



# Litigation and other strategies to challenge police abuse of sex workers in Malawi

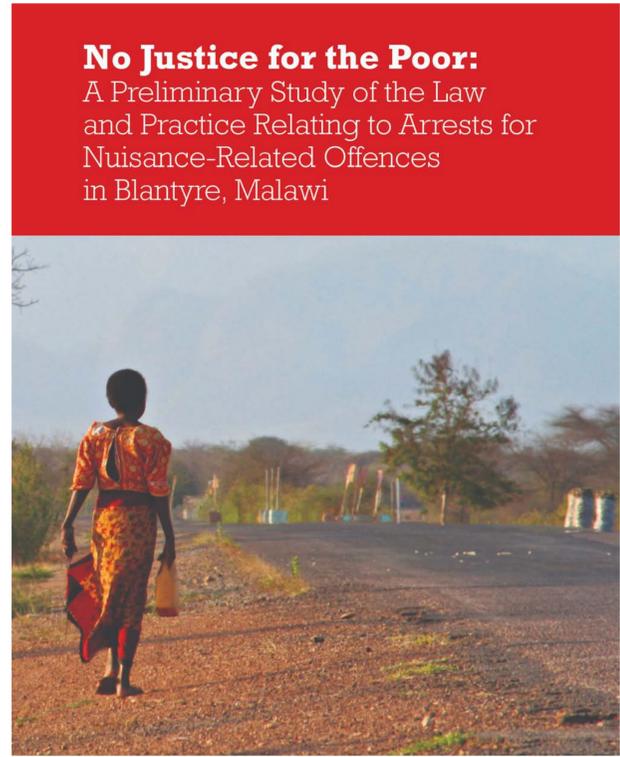
## The problem

Sex workers are often the target of police arrest, abuse and harassment, even without any proof of them having committed any offence.

In most countries, the act of selling sex is not a crime. What is criminalised is people who exploit sex workers through pimping (living off earnings), brothels and procurement. Sometimes soliciting for the purpose of sex work is also a crime. But none of these offences criminalise the status of being a sex worker. These offences also do not make it a crime for sex workers or their dependents to live off money derived from sex work. However, police tend to target sex workers and not those who exploit them.

Arrests are often based on vague offences such as being a rogue and vagabond or common nuisance. Upon arrest, sex workers are then persuaded to plead guilty and pay a fine or asked for a bribe in exchange for their release.

## The strategy



**No Justice for the Poor:**  
A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi

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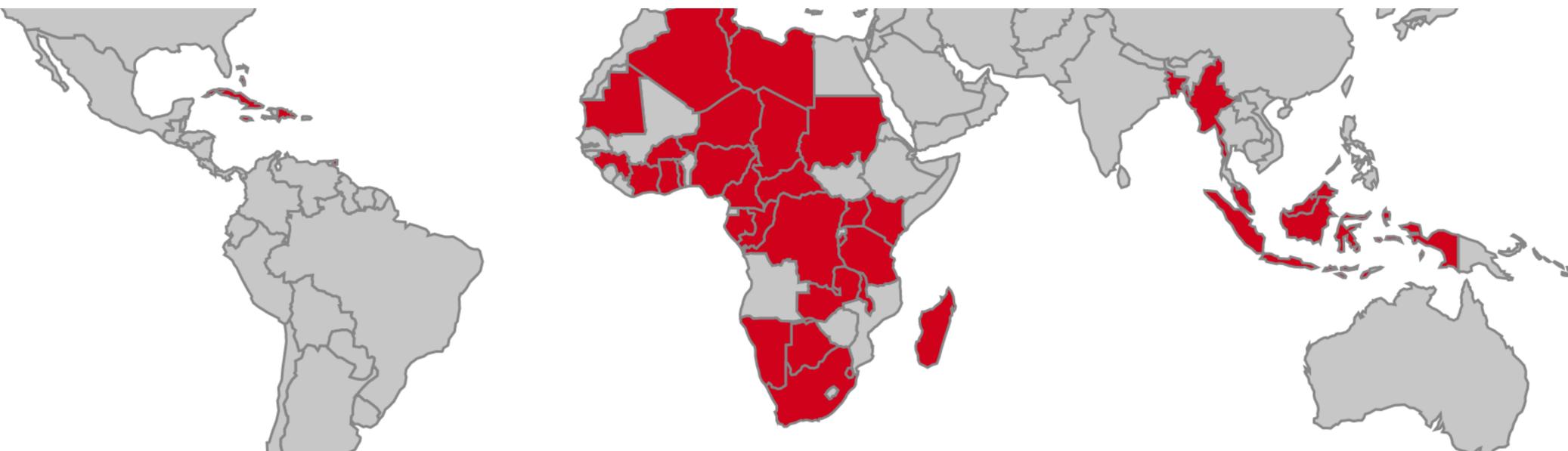
Based on research, SALC and CHREAA successfully brought litigation to challenge the constitutionality of the rogue and vagabond offence (Gwanda case) and the practice of sweeping exercises (Banda case).

Section 146 of the Malawi Penal code has been used to criminalise sex workers as opposed to people who exploitatively live off sex workers' earnings.

The court also found that their fair trial rights were violated because the lower court incorrectly tried all 19 women together and recorded a unanimous plea of guilty.

In *Republic v Pempho Banda and Others*, 19 women were convicted of the offence of living off earnings of prostitution. They challenged their conviction in the High Court on the basis that the offence of living on the earnings ought not to apply to sex workers themselves. They based this argument on detailed research of the history and origin of the offence. The Malawi High Court agreed with their submissions.

Examples of countries with overbroad laws that criminalise living on or sharing in the proceeds of sex work.



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