

HUMAN RIGHTS MANUAL

Sex Work Association of Jamaica

SWAJ



My Body My Business

Sex Work Association of Jamaica

Overview

The Sex Work Association of Jamaica (SWAJ) was formed in 2007. The aim of the Association is to confront issues facing sex worker in Jamaica, work to build the capacity of sex workers and empower them to advocate on their own behalf. Core activities are in Kingston, Ocho Rios and Montego Bay.

This manual was first published as part of the Caribbean Vulnerable Communities Coalition (CVC) and El Centro de Orientación e Investigación Integral (COIN) Vulnerabilized Groups project. This grant was provided by the Global Fund to Fight AIDS, Tuberculosis and Malaria.

This simplified version is now being published with the help of VERJ to ensure that Sex workers find it more user friendly.

How the manual was developed

The content and topics were developed by Mr. Vivian A. Gray, Jr. for the Sex Workers Association of Jamaica (SWAJ). The Manual also received technical review from COIN/CVC.

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Revised: July 2016

Part 1: Introduction to Human Rights

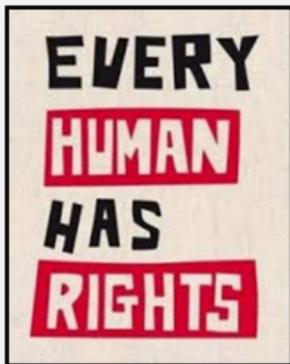
What do you think it means when we say that someone has a human right? A human right is a kind of protection or a right to demand certain things. You have these rights simply because you are human being and they are in place to ensure that certain basic human dignities are respected regardless of the individual.



What are some examples of human rights that you can think of? Some examples of human rights are: to be free from violence; the right to vote, the right to food and shelter and the right to live without discrimination, the right to life, no unfair detention or arrest without reason, the right to go where we want in our own country, the right to own things, the right to think for ourselves, to think what we like, to say what we think.

Where do human rights come from? Every person is born with human rights. The governments have a responsibility to protect these rights and tried to do so by putting them together in one document. They are fundamental –Inherent– 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 challenged so that the practice can be changed.



Part 2: Human Rights which are important for Sex Workers

There are currently no treaties *specifically* devoted to sex workers, BUT 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 Jamaica has signed, which means that the government of Jamaica must take action to uphold, promote and protect these rights.

Right to Work

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 treaty dealing with economic, social and cultural rights, the Jamaican government guarantees that it would take steps to ensure that all Jamaicans, including sex workers, have the right to choose their own employment. Because sex work has been criminalized, it is all but impossible for those sex workers who have low levels of education or job-ready skills, to find and engage in employment.



Right to Freedom of the Person



This covers a wide range of rights including bodily autonomy, freedom from violence, privacy, humane treatment while in detention and freedom of movement.

Right to Health



Jamaica has signed treaties that guarantee each citizen the right to the highest attainable standard of health. Because sex work is criminalized, sex workers often have challenges in accessing health care services, due to stigma and discrimination from public health centres and employees at public hospitals and this is a breach of their right to health.

Right to Freedom of Assembly and association

The treaties signed by Jamaica guarantees Jamaican citizens, including sex workers, the right to assemble peacefully and to associate. This right means that sex workers are allowed to form associations such as SWAJ and work together to request safe and fair working conditions.



Right to Equality and Non-Discrimination

The criminalization of sex work leads to social stigma, further fuelling discrimination. Because sex work is criminalized in Jamaica, sex workers are discriminated against when searching for housing, other forms of employment, when accessing health care or other services. The government of Jamaica has signed treaties that give all citizens, including sex workers the right to equality and non-discrimination. The government must take steps to eliminate and punish discrimination against sex workers and ensure that sex workers receive equal treatment in accessing public and some private goods and services.

Right to Freedom of Opinion and Expression

This right is important for sex workers who are activists and who are fighting for recognition of the general application of human rights to sex workers. This right guarantees to individuals the right to advocate, publish materials or participate in conferences and to disseminate information. Policies or practices that interfere with these rights, without reasonably lawful cause, are violations of both the Jamaican Constitution and international legal obligations.

The General Right to Dignity

People's lives are affected by many different moral and legal rights and duties but only a few rights are so fundamental that they have been embodied as human rights. Human dignity is violated, for example, when people are tortured, enslaved, bought and sold like property, unlawfully imprisoned, murdered, degraded or discriminated against or otherwise treated in a way that degrades them to the status of mere objects of power wielded by others. Human dignity is also breached if people are forced to live in absolute poverty, that is, without a minimum of food, clothes and shelter and without effective access to education, work, medical care, justice and social security.

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

Part 3: Which Laws affect Sex Workers in Jamaica

It is important to know what the laws of Jamaica provide so that sex workers can engage with the authorities about changing the provisions which are overly broad. Also, if partnerships are to be forged between the police and sex workers, sex workers must know the powers under which the police are acting and what the law enables them to do.

Town and Communities Act

This piece of legislation deals with maintaining order in public spaces in cities, towns and villages. It deals with a wide range of public order issues, such as disturbing the peace, noisy and disorderly conduct, street vending, butchering of animals and defacing buildings. There are specific provisions in the Act which affects sex work:

Section 3(r) - Loitering and Soliciting in a Public Place for Prostitution:

“Every person who shall loiter in any public place and solicit any person for the purpose of prostitution shall be guilty of an offence...”

Section 7 - Disturbing the Peace, Lying or Loitering in Open Spaces: *“It shall be lawful for any constable to take into custody, without a warrant...all persons whom he shall find between the hours of nine at night and six in the morning lying or loitering in any highway, piazza or other open place, and not giving a satisfactory account of themselves...”*

Section 9(b) - Indecent Exposure: "Every person who shall... in any thoroughfare or public place, indecently expose his or her person..."

Other relevant prohibitions in the Act include:

Section 20 - Prohibitions on Idle and Disorderly Persons in Public Spaces

Section 11 – Prohibitions on Noisy and disorderly Conduct in Public Spaces

Sexual Offences Act

Section 23(1) - Living off the Earnings of a Prostitute: "Every person who (a) knowingly lives wholly or in part on the earnings of prostitution; or (b) in any place, whether public or private, persistently solicits or importunes for immoral purposes, commits an offence..."

Section 23(2) - Living with or being habitually in the company of a prostitute: "If it is made to appear to a Resident Magistrate or Judge... by information on oath that there is reason to suspect that any house or any part of a house is being used for the purposes of prostitution and that any person residing in or frequenting the house is living wholly or in part on the earnings of prostitution, the Resident Magistrate or Judge may issue a warrant authorizing any constable to enter and search the house and to arrest that person."

Section 23(3) - Using a house for prostitution: "Where **a person** is proved to (i) live with, or (ii) to be habitually in the company of, a prostitute, or (iii) to have exercised control, direction or influence over the movements, of a prostitute in such manner as to show that the person is aiding, abetting or compelling prostitution, whether with any particular person or generally, the person shall, unless the court is satisfied to the contrary, **be deemed to be knowingly living on the earnings of prostitution.**"

Offences Against the Person Act

Section 68 - Suppression of Brothels: "If it is made to appear to a Justice by information on Oath that there is reason to suspect that **any premises** or part thereof is used as a brothel or for the purposes of habitual prostitution, the Justice may issue a warrant authorizing any constable to enter and search the premises, at any time of the day or night and with such assistance and by such force as may be necessary, and to seize any article found therein which there is reasonable ground for believing will afford evidence as to the commission of any offence of an obscene or immoral nature and to arrest any person found therein who there is reasonable cause to suspect is committing, or has committed, any offence against this Act."

The Constabulary Force Act

Section 20: This section empowers a Constable to take measure to prevent congestion of a public thoroughfare by the giving of commands to move on, and keep moving. Sex workers, who congregate at particular public locations and on public streets, especially in busy commercial areas, in order to attract clients, need to be aware that failing to obey such commands, can result in their arrest.

Impact of Laws Prohibiting Sex Work on Human Rights

The measures are so broad that they are at odds with fundamental concepts of justice: If the intent is to protect public health, the total suppression does not achieve this. A person found guilty of living off the earnings of a prostitute or for soliciting, can be fined up to \$500K or imprisoned. For sex workers and clients living in poverty, a fine may be tantamount to a jail sentence if they can be imprisoned for non-payment. A more realistic approach would be to de-criminalize sex work and put in place a regulatory regime so that persons who engage in sex work comply with general laws dealing with labour, occupational health and safety and human rights.

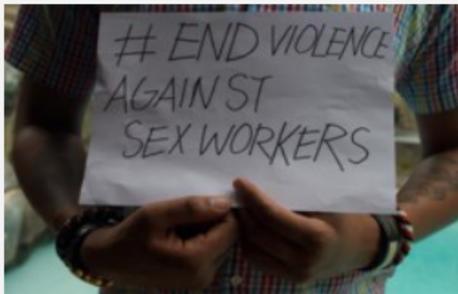
Some provisions in the law violate *the right to liberty and security of the person*: The provisions prevent sex workers from taking any steps to protect themselves in their work. They overlook the fact that many people choose to engage in sex work voluntarily. The decision to pursue sex work is a choice about one's body, one's sexuality and about whom to have sex with and on what terms.

Criminalization of sex work diminishes sex workers' access to justice in respect of violent crimes. Sex workers are reluctant to go to the police to report crimes against themselves or other sex workers out of fear they might be arrested and incur other consequences such as losing custody of their children

The prohibition on living on the avails of prostitution violates the right to protection of family life and privacy of the home. Sex worker's live-in partner could be charged for living off the avails of a prostitute. The provision in effect alienates sex workers from their networks of support, and prevents them from taking measures to find alternatives to sex work and encourage safety. In more developed countries like Canada where these matters have been tested in court, the courts have held that provisions in law like those dealing with living off the avails of a prostitute and suppression of brothels are overly broad, unconstitutional and violate human rights. See for example the judgment of the Supreme Court of Canada in **Canada (AttorneyGeneral)v.Bedford, 2013 SCC72(CanLII)**. Available at: <http://www.canlii.org/en/ca/scc/doc/2013/2013scc72/2013scc72.html>

How criminalizing sex work increases vulnerability to HIV

- ◆ Repression of **private sex work** displaces sex workers to isolated areas, rendering them more vulnerable to violence and limiting their ability to negotiate safe sex.



- ◆ Criminalization of sex work means that the police can confiscate and destroy property, including safer sex materials such as condoms.
- ◆ HIV prevention/outreach workers are at risk of being arrested for aiding, abetting and counseling offences and this impact on the ability of sex workers to gain access to information and prevention devices and services.

- ◆ Prohibiting sex workers from working in indoor locations like brothels affects the ways in which they are able to care for their sexual health. Working indoors provide sex workers with a safer environment and more time to negotiate safer sex, brothels as organizations can establish and enforce procedural mechanisms around condom use and safer sex practices but laws which outlaw the keeping of brothels means that there are no safe space for sex work to take place and this increases vulnerability to abuse, exploitation and violence. Sex workers in brothels with firm policies relating to condom use are in a better position to turn away clients who refuse to use condoms because they have the support of the institution and others working within it. The brothel setting also allows for more time to screen the clients for sores or other indications of STIs.

Safe Sex. No Regrets.

- ◆ The word “solicit” in section 3(r) of the Town and Communities Act is overly-broad and disproportionate, in light of the presumed objectives of the section. It captures and outlaws communication necessary to negotiate, and agree upon, safer sex practices, putting sex workers at risk.

Part 4: Human Rights in the Jamaican Constitution

- 1) The right to life, liberty and security of the person and the right not to be deprived thereof except in the execution of the sentence of a court in respect of a criminal offence of which the person has been convicted.
- 2) The right to freedom of thought, conscience, belief and observance of political doctrines
- 3) The right to freedom of expression
- 4) The right to seek, receive, distribute or disseminate information, opinions and ideas through any media
- 5) The right to freedom of peaceful assembly and association;
- 6) The right to freedom of movement,
- 7) The right to equality before the law;

- 8) The right to equitable and humane treatment by any public authority in the exercise of any function
- 9) The right to freedom from discrimination (*male, female, race, place of origin, social class, colour, religion, political opinions*)
- 10) Protection from search of the person and property
- 11) Respect for and protection of private and family life, and privacy of the home;
- 12) Protection of privacy of other property and of communication;
- 13) The right of every child to such measures of protection as are required by virtue of the status of being a minor
- 14) The right of every child who is a citizen of Jamaica, to publicly funded tuition in a public educational institution at the pre-primary and primary levels

- 15) The right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage
- 16) The right to be registered as an elector for elections to the House of Representatives
- 17) The right of every citizen who is so registered, to vote in free and fair elections
- 18) The right of every citizen of Jamaica to be granted a passport
- 19) The right to protection from torture, or inhuman or degrading punishment or other treatment
- 20) The right to freedom of the person as
- 21) The protection of property rights

22) The right to due process (See also section 16) setting out:

Fair hearing, Presumption of innocence, The right to be informed clearly of the reasons for arrest, The right to adequate time and facilities for the preparation of his defence and Not to be compelled to testify against himself

The right to freedom of religion Section 14(2): Any person who is arrested or detained shall have the right To communicate with and be visited by his spouse, partner or family member, religious counsellor and a medical practitioner of his choice; At the time of his arrest or detention or as soon as is reasonably practicable, to be informed, in a language which he understands, of the reasons for his arrest or detention;

Where he is charged with an offence, to be informed forthwith, in a language which he understands, of the nature of the charge; and to communicate with and retain an attorney-at-law.

Detention, Arrest, Bail

DETENTION: The lawful detention period without charge is 24 hours. Section 50B and 50F of the Constabulary Act was amended in 2010 to form part of the Anti-Crime Bills which extended the detention period without charge to 72 hours. This provision was only extended to July 2012. You have a right to freedom from arbitrary detention. The police should have reasonable grounds for detaining you and they should tell you the reason for your detention.

- I. You have a right to politely ask the reason for your detention if you're not told
- II. You have a right to communicate and be visited by a spouse or family member, religious counsellor and a medical professional of your choice
- III. You have right to retain an attorney-at-law

If you are detained for more than 24 hours without being charged, your duty counsel or lawyer can go to court for an order for the police to release you if they are not going to charge you. This is known as "habeas corpus", which literally means "bring the body". This is a legal action through which a person can be released from unlawful detention.

NB. *The detention period may be extended under State of Emergency circumstances. However under these instances, new stipulations will be made known.*

ARREST: The police should normally have a warrant before they arrest you. They can arrest you without a warrant if:

- a. You have committed a felony or the police have reasonable grounds to suspect that you are about to commit a felony;
- b. You have committed a dangerous Breach of the Peace;
- c. If you refuse to give your name, address, license to a uniformed police officer after you have committed a road traffic offence.
- d. If you are caught in the act of committing some minor offences.

YOUR RIGHTS ON ARREST: You have the right to freedom from arbitrary arrest. The police should advise you of the charge against you; or if they are not charging you, they should tell you why they are arresting you. When you are arrested the police should advise you that you do not have to say anything. They should tell you that anything you say can be taken down and given in as evidence. When arrested, you have a right to communicate with and be visited by a spouse, partner or family member, religious counsellor and a medical professional of your choice.

Responsibilities: NEVER Resist Arrest! Say nothing Until Advised by a Lawyer.



Fingerprints and Photographs: You have a right NOT to have your fingerprints or photograph taken but remember you can agree for them to be taken. If you are suspected of being involved in certain serious offences, a Superintendent of Police or officer of higher rank can authorize that they be taken. They can be taken if you are deemed incapable of consenting, eg. If you are mentally challenged. A court can also order that your fingerprints be taken.

Legal Aid – Duty Counsel: When arrested and taken to the police station, the police should ask you if you have an attorney. If do not have an attorney, then he should refer you to a list of 'Duty Counsel.' You may choose one to represent you. Duty Counsel is a lawyer who has agreed to provide legal aid assistance to persons arrested & detained. A Duty Counsel is paid by the government – Never give Duty Counsel any money. Duty Counsel is usually a 'regular lawyer' who donates a portion of his/her time to providing legal aid assistance – he/she is not always an Attorney from the Legal Aid Department.

Even if he/she is from that department, he/she is equally capable to handle your case. Once you have asked the police to contact Duty Counsel on your behalf, they should not question you until your lawyer arrives. The police should allow Duty Counsel to meet with you somewhere where they cannot hear your conversation. Remember everything you say to a lawyer is confidential! If there is to be an identification parade ensure that your lawyer is present. If you are charged and the case goes to court, the Duty Counsel may represent you for your first court appearance.

DO EVERYTHING IN YOUR POWER TO



HUMAN RIGHTS VIOLATIONS

RIGHT TO BAIL

Police: Once you are charged you have a right to bail. Bail must be considered within 24 hours of you being charged. For most offences bail can be granted by the police. This is known as station bail. If you are charged with an offence for which you cannot be imprisoned then the police SHOULD in most cases grant you bail.

Court: If police deny you bail you can request bail before a Resident Magistrate (RM). If you are charged with an offence for which the police cannot grant you bail then ask to be taken to a judge as soon as possible. If a court denied bail at first, you can keep applying to the same court or you can apply to a judge of the Supreme Court.

To Get Bail: One (1) passport-sized picture signed by a J.P. A valid form of identification (National ID, Drivers' Licence, Passport) Two (2) letters of recommendation (JP, Sergeant of police or police of higher rank. Collateral a. Motor vehicle statement b. Land title without caveat c. Bank statement , Proof of Address: (A recent utility bill).

Part 5: Access to Justice and Human Rights

"Justice" in Jamaica means a lot of things. More often, "We want Justice" means we want to be heard, we want a breach of procedure corrected but necessarily that we want a court hearing. Most often, Jamaicans cry for "we want justice" when they are concerned about the manner in which some thing was done.



Some of the barriers faced by sex workers when seeking justice:

Physical violence, sexual assault and harassment, Arrest and detention, Inhumane conditions of detention, Profiling, exploitation, extortion and bribery, Violations of due process

Possession of safe sex devices (e.g. condoms) are used to institute or as incriminating evidence in prosecutions

Part 6: Access to Healthcare and Human Rights

Sex workers have limited access to healthcare services for many reasons. The most common reason is because they are fearful that if they seek healthcare services, their occupation may be disclosed or they may see someone from their communities at the health care facility. They also fear discrimination or arrest.

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

- I. Abusive comments or judgmental attitudes from health care staff
- II. Mandatory HIV testing
- III. Violation of privacy and confidentiality which may lead to increased risk of violence

***"A right is not what someone gives you,
it's what no one can take from you" –***

Ramsey Clarke

The following publication was made available by the
Caribbean Vulnerable Communities Coalition (CVC)

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