

SEX WORKERS' RIGHTS ARE HUMAN RIGHTS: A TRAINING MANUAL



Respect and protect the human rights of sex workers!



Acknowledgments

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INTRODUCTION

Background and Objective



The Leitner Center for International Law and Justice (“Leitner Center”) at Fordham Law School in New York City contributes to the promotion of social justice around the world by encouraging knowledge of and

respect for international law and international human rights standards. The Center furthers this goal by sponsoring education, scholarship, and human rights advocacy, and facilitating collaboration among law students, scholars and human rights defenders in the United States and abroad. The Leitner Center’s Walter Leitner International Human Rights Clinic (“Leitner Clinic”) aims to train a new generation of human rights lawyers and to inspire results-oriented, practical human rights work throughout the world. The clinic works in partnership with non-governmental organizations to advance access to justice and the sexual health and rights of marginalized populations.

In June 2013, the Leitner Center sent two Fordham Law School students to Kenya to assist KESWA with its legal advocacy campaign. KESWA was founded in 2010 by the African Sex Workers Alliance, and is based in Nairobi. The mission of KESWA is to end human rights abuses against male, female, and transgender sex workers. Their campaign includes community outreach targeted at sex workers not only in Nairobi but in surrounding areas, including Thika, Naivasha, Kiambu and Murang’a. KESWA has also established a community center, which provides HIV testing and education to sex workers, as well as creative spaces and counseling groups. KESWA incorporates a media campaign to raise awareness of the sex workers’ rights movement in Kenya, both among sex workers and non-sex workers, including demonstrations and marches, conferences, and communication with the press.

In Kenya, Leitner Center students developed this training manual for KESWA to advocate for the human rights of sex workers, based on international human rights law and the Kenyan Constitution. In July 2013, the students conducted sex worker rights trainings for KESWA national leaders as well as leaders of other sex workers’ rights groups in the neighboring areas surrounding Nairobi. This “training of trainers” seeks to ensure program sustainability. The substantive human rights content combined with participatory methods such as role playing and empowerment exercises in this manual aim to provide sex workers’ rights organizations with the tools to educate sex workers of their legal standing in the community and to assist sex workers with their own self-advocacy.

This training manual is divided into a series of modules:

- 1) International Human Rights;
- 2) Kenyan Laws;
- 3) Access to Justice and Human Rights;
- 4) Healthcare and Human Rights.

The training was designed for possible completion in a one-day session.

Audience and Approach:



The participants in the July 2013 trainings were members of various sex workers' rights organizations in Kenya. This training manual targets Kenyan sex workers with little or no knowledge of international human rights and is designed for participants with varying literacy levels, with activities and exercises that can be done orally or acted out.

At the conclusion of the trainings, participants were given, a “know your rights” pamphlet outlining the major themes of the training workshop.

One-Day Training:

Welcome, Trainers! This manual will guide you through a one-day training of sex workers about their human rights. The manual includes relevant laws and background, as well as activities to reinforce the training, one 30-minute lunch break, and two 15-minute breaks. The manual should provide you with everything you need to conduct the training, but feel free to tailor the training to the specific group you are working with. Have fun!

INTRODUCTION AND BACKGROUND: (45 MIN)

Part I. Introduce yourself

Explain to the participants which organization you work for. What is your role in the organization? What is your personal connection to sex work or human rights?

We will spend today learning about human rights, and how they can be used to protect sex workers.

Part II. Introduce the plan for the day

Trainers: Keep the plan structured so participants understand what they are going to learn.

First, we will do a segment on human rights and international law.

Next, we will do a segment on human rights that are written into the Kenyan Constitution, and how the government makes laws.

Last, we will train you how to use your rights, and advocate for yourself and others in different situations:

- 1) When you are arrested;
- 2) When you are in prison; and
- 3) When you have to go to the doctor or hospital.

During the training, there will be two 15-min. breaks, and one 30-min. lunch break.

Encourage participants to use the provided notebooks and pens to take notes throughout the training, as there will be a quiz on the material later on in the training. Also inform participants to ask questions during the training if there is something that was not understood.

Part III. Training Norms

After you have introduced the plan for the day, go over the Training Norms with the participants. These should include:

1. Confidentiality
2. Respecting one another's opinions
3. Active participation
4. Raise hand before speaking
5. Speak in your most comfortable language, and a translator will be provided
6. Phone on silent mode
7. Go over start time, break times, and end time
8. If participants would like to begin with a prayer, song, or dance, as some communities may be accustomed to, feel free to do so. Be respectful and ask if a participant would like to lead the group.

List the norms on the chalkboard, whiteboard, or pad of paper provided for all to see.



Part IV. Icebreaker: Let's Get to Know Each Other!



Go around the room and have the participants introduce themselves.

- Please tell us your name.
- Where are you from?
- How did you become involved with KESWA or the partner organization?
- Tell us a fun fact about yourself! Allow participants to have fun with this fact, the point of the icebreaker is to loosen everyone up.

- *Reassure participants that they do not have to answer any questions that may make them uncomfortable.*
- Here are examples of questions that can be asked:

- **Raise your hand if you are you a sex worker**
- **Raise your hand if your family knows you are a sex worker**
- **Raise your hand if your neighbors know you are a sex worker**
- **Raise your hand if you have ever been arrested**
- **Raise your hand if you have ever been to court**
- **Raise your hand if you are a venue-based sex worker**
- **Raise your hand if you have experienced abuse from police?**
- **Raise your hand if you have ever experienced abuse from a client.**
- **Raise your hand if you have ever reported client abuse to the police and they refused to help you**
- **Have you dealt with discrimination at the doctor's office or hospital?**
- **Stigma in your community?**

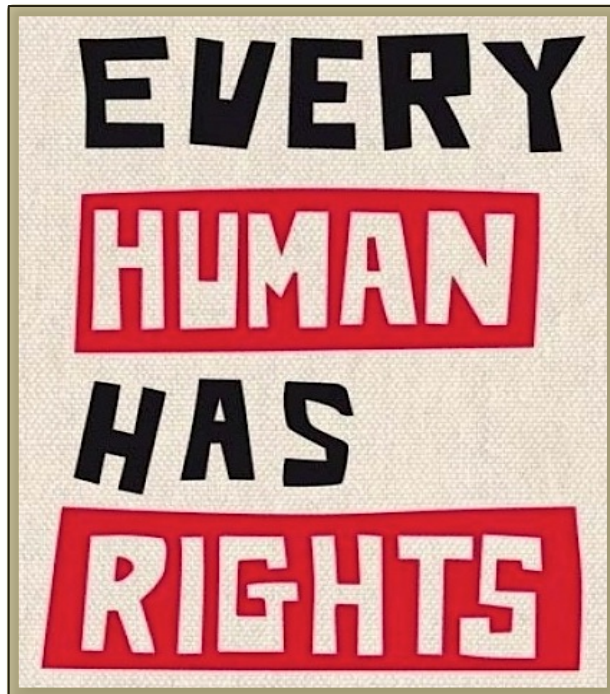
The purpose of asking questions and having participants raise their hands is for everyone to get to know each other better and to stress the commonalities between the participants.

Participants can see by others who have raised their hands that they are not alone when suffering from stigma or abuse. All sex workers experience abuse in similar ways, and this training is meant to address just those kinds of abuses. This is a safe space and participants should feel free to speak, but they are also free to keep any information private if they choose to.

Part V. Introduction to Human Rights

What do you think it means when we say someone has a human right to something? A human right is a kind of protection from certain abuses, or a right to demand certain treatment. Human rights are granted to every person simply because we are human beings.

What are some examples of human rights that you can think of? Some examples of human rights are the right to be free from violence, the right to be vote, the right to education, the right to food and shelter, and the right to live without discrimination because of a person's race or gender.



Where do human rights come from?

Every person is born with human rights. The governments of many countries in the world have come together to put those rights into words, and to agree to protect them, but the governments have not created them. They are fundamental to each and every human being.

Can human rights be taken away?

Human rights cannot be taken away, because they belong to each person. If a government does not respect or protect human rights, this is a violation of our human rights and must be changed.

MODULE I: INTERNATIONAL HUMAN RIGHTS (90 MIN)

Part I. Basics of the international legal system: How are human rights turned into law?

What is the United Nations?

Each country in the world (193 countries!) has a representative at the United Nations, and together, all the representatives work to achieve peace and protect the human rights of all people.



What is a treaty?

The representatives at the United Nations work together to create treaties. A treaty is a document that addresses specific human rights issues; there are treaties that protect the human rights of women, of children, of people who are in prison, or people who are disabled. There are also treaties that protect our right to have education, to have access to healthcare, and to vote. New treaties are created all the time. When the representatives have agreed on which rights they want to include in the treaty, the representatives each sign the document. Each country that signs the document is legally responsible for making sure that those rights are enforced in their country.

Trainers: To help participants get a clearer visual sense of what you are referring to when discussing treaties, print out an example of a treaty (the IESCR for instance) and pass it around the room.

Has Kenya signed any international treaties?

YES! The government of Kenya has signed several important international treaties. As soon as the treaties are signed, the rights listed in the treaty become part of the law in Kenya. Here are just a few of the international treaties Kenya has signed:

International Covenant on Civil and Political Rights - This treaty ensures that people in Kenya have freedom of assembly, freedom of speech, and the right to vote, among many other freedoms.

International Covenant on Economic, Social, and Cultural Rights - This treaty ensures that people in Kenya have the right education, the right to have food and water, and right to health care.

Convention on the Elimination of All Forms of Discrimination against Women - This treaty ensures that women in Kenya have the right to be treated equally, to have equal education as men, to have equal access to employment, and to have equal access to reproductive healthcare.

African Charter on Human and Peoples' Rights - This treaty was created just for the countries of Africa, and ensures human rights for all Africans.

Part II. Basics of international rights for sex workers

There are currently no treaties *specifically* devoted to sex workers, **BUT** when we look at all the treaties together, we see that there are many ways that the human rights of sex workers are protected. Here are **7 SPECIFIC HUMAN RIGHTS** that protect sex workers. These rights exist in the treaties that Kenya has signed, which means that they are the **law** in Kenya, and it is **illegal** for the government to violate these rights.

Trainers: If you have access to a chalkboard, whiteboard, or large pad of paper, write out the name of each of the listed rights as you review them with the participants. As you discuss the rights, write down keywords or important phrases that will help the participants remember the meaning of each right. Encourage the participants to take notes throughout the training.

1) RIGHT TO WORK

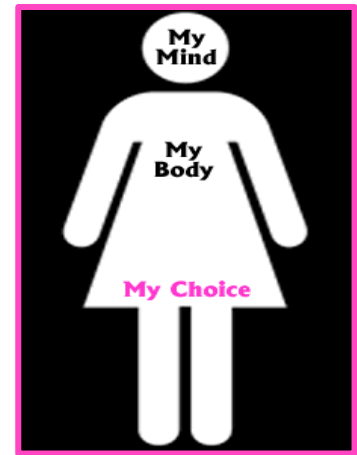
Sex work is fundamentally a labor issue so this right is especially important! Sex work is a form of service work that should enjoy the same protections that any other type of service work entails. By signing the international treaties we have already listed, the Kenyan government guarantees that all Kenyans, including sex workers, have the right to choose their own employment. By criminalizing sex work, the Kenyan government violates sex workers' right to choose this form of employment.

2) RIGHT TO FREEDOM OF THE PERSON (bodily autonomy, freedom from violence, privacy, humane treatment while in detention, and freedom of movement)

Right to Bodily Autonomy

"My body, my business!"

Everyone, regardless of whether their employment is legal or illegal, has the right to bodily autonomy. This means that the Kenyan government must allow each person to do what they wish with his or her own body, as long as he or she is not physically hurting others. For sex workers, this means that the Kenyan government cannot tell consenting adults when or where or if they can have sex; each person can decide for him- or herself if they would like agree to have sex with another person.



Right to Security and Freedom from Violence

The Kenyan government also guarantees the right to protection from torture and cruel and unusual punishment, as well as protection from violence and bodily harm. This means that the Kenyan government cannot allow the physical abuse and mistreatment of sex workers by police officers, askaris, clients, or any other individual or group. In the context of healthcare, by allowing healthcare facilities to implement policies such as mandatory HIV testing and mandatory fingerprinting in order to access services, or mandatory preventative treatments for STIs or HIV/AIDS, the Kenyan government is violating the right to protection from cruel and unusual treatment, and is allowing discrimination on the basis of a person's employment as a sex worker.

Right to Privacy

"You can have sex with whoever you want!"

The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation, gender identity, or HIV status, as well as decisions and choices regarding both one's own body and consensual sexual relations with others. By criminalizing sex work, which is consensual, the Kenyan government is violating sex workers' right to privacy.

Right to Recognition before the Law

Sex workers rarely receive the same legal protections afforded to others when they are victims of a crime. Everyone has the right to recognition as a person before the law, regardless of their choice of employment or whether they have committed a crime, this means that sex workers are entitled to access to justice no matter what! The Kenyan government must protect this right by allowing sex workers to seek redress for abuses, even if abuse took place while they were engaging in criminalized sex work.

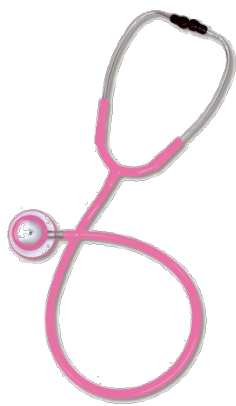
Right to Freedom from Arbitrary Deprivation of Liberty, and Treatment with Humanity while in Detention

Everyone is entitled to a fair and public hearing by a competent, independent, and impartial tribunal. All persons under arrest are entitled to be informed of the reasons for arrest and the nature of any charges against them and to be brought promptly before a judicial officer to determine the lawfulness of their detention. Everyone in detention shall also be treated with humanity and with respect for the inherent dignity of the human person. By allowing police officers to arrest and detain sex workers without informing them of the reason for arrest, by abusing them while they are detained, and by denying them access to food, phone calls, clothing, or necessary medications while they are detained, the Kenyan government is violating sex workers' rights to a fair trial, freedom from deprivation of liberty, and treatment with humanity while in detention.

Right to Freedom of Movement

Everyone lawfully within a State has the right to freedom of movement and residence within the borders of the State, regardless of employment as a sex worker. Policies that require sex workers to live or work in a designated area violate this right. This right is particularly important for migrant sex workers.

3) RIGHT TO HEALTH



Kenya has signed treaties that guarantee each citizen the right to the highest attainable standard of health. Because sex work is criminalized, sex workers have difficulty accessing health care services due to stigma from nurses, doctors, and employees of healthcare facilities, as well as stigma from community members who may be aware that a sex worker is being tested for HIV or is attempting to access certain reproductive health services. By continuing to criminalize sex work, the government of Kenya violates the right of sex workers to a high standard of health, and prevents sex workers from accessing important HIV/AIDS prevention and treatment measures, as well as reproductive health measures.

Furthermore, policies that allow police officers to take condoms from sex workers, or arrest sex workers on the basis solely of carrying condoms, reduces sex workers' ability to work safely and insist on condom use with clients. In addition, police officers often exploit the vulnerable position of criminalized sex workers, and insist on unprotected sex with sex workers, further increasing sex workers' risk of contracting HIV or other STIs. By allowing such policies to continue, the Kenyan government is violating sex workers' right to the highest attainable standard of health.

4) RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION

The treaties guarantee Kenyan citizens, including sex workers, the right to assembly and association. This right means that sex workers are allowed to form labor unions and work together to request safe and fair working conditions. Because sex work is criminalized in Kenya, sex workers are not able to form labor unions or to engage in collective bargaining practices. Instead, they must work in isolation, with no way to guarantee safe and fair working conditions, nor to enforce contracts or end abusive practices by the brothel owners or clients who employ them. This is a violation of sex workers' right to freedom of association and assembly.



5) RIGHT TO EQUALITY AND NON-DISCRIMINATION

Because sex work is criminalized in Kenya, sex workers are discriminated against when searching for housing or other forms of employment, or when accessing health care or banking services. The criminalization of sex work also leads to social stigma, further fueling discrimination on the basis of employment as sex workers. Furthermore, because the majority of sex workers are women (though a large minority are male or transgendered). The government of Kenya has signed treaties that give sex workers the right to equality and non-discrimination. The government must act to eliminate such forms of discrimination and guarantee sex workers equal treatment.

6) RIGHT TO FREEDOM OF OPINION AND EXPRESSION

This right is important for sex workers who are activists and fighting for sex workers' rights. Individuals have the right to advocate for legal rights, publish materials, or participate in conferences, and to disseminate information. Policies that allow police officers to arrest sex workers on the basis of how they are dressed or how they conduct their business, or for participation in an organization such as KESWA, are in violation of the Kenyan government's international legal obligations.

7) GENERAL RIGHT TO DIGNITY

The **Universal Declaration of Human Rights** is a declaration that was created by the United Nations in 1948 and applies to everyone in the world. The Universal Declaration of Human Rights says:

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This **Universal Declaration of Human Rights** recognizes the dignity of every person on earth. The dignity of every individual, whether they are gay, straight, bisexual, or transgendered, man or woman, sex worker or not, must be respected by the laws of every government, including the laws of Kenya.

The General Right to Dignity affects every other human right we have listed. Whenever one of the other 6 rights is violated, the General Right to Dignity is violated as well.



Part III. Activity: Stories of Self-Assertion



Go around and tell one time you or someone you know stood up for human rights:

1. Who or what helped you stand up for yourself?
2. Did you have the support or encouragement of others?
3. Did your social situation, such as being involved in KESWA or a partner organization, make it easier or harder for you to stand up for your rights?
4. Did your economic situation make it easier or harder for you to stand up for your rights?
5. Did your education/awareness enable your action?
6. What were the results of your actions?

[30 minute lunch break]



Activity: Quiz Show Part 1



Divide the group into two teams (or more depending on the size of the group).
Teams can come up with fun names!

How to play

Flip a coin, heads or tails to determine which team will go first
Trainer will ask a question to Team 1.
Team 1 will have 1 minute to discuss and come up with an answer.
If the answer is not correct, Team 2 will be given 1 minute to answer the question.
Repeat with the next question, reverse which Team is asked the question first.
The first round of questions is worth 50 points each, the second worth 75 points each, third round worth 100 points, and so on.

Questions



★ **Question: Name 3 human rights from international treaties that protect sex workers.**
Answer: Team is awarded points for naming any 3 of the 7 rights: Right to Work, Right to Freedom of Assembly and Association, Right to Equality and Non-discrimination, Right to Health, Right to Freedom of the Person, Right to Freedom of Expression and Opinion, General Right to Dignity.

★ **Question: Name one human right that is especially important for activists like those in KESWA.**
Answer: Freedom of Expression and Opinion, or Freedom of Assembly and Association

★ **Question: Name one international treaty that Kenya has signed.**
Answer: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), Convention on the Elimination of Discrimination Against Women (CEDAW), African Charter on Human and People's Charter

★ **Question: What is the organization that is responsible for making international treaties, and how many countries belong to that organization?**
Answer: The United Nations and 193 member countries.

★ **Question: What is the name of the Declaration that was made by the United Nations in 1948 and applies to everyone in the world?**
Answer: Universal Declaration of Human Rights.

★ **Question: Which human right most affects migrant sex workers who are coming from other countries to do sex work?**
Answer: All sex workers have the right to Freedom of Movement. This means that a person cannot be prevented from entering a country, region, or district because they are a sex worker, and a person cannot be prevented from leaving a country, region, or district because they are a sex worker.

★ **Question: Which human right ensures that sex workers will be treated fairly in court?**

Answer: Right to Recognition Before the Law

★ **Question: Which human right means that sex workers are allowed to rent an apartment, open a bank account, or hold the same job as any other Kenyan?**

Answer: Right to Equality and Non-discrimination

★ **Question (scenario question): You are on the street with other sex workers passing out flyers that advocate for sex workers' rights. A police officer stops you and says that you look like a Malaya, you cannot be in a group, and you cannot pass out flyers advocating for something that is illegal. Name two rights that have been violated.**

Answer: Right to Freedom of Opinion and Expression, Right to Equality and Non-discrimination, Right to Freedom of Assembly and Association, and Right to Privacy.

★ **Question: Name all 7 human rights that we discussed that are specifically important for sex workers.**

Answer: This question can be used as the final question of the game or be used as a tie-breaker. Participants will be expected to name all 7 human rights that were discussed throughout the training. If they miss one right, that is incorrect. The correct answer is: 1) right to work; 2) right to freedom of the person; 3) right to health; 4) right to freedom of assembly and association; 5) right to equality and non-discrimination; 6) freedom of opinion and expression; and 7) general right to dignity.

Team with highest points is the winner!

Trainers: Try your best to make it as even as possible when asking the questions. Each question is allotted a certain number of points, so depending on the number of teams, ask each group a 50 point, 75 point, or 100 point question so they all have an opportunity to be awarded the same number of points. Read the questions before hand to make sure you emphasize the information well enough throughout the training so that participants are able to answer these questions.

MODULE II: KENYAN LAWS (90 MIN)

Part I. The Legal Context in Kenya



Note: There will be another quiz show based on Kenyan laws, so pay close attention and take notes!

What is the Constitution?

The Constitution of Kenya is a document that tells us how the government works and tells us the basic rights of all Kenyans. The Constitution is the supreme law of the land. Thus, any law or action that is inconsistent with the Constitution is invalid. The Constitution was rewritten in 2010 and protects the rights of sex workers in many ways.

Rights in the Kenyan Constitution

Chapter four of the Constitution contains a Bill of Rights. This Bill of Rights provides all Kenyans, including sex workers with certain rights and fundamental freedoms that must be respected and fulfilled.

Chapter 4, section 28 provides everyone with a general right to dignity must be respected and protected. Section 27 provides right to equality and non-discrimination before the law. Section 27 (4), states that the government “shall not discriminate directly or indirectly against any person on any ground.”

Section 41 provides the right to work and section 36 (1) provides the right to freedom of assembly and association which means that sex workers have the right “to form, join or participate in the activities of an association of any kind” including a sex worker’s rights organization such as KESWA.

Section 43 (1) provides that everyone has the right to health, including reproductive health care.

Section 29 provides every Kenyan with the right to freedom of the person, which includes the right not to be—

- (a) deprived of freedom arbitrarily or without just cause;
- (b) detained without trial ;
- (c) subjected to any form of violence from either public or private sources;
- (d) subjected to torture in any manner, whether physical or psychological; and
- (f) treated or punished in a cruel, inhuman or degrading manner.



Section 48 ensures the right to recognition before the law for every Kenyan, including sex workers. Section 49 provides arrested persons with the right to be informed of the reason for their arrest and to be brought before a court as soon as reasonably possible.

Section 50 provides everyone with a fair hearing before a court or another independent body. Section 51 provides those who are detained with the right to freedom from arbitrary deprivation of liberty, and treatment with humanity while in detention. This section takes into account relevant international human rights instruments that Kenya is a party to and forbids the enactment of legislation which is inconsistent with it.

Kenya National Human Rights & Equality Commission



Part 5 of the Constitution designates a Kenya National Human Rights and Equality Commission. This Commission has the power to investigate and report on those involved in human rights abuses within the government and public. Every person has the right to complain to the Commission, alleging that a right or freedom has been denied, violated, or is threatened.

The Kenya National Human Rights & Equality Commission can also be an avenue of advocacy for sex workers. Your partner organization should consider bringing cases to the Commission in order to generate greater awareness of abuses of sex workers.

Rights in the National Laws of Kenya

How are laws made in Kenya?

The Constitution tells us how the government of Kenya functions. The government has three parts:

The Executive - The President and the Ministers

The Legislature - The Parliament, which currently has 349 members (in 2013)

The Judiciary - The Superior Courts



The Supreme Court of Kenya in Nairobi

Kenya is a *representative democracy*. This means that the people of Kenya vote for who they want to represent them in the government. Every five years there is a vote to elect the President of Kenya, and to elect new representatives to the Parliament. The President appoints the judges of the courts.

Laws are made in Parliament. One Parliament member must introduce the law, and then all of the members of Parliament vote. If enough members vote “yes,” the law must be approved by the President. If the President also says “yes,” then the law is permanent and can be enforced.

Which national laws affect sex workers in Kenya?

There are 2 national laws in Kenya that negatively affect sex workers: **The Kenyan Penal Code** and the **Sexual Offences Act**.

These two laws do not *specifically* say that sex work is illegal, **rather they criminalize third party actions associated with sex work**. This means these laws criminalize anyone who benefits financially from sex work, however sex workers are often arrested under these laws because police officers do not understand them.

1) Sexual Offences Act of 2006

The Sexual Offences Act outlaws the “exploitation of prostitution.” This means that it is illegal to encourage someone to do sex work or receive financial benefits from another person’s sex work.

Section 24 Protects Sex Workers:

Section 24 of the Sexual Offences Act says that it is illegal for anyone in a position of authority to commit a sexual offence. A person in a position of authority could be:

- The superintendent of a jail
- A police officer
- An askari or soldier
- A doctor or the hospital staff

Sexual offences include:

- Sexual intercourse not amounting to the offence of rape or defilement
- Sexual harassment



If someone in authority commits any of these offences against you, you should report it to the police and to KESWA. The person who hurt you should be arrested!

2) Kenyan Penal Code

Similar to the Sexual Offenses Act, the Kenyan Penal Code does not directly criminalize the acts of sex workers, **BUT** the Penal Code criminalizes anyone who benefits from sex work or promotes sex work.

The Penal Code specifically outlaws:

- living on the earnings of prostitution (this can include: paying rent, buying food, and paying for your children's education)
- aiding, abetting or compelling an individual to engage in sex work
- brothel-keeping

Only men can be arrested for:

- soliciting for immoral purposes
- living and habitually being in the company of a prostitute

The Penal Code also criminalizes homosexuality. Police officers often use this law to arrest sex workers they suspect are gay, lesbian, or transgender.

Municipal By-laws

In addition to the Constitution, and the laws created by Parliament, each city can create its own laws. These laws are very important for participants to understand so they can know which laws to target when advocating for the decriminalization of sex work.

On the next page, let's look at the laws in some of the biggest cities in Kenya:

Nairobi



Mombasa



Kisumu



NAIROBI

Even though the Constitution does not outlaw sex work, the laws of Nairobi make sex work illegal. The Nairobi General Nuisance By-laws say:

Any person who in any street – loiters or importunes for purposes of prostitution is guilty of an offence.

This law does not just criminalize prostitution, it criminalizes loitering for the purpose of prostitution. This law is often used by police officers or askaris to arrest sex workers who are standing on the street or waiting inside a bar, even if they are not doing sex work at that time.

MOMBASA

The Mombasa Municipal Council By-laws also criminalize sex work:

Any person who shall in any street or public place . . . Loiter or importune for the purpose of prostitution [or] Procure or attempt to procure a female or male for the purpose of prostitution or homosexuality ... shall be guilty of an offence.

This law criminalizes prostitution and loitering, but also criminalizes homosexuality. This law is often used by police officers or askaris to harass sex workers and even gay, lesbian, or transgender people who are not sex workers.

KISUMU

The Kisumu Municipal Council By-laws also criminalize sex work:

A person shall not . . . molest, solicit or importune any person for the purposes of prostitution or loiter on any street or public place for such purposes; or willfully and indecently expose his person in view of any street or public place.

This law is used by police officers or askaris to arrest sex workers for loitering. The law also criminalizes “indecent exposure,” which means that police officers can also arrest sex workers for the way they dress.

These laws are all WRONG! All of these laws violate the human rights of sex workers that are protected by international treaties and the Kenyan Constitution. If sex work is decriminalized in Kenya, these laws will be changed.

[15 minute break]

Part II. Legalization or Decriminalization

The Impact of the Illegal Status – Stigmatization and Marginalization

Criminal laws serve to stigmatize sex workers by influencing societal views and promoting further marginalization from the community at large. Sex workers face stigmatization and abuse from the judicial system, police, clients, healthcare providers, and society; this results in the collective violation of basic human rights and a repetitive cycle of abuse.

Sex workers suffer from physical and sexual abuse at rates much higher than the general population because of the criminalization of sex work.

Sex work should not be criminalized! We have learned that the criminalization of sex work violates many human rights. So what are the next steps for the government to take?

There are two options to make sex work legal: **Legalization** and **Decriminalization**. Some countries have already made sex work legal, and they have used either legalization or decriminalization to do so. Here are **just some** of the countries where sex work is legal, but there are many more!



Germany



Senegal



Netherlands



Switzerland



New Zealand



Turkey

What is the difference between legalization and decriminalization?

KESWA and many other sex workers organizations would prefer that sex work be decriminalized, rather than legalized. Why? Decriminalization allows sex workers to have more control over their work and their lives. Legalization is highly-regulated by the government, does not give sex workers as many options as to how to conduct their work, and can allow stigma to continue. Take a look at more of the differences between Legalization and Decriminalization:

Legalization

Legalization means that the government is in charge of sex workers. Sex work would be “regulated” by the government, meaning the government can make rules and laws that tell sex workers how to do their job. A sex worker who refuses to do so, would be considered illegal.

Trainers: Ask participants specifically if they would be willing to do any of this as a sex worker – if not, they’d be operating illegally.

Here is a list of what some of those laws might be:

- Sex workers may have to pay special taxes. Remember, a sex worker who refuses to do so, would be illegal!
 - Sex workers may have to work in certain designated areas, such as only in brothels or in a red light district. Remember, a sex worker who refuses to do so would still be illegal!
 - Sex workers may have to get a special permit or license in order to legally be a sex worker. Remember, a sex worker who refuses to do so would still be illegal!
 - Sex workers may have to undergo mandatory HIV testing and treatment. Remember, a sex worker who refuses to do so would still be illegal!
 - Sex workers may have to be registered in a sex worker database with the government. Remember, a sex worker who refuses to do so would still be illegal!
- **Anyone who does not follow the new regulations will still be an illegal sex worker!** This means that anyone who sets their own hours or prices that are different from those set in the regulations, or who wants to work in an area that is not designated, or who does not register with the government or undergo mandatory HIV testing, will still be subject to criminalization and arrest.



Example: Germany

Sex work has been legalized in Germany since 2001

The German law states that sex workers must sign a special employment form. Only 1 percent of sex workers in Germany have signed the form. The rest are still illegal.

Would you want to register with the government that you are a sex worker?

Decriminalization

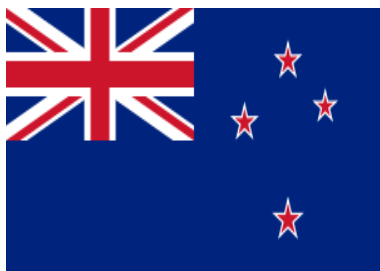
Decriminalization of sex work would remove laws that criminalize anyone involved or engaging in sex work. Decriminalization would promote human rights of sex workers and protect them from discrimination, abuse, and violence from their clients, communities, law enforcement agents, and health providers.

With decriminalization, the government will treat sex workers the same way that other workers, such as factory workers and vendors, are treated. Sex workers can also be considered self-employed workers. The next page lists some of the benefits of being a self-employed worker:

- Sex workers can set their own hours
- Sex workers can set their own prices
- Sex workers do not have to register with the government
- Sex workers do not have to pay special taxes, just the regular taxes that all self-employed workers pay
- Sex workers do not have to follow regulations requiring mandatory HIV testing

With decriminalization, sex workers can work together to ensure that their rights as workers are protected. Sex workers can demand:

- Laws requiring a safe workplace
- Laws upholding contracts between sex workers and clients
- Limits to legal working hours
- Laws requiring screening of clients
- Laws requiring paid sick leave and vacations



Example of decriminalization: New Zealand

Sex work has been decriminalized in New Zealand since 2003

Sex workers in New Zealand have reported that they feel more comfortable going to the police when they are the victim of a crime

If sex workers are abused by clients, brothel owners, or the police, they can safely report the crime

How can we achieve decriminalization?

Trainers: This section is included as background, but it is not necessary to go over with the group in detail, unless the group has many questions about decriminalization.

Let's take a look at the one country that has achieved decriminalization: New Zealand. What steps did sex workers in New Zealand take to achieve decriminalization in their country?

In 1987, a group of sex workers came together to form the **New Zealand Prostitutes' Collective (NZPC)**. This group had similar objectives to those of KESWA and other partner organizations: to provide health and safety resources for sex workers, encourage empowerment of sex workers, provide a community for sex workers, and advocate for sex workers rights.

In 1989, NZPC reached out to the government and was given the opportunity to speak in front of a special **Committee on Justice and Law Reform**. NZPC spoke about the situation of sex workers and how decriminalization would help reduce violence, health risks, and stigma against sex workers.

From 1994 to 1997, NZPC began working on a **model law that would decriminalize sex work**. To help them prepare this model law, NZPC invited many groups with different perspectives on sex work, but who all believed that sex work should be decriminalized. This included sex workers, faith-based organizations, women's groups, and AIDS/HIV groups.

NZPC showed their model law to members of Parliament, and invited the members to visit areas of New Zealand that had already begun to decriminalize sex work. One of the Parliament members, Tim Barnett, decided to take up the cause of sex workers and help in the fight for decriminalization. **Tim Barnett introduced the model law into Parliament in 2000.**

The model law was called the **Prostitution Reform Act**. The Act stated that its purpose was to:

- Safeguard the human rights of sex workers.
- Protect sex workers from exploitation.
- Promote the welfare and occupational safety and health of sex workers.
- Create an environment conducive to public health.
- Protect children from exploitation in relation to prostitution.

In 2003, the law was passed and became permanent, with 60 votes in favor and 59 against. A close call!

Since decriminalization, sex workers in New Zealand have reported that they feel that the police will protect them, that they feel safe reporting abuses to the police, that they feel safe refusing clients who may be dangerous or who refuse to use a condom, and that they have better access to health services.



Activity: Quiz Show Part 2



Divide the group into two teams (or more depending on the size of the group).
Teams can come up with fun names!

How to play

Flip a coin, heads or tails to determine which team will go first.
Trainer will ask a question to Team 1.
Team 1 will have 2 minutes to discuss and come up with an answer.
If the answer is not correct, Team 2 will have 1 minute to answer the questions.
Repeat with the next question, reverse which Team is asked the question first.
The first round of questions will be worth 50 points, the second round 75 points,
the third round 100 points, and so on.



Questions



Question: Name 2 national laws that affect sex workers.

Answer: Sexual Offences Act and Kenyan Penal Code.



Question: Which national law criminalizes homosexuality?

Answer: The Kenyan Penal Code.



Question: Which national law has a section that protects sex workers, and name the section?

Answer: The Sexual Offences Act, Section 24.

★ **Question: The two national laws do not exactly criminalize sex work. What do the two national laws criminalize?**

Answer: They criminalize third party actions associated with sex work. This means these laws criminalize anyone who benefits financially from sex work.

★ **Question: Name 1 country that has decriminalized sex work and 1 country that has legalized sex work.**

Answer: New Zealand has decriminalized sex work. Germany, Netherlands, Senegal, Switzerland and Turkey have legalized sex work.

★ **Question: Name 3 human rights that are listed in the Constitution of Kenya.**

Answer: Team is awarded points for naming any 3 of the 8 rights listed in the Constitution: Right to Equality, Right to Access Justice, Right to Work in Favorable and Just Conditions, Right to Privacy, Right to Freedom and Security of the Person, Right to Access Healthcare, Right to Freedom of Association, Right to Dignity.

★ **Question: How are laws made in Kenya?**

Answer: A new law is introduced in Parliament. The members of Parliament vote on the law; if they vote “yes,” the law goes to the President. If the President also says “yes,” the law is in force.

★ **Question: What do the Nairobi, Mombasa, and Kisumu by-laws have in common?**

Answer: All three by-laws criminalize loitering. The trainer should emphasize loitering in the discussion so participants are able to answer this question.

★ **Question: Why are the municipal by-laws important for sex workers to understand when fighting for decriminalization of sex work?**

Answer: These laws are important because these are the common laws that affect sex workers every day and violate sex workers’ human rights. They are the laws that askaris and police officers use to arrest sex workers and by understanding them, sex workers can work to change them.



Question: Advocate for why you prefer decriminalization and/or do not prefer legalization.

Answer: Have the team pick one participant to stand up and advocate for decriminalization over legalization in their answer. Have a conversation with the participant so they become comfortable advocating for decriminalization with someone who may be pro-legalization. Responses can include decriminalization is preferred because there is: no government registration, no special taxes, no mandatory testing, and so on.

Team with highest points is the winner!

Trainers: Try your best to make it as even as possible when asking the questions. Each question is allotted a certain number of points, so depending on the number of teams, ask each group a 50 point, 75 point, or 100 point question so they all have an opportunity to be awarded the same number of points. Read the questions before hand to make sure you emphasize the information well enough throughout the training so that participants are able to answer these questions.

[15 minute tea break]

MODULE III: ACCESS TO JUSTICE AND HUMAN RIGHTS (30 MIN)

Part I. Barriers to Justice

Some of the barriers sex workers face when seeking justice include:

1. Physical and sexual assault and harassment
2. Arbitrary arrest
3. Inhumane conditions of detention
4. Profiling, exploitation, and bribery
5. Violations of due process and access to justice
6. Gender Based Violence



Part II. Activity: Role Play of Violations



Ask for two volunteers to come to the front of the room. One volunteer will play the role of a police officer and one will play the role of a sex worker.

Ask the volunteers to act out the following scenarios. The scripts provided are to be used as the dialogue between the two volunteers. These scripts are just a suggestion, improvisation is encouraged! Allow the participants to develop realistic scenarios.

Instruct the other participants to yell **“Stop!”** when they see that a human right is being violated. Ask the participants, “Which right is being violated? What would you tell the sex worker to do here?”

Remember, if anything like these scenarios happens to you or a sex worker you know, report it to KESWA or to your partner organization. These organizations can help you.

Scenario 1: Profiling

Sex worker is standing on the street.

Police Officer walks up to the sex worker and starts asking questions

Police Officer: What do you think you're doing here? What is this outfit you're wearing, you look like a Malaya. Open your bag, I bet you've got condoms in there.



STOP! This is a violation of human rights:

Right to Freedom of Expression - sex workers are allowed to dress however they want and express themselves however they want

Right to Privacy - police officers are not allowed to search your possessions for no reason

What would you advise the sex worker to do?

1) Safety first! If the sex worker feels like it is safe to speak up to the police officer, he or she should tell the police officer that is against his or her rights for the officer to search her.

2) If the sex worker feels unsafe, he or she should use his or her best judgment on what steps to take.

Thank the volunteers and pick two new volunteers to continue the role play.

Scenario 2: Unlawful Search

Police Officer grabs the sex worker's bag and finds condoms inside.

Police Officer: Alright, you're under arrest. Unless you want to provide me with sexual services, then I'll let you go. Otherwise, you're going to jail!

Sex worker: NO. I will not provide you with sexual favors in exchange for my freedom.

Police Officer grabs sex worker and drags him or her away.



STOP! This is a violation of human rights:

Right to Freedom and Security of the Person - sex workers should not be treated roughly by the police or treated in a cruel or degrading way.

Right to Freedom from Arbitrary Deprivation of Liberty - sex workers should not be arrested if they have not committed a crime.

Section 24 of the Sexual Offenses Act - it is illegal for those in an authority position (like a police officer) to take advantage of that position in an attempt to commit a sexual offense.

Right to Bodily Autonomy – by demanding that the sex worker perform sexual favors, the police officer is violating the sex worker's right to bodily autonomy. Every person's body belongs to his- or herself, and nobody can force or coerce a person into performing sexual favors.

What would you advise the sex worker to do?

Again, safety first! The sex worker should use his or her judgment about what steps to take. If possible, the sex worker should demand to be told the reason for his or her arrest. Every time a sex worker is arrested, there should be a legal reason and you have a right to be informed of that reason! It is illegal for an officer to arrest a sex worker without informing you of this reason.

Thank the volunteers and pick two new volunteers to continue the role play.

Scenario 3: Inhumane Treatment while Detained

Police Officer continues to drag sex worker away, and pretends to throw him or her in the car.

Police Officer pretends to drive around with the sex worker.

Pretend that much time has passed.

Police Officer finally gets to the police station and throws the sex worker in a cell with prisoners.

Police Officer: You're staying here in jail until I feel like letting you out. Now give me your cell phone and all your money. You won't get these back until you're released.

Pretend that several hours have gone by. . . .

Sex Worker: Can I have some water? I'm thirsty. And I need my ARVs, when will I be released? Can I call someone to make sure my child is taken care of while I am in jail? Can I call someone to assist me in getting released?

Police Officer: No. Be quiet.



STOP! This is a violation of human rights:

Right to Humane Treatment while in Detention - sex workers should be provided with basic care and needs while they are in jail: phone calls, food and water, clothing, access to medications that you need, and safety from prisoners (being held separately from those who are serving a sentence.)

Right to Freedom of Movement - The police cannot drive around with you in their car for long periods of time. You should be taken to the police station within a reasonable timeframe.

You have the right to speak to an attorney or advocate.

You have the right to be released on bond or bail pending a charge or trial, unless there are compelling reasons.

You have the right to be brought to court as soon as reasonably possible - no later than 24 hours after being arrested but if you are arrested on a Friday it may be as long as the end of the next court day (Monday).

What would you advise the sex worker to do?

1) If possible, the sex worker should speak up to the police officer and say that it is his or her right to have access to these things.

2) If the sex worker is given access to a phone, CALL KESWA or your partner organization! These organizations will do what they can to make sure you are taken care of while in jail and help to make sure you are released.

- **Remember**, if anything like these scenarios happens to you or a sex worker you know, report it to KESWA or to your partner organization. These organizations can help you.

MODULE IV: HEALTHCARE AND HUMAN RIGHTS (30 MIN)

Part I. Barriers to Healthcare

Sex workers have limited access to healthcare services for many reasons. The most common reason is because they are fearful that if they seek out healthcare services, their occupation may be disclosed and they could be discriminated against or even arrested.

Some of the barriers sex workers face when seeking healthcare services include:

Health care workers refusing treatment

Abusive comments or judgmental attitudes on the part of staff and other clients

Implementation of mandatory HIV testing

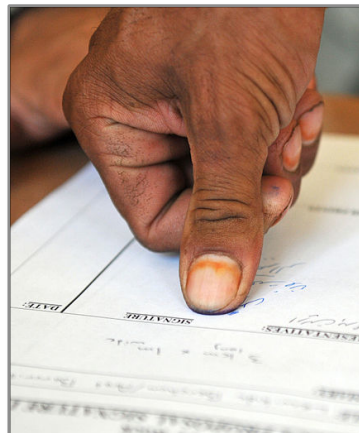
Implementation of mandatory fingerprinting

Implementation of mandatory preventative treatments for STIs or HIV/AIDS

Violation of privacy and confidentiality: disclosure of HIV test results or of a person's HIV status = increased risk of violence

Inconvenient hours and locations

The high costs of services





Part II. Activity: Role Play of Violations



How to play:

Ask for two volunteers to come to the front of the room. One volunteer will play the role of the healthcare provider and one will play the role of a sex worker.

Ask the volunteers to act out the following scenarios. The scripts provided are to be used as the dialogue between the two volunteers. These scripts are just a suggestion, improvisation is encouraged! Allow the participants to develop realistic scenarios.

Instruct the other participants to yell **“Stop!”** when they see that a human right is being violated. Ask the participants, “Which right is being violated? What would you tell the sex worker to do here?”

Remember, if anything like these scenarios happens to you or a sex worker you know, report it to KESWA or to your partner organization. These organizations can help you.

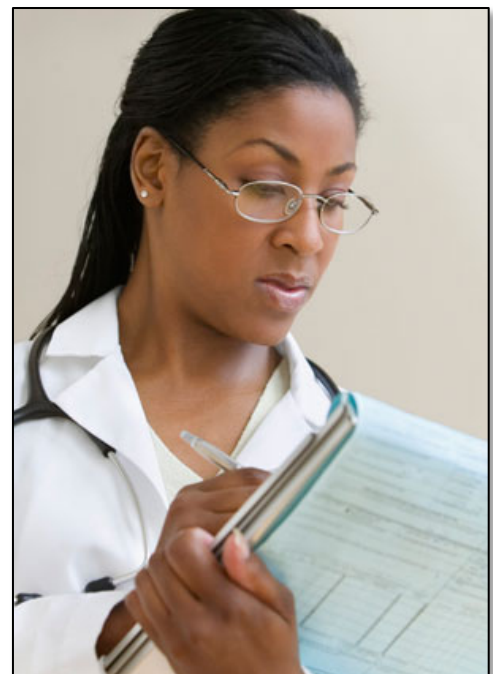
Scenario 1: Facing Stigma

Healthcare Provider is seated at the reception desk. Sex worker walks up to the desk.

Sex Worker: Hello, I am here for HIV testing. Can I be tested today?

Healthcare Provider: Oh, I know you. You have a reputation around town. We don't like to treat Malaya here.

Sex Worker: I would still like to be tested.



Healthcare Provider: Alright, give me your name. Then sit down and I'll call you when we're ready.

Sex Worker: [give name]

Sex worker sits in a waiting room full of people (can sit with other participants acting as the waiting room).

Healthcare Provider [shouting so all can hear]: [name of Sex Worker], come here so we can treat you for HIV!

All the people in the waiting room now believe Sex Worker is HIV positive.



Stop! This is a violation of human rights:

Right to Health - Sex workers have the right to confidential healthcare. They should not be denied treatment or healthcare because they are a sex worker, and their name and status should not be made public.

Right to Privacy - Sex workers have the right to privacy and confidentiality just like all other patients.

Right to Security and Freedom from Violence - Sex workers have the right to take care of their bodies. If a healthcare employee tries to refuse to treat a person because he or she is a sex worker, it is a violation of a sex worker's right to security and freedom from violence and is considered cruel and unusual punishment to cause a sex worker to suffer, or feel pain and humiliation because of his or her employment.

Right to Equality and Non-discrimination - Sex workers should not be denied access to health just because they are sex workers. Sex workers are Kenyans and are entitled to the same treatment as all other Kenyans.

What would you advise the sex worker to do?

1) The sex worker should tell the healthcare provider that sex workers have a right to be treated or tested at this facility, and that sex workers have a right to confidentiality as do all patients.

2) Report the incident to KESWA or your partner organization.

Scenario 2: Mandatory Identification

Sex worker enters the doctor's office and sits across from the doctor

Doctor: So you would like to be tested for HIV?

Sex Worker: Yes.

Doctor: Are you a Malaya?

Sex Worker: I don't want to talk about what I do.

Doctor: If you want to be tested or treated here, I need you to give me information about yourself. Give me your name, address, and tell me if you are a Malaya. We will also be taking a copy of your fingerprints. If you don't want to do this, you can go to some other hospital.



Stop! This is a violation of human rights:

Right to Health - sex workers have the right to access healthcare. They cannot be denied healthcare on the basis of their employment as a sex worker.

Right to Privacy - sex workers do not have to give any information about themselves that they do not wish to share. Healthcare providers must treat sex workers as they treat all patients, and respect their right to privacy.

What would you advise the sex worker to do?

1) The sex worker should tell the doctor that he or she does not want to share that information, and demand to be treated like any other patient.

2) If the doctor refuses to treat until the sex worker gives the information, the sex worker should leave. Contact KESWA or your partner organization, and they will arrange for you to see a doctor that will treat you properly.

Scenario 3: Mandatory Testing

Sex Worker walks into the doctor's office and sits across from the doctor.

Doctor: How can I help you today?

Sex Worker: I have not been feeling well. I have a fever and a sore throat. I have been coughing. I think it is just a bad cold, but can you prescribe me some medication?

Doctor: It sounds like it could be a throat infection. I will prescribe you a course of antibiotics. But I've seen you around, aren't you a Malaya?

Sex Worker: I would prefer not to talk about that.

Doctor: Alright, well we should do some testing. I will take a swab of your throat, but I am also requiring you to take an HIV test.

Sex Worker: I know my status. I don't want to take an HIV test.

Doctor: I can't treat you for your sore throat until you take the HIV test.



Stop! This is a violation of human rights:

Right to Health - sex workers have the right to healthcare and should not be denied treatment because they are a sex worker. Sex workers also should not be forced to undergo medical treatment or testing that they do not want.

Right to Privacy - Sex workers should not be forced to be treated or tested if they do not want to.

What would you advise the sex worker to do?

- 1) The sex workers should tell the doctor that he or she has the right to be treated like any other patient, who is not required to be tested for HIV.
- 2) If the doctor still refuses to treat him or her until she is tested, the next step depends on how sick the sex worker is and if he or she needs immediate treatment. The sex worker should use his or her own judgment about whether to be tested or to leave.
- 3) If possible, the sex worker should leave the doctor's office. Call KESWA or your partner organization to report the incident, and they will refer you to a doctor who will treat you properly.

Scenario 4: Lawful Protest

Group of sex workers gather with signs for a protest. Police officer comes over to investigate.

Police Officer: What do you think you're doing over here?

Sex Worker: We are holding a demonstration for sex workers' rights. We have a permit for the demonstration

Doctor: So you are all Malayas?

Sex Worker: Some of us are sex workers.

Doctor: Well there's no way I'm going to allow a bunch of Malayas to hold a demonstration here. Get out of here or I'll arrest all of you.



Stop! This is a violation of human rights:

Right to Freedom of Opinion and Expression - Sex workers have the right to express themselves through all kinds of activism, such as distribution of materials promoting sex workers' rights, distributing condoms, speaking with the media, and holding protests and demonstrations.

Right to Freedom of Assembly and Association - Sex workers are allowed to come together in a group as sex workers, to discuss their lives, their jobs, their rights, and the daily problems they face.

Right to Equality and Freedom from Non-discrimination - Sex workers are allowed to hold lawful demonstrations just as any other group does. Sex workers should not be treated differently and denied anything just because they are sex workers. Sex workers must be treated the same as all other Kenyans.

What would you advise the sex worker to do?

1) The sex workers should tell the police officer that they have the right to be treated like any other Kenyan, who is allowed to hold a demonstration for their rights.

2) If the police officer still insists that he will arrest the sex workers, the sex workers should use their best judgment about how to handle the situation. If possible, the sex workers should challenge the police officer to tell them why they are being arrested, and hopefully the police officer will leave them alone. If that does not feel like a safe option, the sex workers should leave and report the incident to KESWA or a partner organization.

CONCLUSION (30 MIN)

- Make sure that participants are clear on the elements of human rights covered in the training.
- Distribute any additional materials, such as the know-your-rights pamphlet and contact information for KESWA.
- If participants would like, feel free to end with a prayer, song, or dance!

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