

# KNOW YOUR RIGHTS

## SEX WORKERS AND THE LAW

*(Extracted from Legal Literacy Trainers' Manual)*

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## A. LAWS GOVERNING SEX WORK

### WHAT LAWS GOVERN SEX WORK IN JAMAICA?

There are laws in Jamaica, which specifically govern sex work. The act of selling sex is not in itself illegal or criminalized. Sex work is criminalized by what is called 'de facto' criminalization. This is achieved by criminalizing several activities surrounding sex work. The laws, which govern sex work in Jamaica, are set out in three pieces of legislation. These are the Sexual Offences Act, the Towns and Communities Act and the Offences Against the Person Act.

#### Under the Sexual Offences Act

***Procurement: Under section 18, procuring a person to become a prostitute carries a maximum penalty of 10 years imprisonment and a possible fine***

***Under section 23, (a) knowingly living off the earnings of prostitution carries a maximum penalty 3 years imprisonment or a fine of \$500,000 if convicted in the Resident Magistrate's Court but imprisonment for 10 years if convicted in the Circuit Court***

***Under section 23 (b) soliciting for immoral purposes carries a maximum penalty 3 years imprisonment or a fine of \$500,000 if convicted in the Resident Magistrate's Court but imprisonment for 10 years if convicted in the Circuit Court***

#### Under the Town and Communities Act

***Loitering and Solicitation under section 3 (r): it is an offence for a person to loiter in any public place and solicit any person for the purpose of prostitution.***

***Under Section 7, When a person is a drunk, loose or disorderly person who is disturbing the public peace, or who loiter at certain times and are unable to give a satisfactory account of him or herself.***

## Under the Offences against the Person Act

**“Under section 68, the use of premises as a brothel or for habitual prostitution is an offence. A police officer can obtain a search warrant to search the premises and upon searching, the officer can seize any item found which may provide evidence of the commission of an offence. Any person found on the premises may also be arrested.**

## B. IMPACT OF LAWS ON SEX WORKERS

### HOW DO THESE LAWS IMPACT PERSONS ENGAGING IN SEX WORK?

These laws negatively impact the rights of sex workers. The Global Commission on HIV and the Law has expressed that laws that criminalize sex work make sex workers more vulnerable to HIV, and drive them away from HIV, harm reduction and health services.<sup>68</sup> Local civil society groups have called on the Parliament of Jamaica to decriminalize sex work. In a submission to the Joint Select Committee of Parliament in 2014, they pointed out that whatever objectives existed at the time that the laws were made are now outweighed by their negative impacts. The current laws were said to heighten the risk that sex workers face and negatively impact on their rights to liberty, right to due process and the right to security of the person.

Of concern is the fact that offences such as solicitation has the effect of preventing sex workers from negotiating with their clients important issues such as safe sex and other terms of the transaction. The suppression of brothels prevents sex workers from working in an environment in which they are better able to put measures in place to protect their physical and sexual health. Additionally loitering and vagrancy laws authorize the police to arrest persons without a warrant. Given the nature of sex work and where this type of work tends to take place, sex workers are at an increased risk for arrest and also harassment by the police. The scope and meaning of these offences also tend to be uncertain. Also of note is that since the activities surrounding sex work are criminalized, sex workers who are subjected to violence by their clients and by the police may fear reporting the acts of violence to law enforcement officials. This is because of the fear and threat of prosecution for engaging in activities surrounding sex work.

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<sup>68</sup> Global Commission on HIV and the Law, HIV and the Law: Risks, Rights and Health, (Report 2012 and also Factsheet)

## OTHER LEGAL ISSUES FOR CONSIDERATION

- A person under 16 years of age cannot in law give consent to sexual intercourse. Consequently, selling sex or having sexual intercourse with a person under the age of sixteen years is an offence. The maximum penalty for this offence is life imprisonment.
- Engaging in anal intercourse or penile penetration per anum is known as the offence of buggery. Under the Offences against the Person Act, this offence carries a maximum penalty of ten years imprisonment at hard labour. An attempt to commit the offence carries a penalty of seven years imprisonment at hard labour.
- There is also the offence of gross indecency, which carries a penalty of up to two years imprisonment. Gross indecency captures sexual acts between males, which do not include penile-anal penetration.
- Trafficking in Persons: - Trafficking in persons is an offence. It is understood as where for the purpose of exploitation a person recruits, transports or facilitates transportation of another person within Jamaica, or from Jamaica to another country, or from another country to Jamaica. It also considered trafficking if one harbours or receives such person. For there to be an offence of trafficking in persons, the act must have been done via threats, force, forms of coercion, abduction or deception or through one's abuse of power. It is an offence to engage in trafficking anyone for the purposes of engaging in sex work. The penalty for the offence of trafficking in persons is a fine or imprisonment of up to ten years or both such fine and imprisonment. Facilitating the offence by hiding or withholding travel documents of the victim also carry a maximum penalty of ten years imprisonment or a fine or to both such fine and imprisonment. Receiving any benefit from the offence of trafficking carries a similar penalty.
- Disclosure of HIV status to clients: - There is no law, which mandates disclosure of one's HIV status to clients. However a 2016 Jamaican case suggests that if one is aware that one has HIV and proceeds to engage in sexual intercourse with another person without disclosing one's status and obtaining the consent of that person, then this could amount to an under Jamaican law. While the law in this area is not settled, it was suggested that such actions would amount to

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the offence of grievous bodily harm under section 22 of the Offences against the Person Act.<sup>69</sup>

- Client's failure to pay: - Where the client of a sex worker refuses to pay for services, it will be a challenge for the sex worker to rely on the law in insisting on payment since the activities surrounding sex work are illegal.
- Mandatory Testing: - Although there is no law in Jamaica, which explicitly prohibits this, there is a national HIV policy in which the government has communicated its support of the ten key principles of the ILO Code of Practice on HIV/ AIDS and the world of work. Principle # 6 in particular states that "HIV/AIDS screening should not be required of job applicants or persons in employment." The National HIV Policy and the ILO Code of Practice on HIV/AIDS are not legally binding; they do not have the force of law.<sup>70</sup>

## C. STANDARDS GUIDING POLICE'S INTERACTION WITH SEX WORKERS

Police awareness and respect of the rights of sex workers can help to protect sex workers. The Global Commission on HIV and the Law points out that police education and empowerment of sex workers can lead to decreased risk of HIV infection among sex workers. The Commission indicates that in Kolkata, India, such interventions helped reduce HIV prevalence among sex workers from 11% in 2001 to less than 4% in 2004.

### ARE THERE ANY FORMAL STANDARDS OR POLICY, WHICH GUIDE THE POLICE'S INTERACTION WITH SEX WORKERS?

In August 2011, the Jamaica Constabulary Force ("JCF") issued a Force Order, which sets out the JCF's Policy on Diversity.<sup>71</sup> The JCF affirmed its belief that all persons in Jamaica 'have a right to be treated with dignity and respect, irrespective of who they are or the particular grouping to which they belong.' The Diversity Policy is meant to aid in fulfilling the mandate.

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<sup>69</sup>George Flowers v Director of Public Prosecutions et al, Claim No. 2014 HCV 04232, Supreme Court of Jamaica decided on 30 June 2016 available at [http://supremecourt.gov.jm/sites/default/files/judgments/Flowers,%20George%20v%20The%20Director%20of%20Public%20Prosecutions%20for%20and%20on%20behalf%20of%20the%20Government%20of%20Canada,%20The%20Commissioner%20of%20Correctional%20Services%20and%20the%20Attorney%20General%20of%20Jamaica\\_0.pdf](http://supremecourt.gov.jm/sites/default/files/judgments/Flowers,%20George%20v%20The%20Director%20of%20Public%20Prosecutions%20for%20and%20on%20behalf%20of%20the%20Government%20of%20Canada,%20The%20Commissioner%20of%20Correctional%20Services%20and%20the%20Attorney%20General%20of%20Jamaica_0.pdf)

<sup>70</sup>ILO Code of Practice on HIV/AIDS and the world of work, ILO Geneva, 2001 at iii [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/publication/wcms\\_113783.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/publication/wcms_113783.pdf)

<sup>71</sup>Force Orders No. 3351 Part I Sub. No. 1 dated 2011-08-25

of the Constitution's Charter of Rights, section 13(3)(h) which requires fair and equitable treatment of everyone by public bodies. The Diversity Policy:

- Speaks to the imperative of fair treatment in its service delivery and that all reports from any individual or group be handled in a manner which reflects the highest level of professionalism and respect for human rights and dignity
- Affirms the acceptance of persons without prejudice and discrimination, irrespective of their religion, ethnicity, sexual orientation, class, colour, creed or political ideology and expressly recognizes that diverse communities are made up of groups of persons of various ethnicity, religion, sexual orientation, class, colour, political ideology, physical or mental challenges and any other feature that adds variety to mainstream society.

### **CISOCA**

The JCF also has the Centre for the Investigation of Sexual Offences and Child Abuse ("CISOCA"). CISOCA is concerned with the helping victims to report instances of sexual offence and child abuse. They also concerned with investigation of sexual offences and rehabilitation of victims. They also arrange for victims of sexual violence to be medically examined and treated.



“I am entitled to fair and professional treatment by you and you are required to give full respect to my human rights and dignity both in the Constitution and echoed in the Diversity Policy.”

“I have the right not to be arbitrarily deprived of my liberty.”

“If I am detained or arrested:

- I have the right to communicate with my family, my partner, my religious counsellor and a medical practitioner of my choice.
- I have the right to be informed within a timely manner of the reasons for my arrest or detention, as soon as is reasonably practicable.
- I have the right to be informed of the nature of any charge against me and in a language which I understand
- I have the right to communicate with and retain an attorney- at-law.
- I am entitled to request legal assistance from the Duty Counsel.
- I am entitled to bail and should be brought before the Court within a reasonable time.