⁰⁰ It is necessary to completely strip the tool from law enforcement by repealing laws that create these vague offenses if the full and equal dignity of marginalized persons, particularly female sex workers and LGBTI persons, is to be realized. Good enough, there is already sizeable political momentum to get rid of these laws, and

⁹⁸ HRAPF *Enforcement Implications*, *supra* note 4, at 22.

⁹⁹ *Id.* at 25.

¹⁰⁰ See HRAPF *Reflections*, *supra* note 69 at 28–31; *see, e.g.*, HRAPF *LGBT Youths*, *supra* note 75; Neela Goshal, *supra* note 74; *Uganda Police Arrests More Than 100 Pickpockets in Kampala*, Dispatch (Mar. 23, 2018), <http://dispatch.ug/2018/03/23/uganda-police-arrests-100-pickpockets-kampala/> (referring to arrest of 100 “pickpockets” although there appeared to be no evidence in article that persons arrested were, in fact, pickpockets).

activists are strategically engaging with the political processes, including through strategic litigation, to ensure that these laws are off the law books,¹⁰¹ largely following Meerkotter's recommended strategies.¹⁰²

¹⁰¹ See HRAPF *Reflections*, *supra* note 69 at 19.

¹⁰² Meerkotter, *supra* note 1 at 35–36.