



**KELIN**



Reclaiming Rights, Rebuilding Lives

# PUNITIVE LAWS AFFECTING SEX WORKERS

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## INTRODUCTION

Laws specific to sex work are used to criminalize sex workers, clients and third parties. In addition to the sex work-specific laws that criminalize sex workers, there are a number of other laws, such as the county by laws, which in practice are used to oppress sex workers. They also broadly create conditions of criminalization.<sup>1</sup>

Sex workers are subjected to these repressive and discriminatory laws and practices, which in turn fuel stigma, discrimination and in a large number of instances, violence being perpetrated against them.<sup>2</sup>

According to the United Nations Secretary General Banki Moon *'There will be no equitable progress in HIV prevention so long as some parts of the population are marginalized and denied basic health and human rights for example people living with HIV, sex workers, men who have sex with men, and injecting drug users.'*

This booklet is intended to educate sex workers and peer educators on punitive laws affecting sex workers, constitutional provisions protecting their rights and where to go if they need redress for human rights violations.

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1 NSWP. Briefing Paper Sex Work & The Law. [www.nswp.org/sites/nswp.org/files/Sex%20Work%20&%20The%20Law.pdf](http://www.nswp.org/sites/nswp.org/files/Sex%20Work%20&%20The%20Law.pdf)

2 Crago A.L. (2009). Arrest the Violence. Sex Workers' Rights Advocacy Network; Deering, KN, A Amin, et al. (2014). A systematic review of the correlates of violence against sex workers. Am J Public Health.104(5): e42-54; Scorgie F., Vasey K., et al (2013). Human rights abuses and collective resilience among sex workers in four African countries: a qualitative study. Global Health. 9 (1):33

## PUNITIVE LAWS AFFECTING SEX WORKERS

### The Kenyan Penal Code

The Kenyan Penal Code does not criminalize sex work. However, it criminalizes third parties who live on the earnings of prostitution. The Penal Code defines two types of offences with respect to sex work, namely “*living on the earnings of prostitution*” and “*soliciting or importuning for immoral purposes.*” The Penal Code outlaws offences such as

- Detention of females for immoral purposes (section 151)
- Male person living on the earnings of prostitution or soliciting (section 153)
- Woman living on earnings of prostitution or aiding, abetting or compelling an individual to engage in sex work (section 154)
- Premises used for prostitution or residing in or frequenting or living in a house wholly or in part on the earnings of prostitution (section 155)
- Running a brothel (section 156)

### Male sex workers can be charged under the following provisions

- Unnatural offences – Any person who has carnal knowledge of any person against the order of nature, permits a male person to have carnal knowledge of her against the order of nature (Section 162 b and c)
- Attempts to commit unnatural offences (Section 163)
- Indecent practices between males (Section 165)

### The Sexual Offences Act 2006

- Sexual Offences Act SOA) does not specifically criminalize sex work. The SOA aims at protecting persons who may be forced into sex work or may be exploited for prostitution. The SOA makes it an offence to encourage one to be a sex worker or to be in control of the sex worker. (Section 17)
- The law criminalizes acts such as child prostitution, which acts include the procuring of, or permitting children under the age of 18 “to be sexually abused, or to participate in any form of sexual activity, or in any obscene or indecent exhibition or show (section 15).
- The SOA also criminalizes trafficking for sexual exploitation (section 18) and prostitution of persons with mental disabilities (section 19).

### Municipal by-laws

Defunct municipal by-laws across the country that refer to sex work differ according to different regions, and can be very vague, leaving a large amount of discretion for interpretation. These by laws are utilized by council officers and police officials to arrest sex workers.

## **Nairobi**

Section 19(m) of the Nairobi General Nuisance By-laws (2007) provides that “any person who in any street – loiters or importunes for purposes of prostitution is guilty of an offence.”

This law criminalizes loitering for purposes of prostitution, and not prostitution. It is often used by police to arrest sex workers who are seen waiting for clients in public places

## **Mombasa**

*Sections 258 (m) and (n) of the Mombasa Municipal Council By-laws (2003) state that:*

*Any person who shall in any street or public place-*

*(m) Loiter or importune for the purpose of prostitution*

*(n) 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 homosexuality.**

## **Kisumu**

Part VIII of the Kisumu Municipal Council bylaws provide that a person shall not-

*(m) molest, solicit or importune any person for the purposes of prostitution or loiter on any street or public place for such purposes; or*

*(n) willfully and indecently expose his person in view of any street or public place;*

This law criminalizes prostitution and loitering in public places for such purposes. It also criminalizes indecent exposure in a public place.

## VIOLATIONS FACED BY SEX WORKERS AND SECTIONS OF THE CONSTITUTION THAT PROTECT AGAINST SAID VIOLATIONS

	Examples of Violations	Article of Constitution Protecting against Violation	Other Laws that protect against these violations
1.	Extortion of bribes from the sex workers	<ul style="list-style-type: none"> <li>• Art. 29 Guarantees Freedom and Security of the Person.</li> <li>• Art. 47 Guarantees Fair Administrative Action</li> <li>• Art. 48 Guarantees Access to Justice.</li> <li>• Art. 49 on Rights of an Accused Person: To be informed in a language he or she understands the reason for arrest; the right to remain silent and the consequences of not remaining silent; to communicate with an advocate; not to be compelled to make any confessions; to be held separately from other persons; to be brought before a court as soon as possible; not to be remanded in custody for an offence punishable by a fine only or imprisonment for less than six months.</li> </ul>	Section 300 of the penal code criminalizes extortion.
2.	Corruption and payment of a “protection from arrest fee;” to the police	<ul style="list-style-type: none"> <li>• Art. 29 Guarantees Freedom and Security of the Person.</li> <li>• Art. 47 Guarantees Fair Administrative Action</li> <li>• Art. 48 Guarantees Access to Justice</li> <li>• Art. 49 on Rights of an Accused Person: To be informed in a language he or she understands the reason for arrest; the right to remain silent and the consequences of not remaining silent; to communicate with an advocate; not to be compelled to make any confessions; to be held separately from other persons; to be brought before a court as soon as possible; not to be remanded in custody for an offence punishable by a fine only or imprisonment for less than six months.</li> </ul>	Section 46 of the Anti Corruption and Economic Crimes Act criminalizes abuse of office

	Examples of Violations	Article of Constitution Protecting against Violation	Other Laws that protect against these violations
3.	Demand for sexual favors by law enforcement officers	<ul style="list-style-type: none"> <li>• Art. 28 Guarantees right to human dignity</li> <li>• Art. 29 Guarantees Freedom and Security of the person. It protects persons from: being deprived of freedom arbitrarily or without just cause; detained without trial except in a state of emergency; subjected to any form of violence from either public or private persons; subjected to torture in any manner, whether physical or psychological; subjected to corporal punishment; being treated or punished in a cruel, inhumane or degrading manner.</li> <li>• Art. 49 on Rights of an Accused Person: To be informed in a language he or she understands the reason for arrest; the right to remain silent and the consequences of not remaining silent; to communicate with an advocate; not to be compelled to make any confessions; to be held separately from other persons; to be brought before a court as soon as possible; not to be remanded in custody for an offence punishable by a fine only or imprisonment for less than six months.</li> </ul>	<ul style="list-style-type: none"> <li>• Section 46 of the Anti Corruption and Economic Crimes Act criminalizes abuse of office</li> <li>• Section 95 of the National Police Service Act prohibits a police officer from subjecting any person to torture.</li> </ul>
4.	Rape and sexual assault of sex workers in police custody	<ul style="list-style-type: none"> <li>• Art. 28 Guarantees Right to Human Dignity</li> <li>• Art. 29 Guarantees Freedom and Security of the Person.</li> <li>• Art. 49 on Rights of an Accused Person: To be informed in a language he or she understands the reason for arrest; the right to remain silent and the consequences of not remaining silent; to communicate with an advocate; not to be compelled to make any confessions; to be held separately from other persons; to be brought before a court as soon as possible; not to be remanded in custody for an offence punishable by a fine only or imprisonment for less than six months.</li> </ul>	<ul style="list-style-type: none"> <li>• Section 95 of the National Police Service Act prohibits a police officer from subjecting any person to torture.</li> <li>• Section 3 of the Sexual Offences Act criminalizes Rape</li> <li>• Section 10 of the Sexual Offences Act criminalizes gang rape</li> <li>• Section 5 of the Sexual Offences Act criminalizes sexual assault</li> </ul>

	Examples of Violations	Article of Constitution Protecting against Violation	Other Laws that protect against these violations
5.	Gang rape of sex workers by police officers and their clients;	<ul style="list-style-type: none"> <li>• Art. 29 Guarantees Freedom and Security of the person.</li> <li>• Art. 28 Guarantees right to human dignity</li> </ul>	<ul style="list-style-type: none"> <li>• Section 3 of the Sexual Offences Act criminalizes rape</li> <li>• Section 10 of the Sexual Offences Act criminalizes gang rape</li> <li>• Section 5 of the sexual offences act criminalizes sexual assault</li> <li>• Section 95 of the National Police Service Act prohibits a police officer from subjecting any person to torture.</li> </ul>
6.	Arbitrary Killings	<ul style="list-style-type: none"> <li>• Art. 26 Right to Life</li> <li>• Art. 28 Guarantees Right to Human Dignity</li> <li>• Art. 29 Guarantees Freedom and Security of the Person.</li> </ul>	<ul style="list-style-type: none"> <li>• Section 203 and 205 of the penal code criminalizes murder and manslaughter</li> </ul>
7.	Officers negotiating engagement with sex workers for an agreed charge and threatening the women with arrest if they request to be paid after the officers have had sex with them	<ul style="list-style-type: none"> <li>• Art. 28 Guarantees Right to Human Dignity</li> <li>• Art. 29 Guarantees Freedom and Security of the Person.</li> <li>• Art. 47 Guarantees Fair Administrative Action</li> </ul>	<ul style="list-style-type: none"> <li>• Section 46 of the Anti-Corruption and Economic Crimes Act criminalizes abuse of office</li> </ul>
8.	Violent assaults, such as beatings, perpetrated by police officers and the sex workers clients	<ul style="list-style-type: none"> <li>• Art. 28 Guarantees right to human dignity</li> <li>• Art. 29 Guarantees Freedom and Security of the person</li> </ul>	<ul style="list-style-type: none"> <li>• Section 95 of the National Police Service Act prohibits a police officer from subjecting any person to torture.</li> </ul>

	Examples of Violations	Article of Constitution Protecting against Violation	Other Laws that protect against these violations
9.	Illegal detention of sex workers in officers' houses	<ul style="list-style-type: none"> <li>• Art. 39 Guarantees Freedom of Movement.</li> <li>• Art. 28 Guarantees Right to Human Dignity</li> <li>• Art. 30 Guarantees Freedom from Slavery, Servitude and Forced Labour</li> </ul>	<ul style="list-style-type: none"> <li>• Section 46 of the Anti-Corruption and Economic Crimes Act criminalizes abuse of office</li> <li>• Section 95 of the National Police Service Act prohibits a police officer from subjecting any person to torture.</li> </ul>
10.	Forced into sex work	<ul style="list-style-type: none"> <li>• Art. 28 Guarantees Right to Human Dignity</li> <li>• Art. 30 Guarantees Freedom from Slavery, Servitude and Forced Labour</li> </ul>	<ul style="list-style-type: none"> <li>• Section 17 of the Sexual Offences Act criminalizes exploitation of prostitution</li> </ul>
11.	Abuses perpetrated by female officers including physical beating and verbal abuse	<ul style="list-style-type: none"> <li>• Art. 29 Guarantees Freedom and Security of the Person</li> <li>• Art. 28 Guarantees Right to Human Dignity</li> </ul>	<ul style="list-style-type: none"> <li>• Section 95 of the National Police Service Act prohibits a police officer from subjecting any person to torture.</li> </ul>
12.	Being chased away from church.	<ul style="list-style-type: none"> <li>• Art. 27 Guarantees Freedom from Discrimination</li> <li>• Art. 28 Guarantees Right to Human Dignity</li> </ul>	
13.	Health care workers disclosing sex workers' health status	<ul style="list-style-type: none"> <li>• Art. 28 Guarantees Right to Human Dignity</li> <li>• Art. 31 Guarantees the Right to Privacy</li> </ul>	<ul style="list-style-type: none"> <li>• Section 22 of the HIV Prevention and Control Act prohibits disclosure of one's status</li> </ul>
14.	Stigma and discrimination at the health care setting based on their work	<ul style="list-style-type: none"> <li>• Art. 27 Guarantees Freedom from Discrimination</li> <li>• Art. 43 Guarantees the Highest Attainable Standard of Health</li> </ul>	<ul style="list-style-type: none"> <li>• Section 36 of the HIV and AIDS Prevention and Control Act prohibits discrimination at health care settings</li> </ul>
15.	Being forced to come with their sexual partners before receiving sexual reproductive health services and HIV prevention and treatment services	<ul style="list-style-type: none"> <li>• Art. 43 Guarantees the highest attainable standard of health</li> <li>• Art. 27 Guarantees freedom from Discrimination</li> </ul>	

## Institutions Created to Protect and Promote Human Rights for Sex Workers

No	Name of Institution	Mandate	Remedies it offers	How can One Engage with it	How to get in-touch
1.	Judiciary (all courts)	<ul style="list-style-type: none"> <li>Derives its mandate from the Constitution, which is to provide justice fairly, expeditiously and impartially.</li> <li>Its role is to also promote alternative forms of dispute resolution.</li> </ul>	<ul style="list-style-type: none"> <li>Compensation</li> <li>Injunctions</li> <li>Declarations - Court gives orders regarding the law</li> <li>Specific Performance- Court gives orders for performance of specific acts</li> <li>Restitution - Order to pay money to a victim</li> </ul>	<ul style="list-style-type: none"> <li>Available countrywide</li> <li>Individuals can file cases</li> <li>NGOs can file cases</li> </ul> <p>Experts can enjoin onto filed cases</p>	<p>The Chief Registrar of the Judiciary, Supreme Court of Kenya, City Hall way. PO Box 30041-00100 Nairobi, Kenya</p> <p>Tel: (020) 2221 221</p> <p>email : <a href="mailto:info@judiciary.go.ke">info@judiciary.go.ke</a></p>
2.	HIV & AIDS Tribunal	<ul style="list-style-type: none"> <li>Has the power of a court and can receive evidence, hear witness accounts, conduct full hearings and pass judgments on matters related to HIV.</li> <li>Can perform functions related to the HIV &amp; AIDS Prevention and Control Act, but does not have criminal jurisdiction.</li> <li>Can set aside, confirm or vary decisions, summon expert evidence, and direct that specific steps be taken to stop discriminatory practice.</li> </ul>	<ul style="list-style-type: none"> <li>It can make an order for:</li> <li>damages or</li> <li>costs</li> </ul>	<p>Procedure fairly informal and complaint can be made even by way of a simple letter</p> <p>Easily accessible by individuals even without legal representation</p> <p>Matters are heard in camera and persons not directly involved in the case are not allowed to sit in during the hearing of the case</p>	<p>HIV and AIDS Tribunal NHIF Building, 15<sup>th</sup> Floor P.O Box 37953-00100 Nairobi</p>

No	Name of Institution	Mandate	Remedies it offers	How can One Engage with it	How to get in-touch
3.	National Gender Equality Commission	<p>To promote gender equity and non-discrimination in accordance with Article 27 of the Constitution.</p> <p>The Commission's target groups are; youth, children, women, persons with disabilities, older persons, minorities and marginalized persons.</p> <p>Its mandate includes ensuring compliance with all treaties and conventions relating to equality and freedom from discrimination for women, persons with disabilities, and children</p> <p>Investigating any matters which violate the principles of equality and freedom from discrimination</p>	<ul style="list-style-type: none"> <li>• Report criminal cases to the Director of Public Prosecution.</li> <li>• Make recommendations on alternative ways of resolving complaints.</li> </ul>	<ul style="list-style-type: none"> <li>• Procedure fairly informal and complaint can be made even by way of a simple letter</li> <li>• Easily accessible by individuals even without legal representation</li> </ul>	<p>Nairobi Office: Solutions Tech Place, Upper Hill (Longonot Road, Next to Crowne Plaza Hotel)</p> <p>PO Box 27512-00506, Nyayo Stadium, Nairobi, Kenya.</p> <p>Telephone: +254 20 2727778</p> <p>Email: info@ gendercommission.org</p> <p>Kisumu office: Reinsurance Plaza, 3rd Floor Bank Street Kisumu Telephone: 20 2727776</p> <p>Nakuru office: P.O. Box 15263 Nakuru, Tamoh Plaza, 1st Floor, Kijabe Street Telephone: +254 722 824303</p> <p>Garissa Office: Along Thika- Garissa Road, County Commissioner's office turn left from KWS signage, NGECC office</p>

No	Name of Institution	Mandate	Remedies it offers	How can One Engage with it	How to get in-touch
4.	Kenya National Commission on Human Rights	<ul style="list-style-type: none"> <li>• Acts as a watchdog over the Government in the area of human rights.</li> <li>• Investigates and provides redress for human rights violations.</li> <li>• Monitors the compliance of human rights norms and standards.</li> <li>• Conducts human rights education, facilitates training, campaigns &amp; advocacy on human rights.</li> </ul>	<ul style="list-style-type: none"> <li>• After carrying out an inquiry, it can:</li> <li>• Refer the matter to the Director of Public Prosecutions or any other relevant body.</li> <li>• Recommend other appropriate methods of settling the complaint or obtain relief.</li> <li>• Provide a copy of the inquiry report to all interested parties.</li> </ul>		<p>Nairobi Office:</p> <p>CVS Plaza 1st Floor, Kasuku Lane ,Off Lenana Road</p> <p>PO Box: 74359-00200 Nairobi, Kenya</p> <p>Landline: +254- 0202717908 / 00 / 28</p> <p>Mobile: +254 733 78 00 00 / 0736 78 00 00 / 0724 256 448 / 0726 610 159</p> <p>General Enquiries: haki@knchr.org</p> <p>Complaints: complaint@knchr.org</p> <p>Kitale Office:</p> <p>Ambwere Plaza, Ground Floor</p> <p>PO Box 2999 – 30200, Kitale</p> <p>Telephone:</p> <p>Land Line: +254-054- 31773</p> <p>Email: northrift@knchr.org</p> <p>Wajir Office:</p> <p>Airstrip Road /Public Works</p> <p>PO Box 363-70200, Wajir</p>

No	Name of Institution	Mandate	Remedies it offers	How can One Engage with it	How to get in-touch
5.	Commission on Administrative Justice	<p>The Commission has been given a wide mandate both by the Constitution and the Commission on Administrative Justice Act, to enforce the right to fair administrative action, which is a fundamental right under Article 47 of the Constitution. Its mandate includes:</p> <p>Investigating complaints of abuse of power, unfair treatment, manifest, injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;</p> <p>Report complaints investigated and action taken to the National Assembly</p> <p>Inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service.</p>	<p>After carrying out an inquiry, it can:</p> <ul style="list-style-type: none"> <li>• Refer the matter to the Director of Public Prosecutions or any other relevant body.</li> <li>• Recommend other appropriate methods of settling the complaint or obtain relief.</li> </ul>	<p>Has vast powers to investigate complaints against public officers, institute proceedings, formally determine a matter and recommend appropriate remedy and award compensation</p>	<p>The Commission Secretary, Commission on Administrative Justice, 2nd Floor, West End Towers Opposite Aga Khan High School off Waiyaki Way - Westlands</p> <p>P.O. Box 20414 – 00200 Nairobi, Kenya.</p> <p>Tel 2270000 / 2303000 / 2603765 / 2441211 / 8030666</p> <p>Email: info@ombudsman.go.ke (for general inquiries)</p> <p>complain@ombudsman.go.ke (for complaints)</p>

No	Name of Institution	Mandate	Remedies it offers	How can One Engage with it	How to get in-touch
6.	Director of Public Prosecution	<p>Institute and take over criminal proceedings.</p> <p>Discontinue proceedings, with the permission of the court, taken over by the Director of Prosecutions at any stage before judgments are delivered.</p>	<ul style="list-style-type: none"> <li>• Fines</li> <li>• Arrests</li> <li>• Imprisonment</li> <li>• Community service</li> <li>• Probation</li> </ul>		<p>Office of the Director of Public Prosecutions, NSSF building, Block a, 19th Floor Bishops Road, Nairobi PO Box 30701-00100 GPO, Nairobi</p> <p>Nairobi Telephone: +254 20 2732090</p> <p>Email: info@odpp.go.ke</p> <p>Kisumu Telephone: +254 (57)-2024620</p>
8	Judiciary (all courts)	<ul style="list-style-type: none"> <li>• Derives its mandate from the Constitution, which is to provide justice fairly, expeditiously and impartially.</li> <li>• Its role is to also promote alternative forms of dispute resolution.</li> </ul>	<ul style="list-style-type: none"> <li>• Compensation</li> <li>• Injunctions</li> <li>• Declarations - Court gives orders regarding the law</li> <li>• Specific Performance- Court gives orders for performance of specific acts</li> <li>• Restitution - Order to pay money to a victim</li> </ul>	<ul style="list-style-type: none"> <li>• Available countrywide</li> <li>• Individuals can file cases</li> <li>• NGOs can file cases</li> <li>• Experts can enjoin onto filed cases</li> </ul>	<p>The Chief Registrar of the Judiciary, Supreme Court of Kenya, City Hall way. PO Box 30041-00100 Nairobi, Kenya</p> <p>Tel: (020) 2221 221</p> <p>email : <a href="mailto:info@judiciary.go.ke">info@judiciary.go.ke</a></p>

**You can contact the following hotline numbers in case of gender based violence or sexual gender based violence**

Organization	Hotline Number
<p>Healthcare Assistance Kenya</p> <p>State House Avenue</p> <p>Africa Alliance of YMCA Building</p> <p>P.O Box 49069-00200 Nairobi.</p> <p>Tel: 0722 570308</p>	1195
<p>Office of the Director of Public Prosecutions</p> <p>NSSF building, Block a, 19th Floor</p> <p>Bishops Road, Nairobi</p> <p>P.O. Box 30701-00100</p> <p>GPO, Nairobi</p> <p>Nairobi Telephone:</p> <p>+254 20 2732090</p> <p>Email:</p> <p><a href="mailto:info@odpp.go.ke">info@odpp.go.ke</a></p> <p>Kisumu Telephone: 057-2024620</p>	077610505
<p>Kimbilio Trust</p> <p>P.O Box 26790-00100</p> <p>Nairobi</p> <p>Tel: 254719402391 / 254725853511</p>	1193
<p>Coalition of Violence against Women (COVAW)</p> <p>Valley Field Court</p> <p>House No 2 Korosho Road</p> <p>Valley Arcade</p> <p>Nairobi</p> <p>Tel: 254 721594794</p>	SMS Hotline 20351
<p>LVCT Health</p> <p>Off Argwings Kodhek Road</p> <p>PO Box 19835-00202</p> <p>Nairobi</p> <p>Tel: 254 202646692</p>	1190

## KELIN'S STRATEGIC DIRECTION 2015 – 2019

### **Vision:**

The full enjoyment of health related rights for all

### **Mission:**

To promote and protect health related human rights for all

### **Core Values:**

Integrity, Equality & Non-Discrimination, Justice & Fairness, Excellence, Respect and Dignity

### **Goal:**

To advocate for a holistic and rights based system of service delivery in health and for the full enjoyment of the right to health by all, including the vulnerable, marginalized and excluded populations and especially PLHIV, women, children, persons with disabilities, adolescents, and key populations.

### **KELIN's Thematic Areas**

- HIV and TB
- Women's land and property rights
- Sexual and reproductive health rights
- Key and affected populations

#### Nairobi

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