

- You have the right to access the courts and other bodies if your rights have been violated. The police must pay attention to your complaints and must open a case if you want to lay a charge.
- You have the right not to be arrested without reasons or detained without a trial.

What are my rights if I am arrested?

What should happen when I am arrested?

- When you are arrested, the police must tell you why you have been arrested.
- Police must have proof that you have committed a criminal offence, otherwise the arrest is unlawful and they must release you.
- The police must also tell you that you have the right to remain silent. You cannot be forced to make a statement. However, if the police ask you for your name and residence you must give this to them.
- The police must not harass or intimidate you in any way. The police cannot use unnecessary force during the arrest.
- A woman who is arrested may be searched by a female police officer only, in a decent way. The police may not remove your clothes in public when they search you.
- When you are at the police cells, you have the right to medical treatment.
- You have the right to speak to a lawyer or paralegal in private.
- After you have been arrested, the police must either charge you with an offence or release you.

Important information: The only reason police can arrest you is to bring you before a court to face charges. The police may not arrest you to punish, frighten or harass you.

What are my rights in Court?

- You have the right to speak with a lawyer.
- You are innocent until proven guilty.
- You have right to a fair trial.
- If you are convicted, and believe that you did not receive a fair trial or that there was an error in your trial, you have the right to appeal.

Where can I get assistance?

ORGANISATION	SERVICE	PHONE
Centre for Human Rights Education, Advice and Assistance (CHREAA)	CHREAA can provide paralegal services and where necessary also litigation support. <i>You can visit them at JHANGO House along Kenyatta Drive next to Winners Chapel in Chitawira</i>	(Toll free) MTL Lines 80000333 TNM & Airtel 80000331
YouthNet and Counselling (YONECO)	Advice & counselling service. They will refer you to an organisation that can help you.	80001234
Malawi Human Rights Commission (MHRC)	If your rights have been violated you can bring a complaint here.	Lilongwe: (+265) 1 750 900/958/954 Blantyre: (+265) 1 831 953/945

**SOUTHERN AFRICA
LITIGATION CENTRE**



CHREAA



Know Your Rights
SEX WORK AND THE LAW IN MALAWI





What is sex work and who is a sex worker?

Sex workers include female, male and transgender adults who receive money or goods in exchange for sexual services, either regularly or occasionally. Sex work refers to commercial sexual activities taking place between consenting adults.

What does the law say about sex work in Malawi?

Is sex work illegal?

Sex work is **not illegal** in Malawi, however related criminal offences are often used as a reason to target, harass, abuse and arrest sex workers. It is therefore important to know your rights.

It is an offence to behave in an indecent way or perform an indecent act in public. It is also an offence to recruit someone to become a sex worker (procurement) or to keep a place that is used for sex work (brothel). It is a crime to force someone to become a sex worker or to keep someone in a brothel without their consent.

What laws are often used wrongly against sex workers?

Sex workers are at risk of being wrongly arrested for offences such as:

- Living on the earnings of prostitution; or
- Being a rogue and vagabond.

Living on the earnings of another person's prostitution

The aim of this offence is to protect sex workers from people (for example pimps) who may exploit you by receiving money from clients on your behalf or charging you for services related to sex work.

This offence **does not apply to sex workers** themselves. It does not prevent you from earning money through sex work and from using the money to support your dependants. A police officer **may not** arrest you for engaging in sex work and living off this money. The police official can however arrest you if they have sufficient evidence that you live on the earnings of another person's sex work by acting as their pimp or madam or if they can show that you are controlling another person and forcing them to engage in sex work.

Remember: Sex work itself is not a crime and police cannot arrest you for living on the earnings of your own sex work.

Rogue and Vagabond

Who can be arrested for being a 'rogue and vagabond'?

Police are **not allowed to arrest you on the basis that you are loitering or hanging around in a public place**, in a way that looks as if you might be there for an illegal or disorderly purpose. This offence has recently been declared unconstitutional by the High Court.

Police are not allowed to arrest you on the basis that you are **a suspected person or a reputed thief who has no visible income and cannot explain why they are at a specific place**. The courts have said that this offence is problematic and that it should only apply when the police suspect that a person is guilty of criminal behaviour based on previous conduct. Because sex work is not illegal, **sex workers are not supposed to be arrested under this offence**.

What if I am arrested for being a 'rogue and vagabond'?

To arrest you, **police must have proof** that you have committed a criminal offence, otherwise the arrest is unlawful and they must release you. Police cannot arrest lots of people at different places and charge them under one offence. Each person must be given an opportunity to speak in court based on charges that apply specifically to them.

The police sometimes pressure sex workers to admit to an offence, even if they did not do anything wrong. You do not need to admit to anything that you did not do.

If you want legal advice, ask the police to get a paralegal to speak to you. If you can, contact the CHREAA toll-free helpline for paralegal advice.

Do sex workers have rights?

What rights do I have as a sex worker?

All living persons enjoy all the rights in the Constitution. Being a sex worker doesn't change who you are as a person and your status as a living human being, therefore all of the rights in Constitution apply to you.

The Constitution states that all government officials, including police and magistrates, must recognise, respect and protect the human rights of all people, including sex workers and minorities.

- Police must treat you with respect and not punish or humiliate you because you are a sex worker. You have the right to be treated with dignity and to have your privacy respected.
- You may not be discriminated against on grounds of race, sex, language, religion, opinion, nationality, social origin, disability, property, birth, occupation or other status. This means that police are not allowed to arrest you simply on the basis of being a sex worker.
- If you are arrested for whatever reason, you may not be tortured, abused or mistreated in any way. You may not be treated in a cruel, inhuman or degrading way.
- You have the right to move freely within Malawi. This means that the police cannot arrest you for simply being in or walking through a particular place.