

## 1. NAME OF NGOS MAKING SUBMISSION:

JOINT SUBMISSION BY

1. JAGRITI MAHILA MAHASANGH (JMMS) - NATIONAL FEDERATION OF SEX WORKERS

AND ITS PARTNERS COLLECTIVES

2. KRIYASHIL MAHILA SANGH, KATHMANDU DISTRICT
3. PARIJAT MAHILA SANGH, KATHMANDU DISTRICT
4. NAMUNA MAHILA SANGH, LALITPUR DISTRICT
5. JIVANJYOTI MAHILA SANGH, LALITPUR DISTRICT
6. MAHILA SAHAYOGI SAMUHA, SUNSARI DISTRICT
7. MILIJULI MAHILA SAMUHA, SARLAHI DISTRICT
8. MAHILA PAURAKHI MANCH NEPAL, BARDIYA DISTRICT
9. GORETO NEPAL, KASKI DISTRICT
10. NARI EKATA SAMUHA, DANG DISTRICT
11. NARI KO AWAAJ, NAWALPARASI DISTRICT
12. MAHILA MUKTI SANGH, MAKWANPUR DISTRICT
13. MAHILA SACHETANA SAMAJ, SAPTARI DISTRICT
14. EKAKRIT MAHILA SAMUHA, TANAHU DISTRICT
15. KANCHAN KRIYASHIL MAHILA SANGH, KANCHANPUR DISTRICT
16. BANKE PRAGATISHIL MAHILA SANGH, BANKE DISTRICT
17. MAHILA JAGARAN SAMAJ, JHAPA DISTRICT
18. SANGARSHA MAHILA SAMUHA, BHAKTAPUR DISTRICT

2. STATE PARTY TO WHICH INFORMATION RELATES: NEPAL

## 3. CAN THE SUBMISSION BE POSTED ON CEDAW

WEBSITE FOR PUBLIC INFORMATION PURPOSES : Yes

## 1. Sex work in Nepal

Officially, there are around 55000 women in sex work in Nepal<sup>1</sup>. However, the actual population exceeds this figure. A large number of women in sex work are situated in Kathmandu and there is a sizeable proportion of sex workers in districts and small towns such as Kaski, Kailali, Rupandehi, Saptaru, Dhanusha, Parsa and Chitwan.

## 2. Laws relating to sex work <sup>2</sup>

a. The Human Trafficking and Transportation (Control) Act, 2064(2008) was enacted as a more comprehensive law. Human Trafficking<sup>3</sup> has been defined as “selling or purchasing a person for any purpose, forcing someone into prostitution with or without benefit; extracting human organs except in accordance with law; and finally, to go in for prostitution. The law specifically includes ‘to go in for prostitution’ in the definition of trafficking and has made prostitution an offence and included it in the definition of human trafficking.

b. The Public Offences and Penalties Act 1970 is used by police to arrest, detain and harass sex workers, under the provisions pertaining to public nuisance, public tranquillity, obscenity and harassment.

c. Chapter 14 of the Country Code 1963 that defines and provides for punishment for rape provides for differential punishment in case the survivor/victim of rape is a prostitute. The Supreme Court struck the provision down as unconstitutional, holding that providing lesser punishment for rape of a prostitute was discriminatory.<sup>4</sup> The judgement observed that “prostitution is a profession or occupation irrespective of whether or not it is legal” and given the Constitutional right to choose one’s own profession and the Constitutional guarantee of equality, sex workers should not be discriminated against in the criminal law with respect to rape.

Public order laws are used to target and arrest sex workers.<sup>5</sup> Anti-Human Trafficking Laws have been applied broadly to extend to third parties including clients. There are laws in place that have made it an offence to engage the services of a sex worker.<sup>6</sup> Sex workers are arrested for public order offences,<sup>8</sup> and condoms are confiscated as evidence of sex work.<sup>9</sup>

## 3. Anti-Discrimination provisions

The Constitution of Nepal has anti-discrimination provisions and protection against inequality.<sup>10</sup> It provides for measures for affirmative action that may be undertaken for the protection, empowerment or development of socially or culturally backward women.<sup>11</sup> The non-discrimination provisions include equal lineage rights, right not to be subjected to physical, mental, sexual or other forms of exploitation and violence.<sup>12</sup> Despite this, sex workers face exclusion, discrimination, violence by state and non-state actors.

## 4. Health program for sex workers

Nepal has a robust HIV/AIDS prevention program headed by the Ministry of Health. The HIV strategic plan directives include reaching out to sex workers through a peer led approach and providing them with prevention, care and support services.<sup>13</sup> The enablers for such a programmatic response include among others, “adopting zero tolerance for discrimination, revoking punitive laws, and respecting the “rights of all” principle...”.<sup>14</sup> The

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<sup>1</sup> Mapping and size estimation of FSW, MSM and PWID, National Centre for AIDS and STD Control (NCASC) 2016

<sup>2</sup> Sex work and laws in South Asia, A Monograph. Rakesh Shukla, SANGRAM, 2010

<sup>3</sup> Human Trafficking and Transportation (Control) Act, 2064 (2008) Section 4.

<sup>4</sup> Sapana P. Malla for FWLD v. HMG/Nepal, Publication of Judgments relating to Human Rights: Special Issue (Kathmandu: Supreme Court, 2002) at 144-151.

<sup>5</sup> Section 2, Public (Offences and Penalties) Act, 1970.

<sup>6</sup> Section 4 (1) (b), Trafficking and Transportation (Control) Act 2007.

<sup>7</sup> Trafficking and Transportation (Control) Act 2007, Section 15(d).

<sup>8</sup> Public Offences and Penalties Act, 1970.

<sup>9</sup> UNDP and UNFPA, 2012, p. 76.

<sup>10</sup> Article 18, Constitution of Nepal.

<sup>11</sup> Proviso, Article 18, Constitution of Nepal, 2015.

<sup>12</sup> Article 38, Constitution of Nepal, 2015.

<sup>13</sup> National HIV Strategic Plan 2016-2021, Ministry of Health, Government of Nepal, June 2017.

<sup>14</sup> Page 3, National HIV Strategic Plan 2016- 2021, Ministry of Health, Government of Nepal, June 2017.

program provides free condom distribution, STI treatment and other services for sex workers in 16 districts. Condom distribution and uptake is the cornerstone of these programs.

## **5. Access to Justice for sex workers**

Nepal guarantees the right to access justice and legal aid for citizens who are economically or socially unable to access their rights.<sup>15</sup> For sex workers, the intersection of socio-economic status and gender is compounded by the stigma attached to their work which makes it difficult for them to access free legal aid. Self-stigma prevents sex workers from approaching legal aid centres. Organisations running legal aid clinics in districts are not willing to take up cases of sex workers who have been picked up by the police. Legal rights awareness programs do not include sex workers as participants or speak of the violations faced by sex workers.

Women feel that their identity works against them when they approach legal aid services. The obstacles they encounter include the demand by officials for free sex and delays in their complaints being heard. A sex worker in Rautahat district narrated that in 2015 when she went to the legal aid centre, a lawyer agreed to provide legal aid after she provided him sexual favours. Another sex worker from Sunsari district narrated that in 2017, she approached legal aid services, but she was recognised by one lawyer who humiliated her.<sup>16</sup>

## **6. Violence faced by sex workers**

Legal provisions are often used against sex workers. This uncertain status coupled with social stigma leads to a high level of violence from state and non-state parties in Nepal. Sex workers report that once their identity is known in smaller towns and villages, they face daily harassment, ostracization and exclusion from social life. They bear the brunt of abuse from people ranging from family, neighbours, shopkeepers and other service providers.<sup>17</sup> Verbal abuse, including gendered and sexualised epithets, threats and verbal intimidation are hurled by family, neighbours, clients and even members of the public. Sex workers face sexual abuse by people posing as clients, as well as those seeking sexual favours in response to providing legitimate services.<sup>18</sup>

## **7. Violence from Law Enforcement**

Women in sex work face a high degree of violence and abuse from law enforcement. A study conducted in 2011<sup>19</sup> found that 89% of the 75 sex workers surveyed, reported facing violence from law enforcement. Another study conducted in Kathmandu by JMMS in 2013<sup>20</sup> documented sexual violence by the police. Sex workers stated that abuse of authority by the police makes it difficult for sex workers to refuse sex with them. The most common forms of abuse were threats, intimidation and abuse of power by the police, most often to extort money<sup>21</sup> or free sex.<sup>22</sup> Police officials used the possession of condoms to arrest and detain sex workers, extort money or free sex, abuse them and force them to pay heavy fines or deposits for their release.<sup>23</sup> The police recorded video clips of sex workers in custody and used it against them.<sup>24</sup> Police also called families of the sex workers to the police station, thereby revealing their work identity and exposing them to greater stigma and ostracization<sup>25</sup>. Sex workers stated that they had to pay heavy fines to the police as a condition of release from jail.<sup>26</sup>

## **8. Inability to seek redress for exploitative practices during work**

Sex workers are vulnerable to violence during work or by compromised access to health legal, and other services. They face discrimination while seeking legal redress when faced with violence or exploitative practices

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<sup>15</sup> Nepal Legal Aid Act, 2054 (1997).

<sup>16</sup> JMMS data on legal aid support, 2018.

<sup>17</sup> JMMS, Orientation on CEDAW, Kathmandu, May 2018.

<sup>18</sup> Sex work and violence in Kathmandu, Nepal: Understanding factors for safety and protection; UNFPA, UNDP 2014..

<sup>19</sup> Survey, JMMS; Blue Diamond Society (BDS). "Sex work and the law in Asia and the Pacific", 2012, UNDP and UNFPA.

<sup>20</sup> Sex work and violence in Kathmandu, Nepal: Understanding factors for safety and protection; UNFPA, UNDP, JMMS, BDS, APNSW, CASAM- SANGRAM 2014.

<sup>21</sup> E#8, Annexure 2. "if the police are happy and get bribes they do not do anything."

<sup>22</sup> E#7, Annexure 2 "Once when I was caught outside, the police threatened me to give them fuck so that they would release."

<sup>23</sup> N#15, Annexure 1. "...police raided the hotel and arrested four sex workers on finding condoms."

<sup>24</sup> N#16 Annexure 1, "...when I was caught in a police raid the police made a video clip of me."

<sup>25</sup> N#20 Annexure 1, "... sex worker's husband came to know of her work from the police and left her."

<sup>26</sup> Annexure 1,

at work. Sex workers experiencing rape and other forms of violence from non-paying clients or managers state that they cannot approach the police for fear of further abuse and reprisals. In June 2018, sex workers fought back against five men who attacked them in a hotel in Sarlahi district. When the police came, they arrested the sex workers.<sup>27</sup>Legal Aid services also adopt a discriminatory approach to sex workers by questioning their choice of work. Even when they choose to take up the case, they are advised to give up sex work or not follow up the case,<sup>28</sup> since it would lead nowhere or then give her a bad name or result in more stigma.<sup>29</sup>Sex workers going to hospitals after rape prefer to hide the cause of their injuries to escape medico-legal cases, ridicule and harassment.

## 9. Denial of right to health

Sex workers have specific health needs. The International Guidelines on HIV/AIDS and Human Rights call on State parties to ensure on a sustained and equal basis, the availability of quality goods and services on HIV/AIDS prevention, treatment, care and support.

Accessing health services remains a challenge for sex workers. They access health care services for ailments ranging from simple illnesses to chronic diseases, menstrual problems, and also for regular cervical check-ups. They are vulnerable to judgemental attitudes and abusive behaviour of medical practitioners and support staff. Sex workers share that they don't access services out of fear of their status being known to the service providers. Once their identity is known, sex workers report harassment and invasion into their personal lives<sup>30</sup>judgemental behaviour<sup>31</sup>inappropriate touch<sup>32</sup>withholding medication<sup>33</sup>, verbal abuse<sup>34</sup>, sexual overtures, innuendoes and sexual abuse.<sup>35</sup>When a sex worker shares her HIV positive status in hospitals, the stigma and accompanying discrimination gets more pronounced.<sup>36</sup>The trauma of sex workers who are raped or have faced brutal abuse from the police and try to access health services is more severe. Health-care providers refuse to touch sex workers or attend to their injuries.<sup>40</sup><sup>41</sup><sup>42</sup>Sex workers access health-care settings only when their ailment becomes intolerable.

## 10. Access to condoms

The HIV/AIDS program operates in 16 districts with a provision of free condoms for sex workers through a peer-led approach. However, sex workers are unable to access quality condoms across all districts. They have to depend on clients or have to purchase condoms at high prices. Sex workers report not purchasing condoms from commercial outlets, due to fear of identification, or being accused of having loose morals.<sup>43</sup> When sex workers go to government hospitals they report being questioned or judgmental attitudes of health-care

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<sup>27</sup>N#23 Annexure 1.

<sup>28</sup>N#27 Annexure 1

<sup>29</sup> JMMS, May 2018. Training for CEDAW, Sangram.

<sup>30</sup>N#3 Annexure 1, FSW shares that when she went for a cervical screening, once her identity was revealed, the doctors mistreated and abused her.

<sup>31</sup> N#5 Annexure 1. "when she went to the local hospital for a check for irregular menstrual cycles, the hospital staff knew her identity. They asked for her personal history which had no relation to her medical complaint."

<sup>32</sup>N#7 Annexure 1, "In the hospital, the nurse made me wait for a long time ... when I asked her... she said you don't have a problem sleeping with so many people, ...."

<sup>33</sup>N#8 Annexure 1, "... used to visit hospital often due to ill health. ... she was asked questions like where is your husband? how long have you been in sex work... and faced a lot of judgments from staff."

<sup>35</sup>E#1. Annexure 2 "...They did not give me medicines in a good manner. They used to be angry and told me that the medicines had finished."

<sup>36</sup> E#3. Annexure 2 "I was not treated well despite paying for the health services. They said that I was a *randi, bhalu* (whore) ..."

<sup>37</sup>N#12 Annexure 1 "...went to hospital in Nawalparasi for a regular check -up... the doctor sexually abused her..."

<sup>38</sup> E#2, Annexure 2. "I had wounds and went for a check -up. As soon as I told the doctor that I was HIV positive, he put on a mask and gloves and threw me out saying that HIV +ve people were not treated there."

<sup>39</sup>N#10 Annexure 1 "...after the hospital conveyed her positive status, the staff was very judgmental."

<sup>40</sup>E#4, Annexure 2. "I went to the hospital after a rape. ... they hesitated to touch me... I ran away from there."

<sup>41</sup>E#5, Annexure 2. "After the rape... I did not go to the hospital because they would all look at me. They know I do sex work. So I usually do not go to hospital."

<sup>42</sup>E#6, Annexure 2. "...the police kicked her on the stomach, due to which she had severe bleeding. We took her to the hospital...the doctors said we did 'wrong' work... they did not check properly and returned us..."

<sup>43</sup> May 2018. Workshop on CEDAW, SANGRAM, JMMS

providers.<sup>44</sup> Stigma attached to sexual behaviour of unmarried women complicates reporting of refusal of sexual and reproductive services.

### **11. Access to safe abortion services**

Nepal legalised abortion in 2002. A landmark judgment<sup>45</sup> in 2009 established access to abortion as a human right. However, sex workers are discriminated against in the health-care setting when their identities are known, and they access abortion services in hospitals.<sup>46</sup> Those who access services report that they are treated rudely, with judgemental attitudes.<sup>47</sup>

### **12. Nationality**

The Right to Nationality without discrimination is guaranteed under the new Constitution of Nepal. However, sex workers are deprived of nationality. Sex workers who have been deserted by their husbands or do not have citizenship documents from their parents find it extremely difficult to obtain these documents. Sex workers are asked to produce proof of their husband or father when they apply for citizenship. Their children are denied education.<sup>48</sup> A sex worker married to a non-Nepali is unable to get her daughters educated because she did not have citizenship documents.<sup>49</sup> A deserted sex worker was told to produce marriage documents to apply for citizenship.<sup>50</sup> If their identity as sex worker is known, officials refuse to give them documents, harass or abuse them,<sup>51</sup> or ask for free sex.<sup>52</sup> Families disown the woman and her children, making the process of obtaining documentation more difficult.<sup>53</sup>

Sex workers report entering into arranged marriages to obtain these citizenship documents. The 'husbands' desert the women, four or five months after such marriages and their 'wives' are often left pregnant and have to deal with bringing up another child single-handedly.<sup>54</sup> Sex workers state that when they are unable to give proof of the father to the authorities, their child's citizenship is made with the notation "father not known" against their name. This exposes their children to stigma and ridicule.

## **Recommendations**

The State Party must

1. Establish "one- stop centres" for women in sex work to access non-stigmatising legal and social services. The centre should provide legal support including regular awareness-raising events; legal aid, advice and support for women in sex work who experience violence, police detention and torture; and support to access nationality papers for themselves and their children.
2. Ensure accountability of police personnel and ensure immediate legal action against law enforcement personnel committing acts of violence and abuse against sex workers.

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<sup>44</sup>N#9 Annexure 1, "I went to the hospital for contraception... the staff asked me many questions why I am taking contraception when I am unmarried..."

<sup>45</sup>Supreme Court of Nepal. Lakshmi Dhikta v. Government of Nepal 2009. Writ petition no. WO -0757, 2067

<sup>46</sup> N#68 Annexure 1, "...I visited a clinic, my third time ... there was a male doctor who said, "are you not tired of doing abortion? Do you enjoy this? He then touched my breast and vagina. I was uncomfortable..."

<sup>47</sup> N#8 Annexure 1, "had several abortions and STI and had to visit the hospital they asked why don't you change your profession, where is your husband, how long have you been in sex work. I faced a lot of judgments."

<sup>48</sup>N#33, Annexure 1, "in the absence of a citizenship certificate and a birth certificate of her child, she is unable to get her child enrolled in a school. The authorities are asking for her father's citizenship documents."

<sup>49</sup>N#34, Annexure 1

<sup>50</sup> N#37, Annexure 1 "left an abusive husband. She is unable to get citizenship because the officials ask for the marriage certificate."

<sup>51</sup> N#58, Annexure 1, "Citizenship blocked by husband's family. Husband threatened her after it was revealed she was in sex work. She is still fighting for citizenship."

<sup>52</sup>N#36, Annexure 1, "She approached officials but the officer asked for sex in return. Other people in the village called her names and refused to help."

<sup>53</sup>N#38, Annexure 1

<sup>54</sup>N#69 Annexure 1

3. Ensure that sex workers can access affordable, non-stigmatising and quality health services to prevent and respond to violence.
  - a. Ensure access to integrated services when faced with violence, including emergency shelter, comprehensive health services.
  - b. Ensure that care and support for sex workers who survive violence is integrated into services for HIV prevention or care and for sexual, reproductive and mental health care.
4. Ensure adequate training of medical professionals on non-discrimination and patient rights and that sex workers can access health services without discrimination.
5. Reform punitive laws, policies and law enforcement practices to protect sex workers' rights, including the right to be free from violence.
  - a. Decriminalise sex work and activities associated with it, including laws and penalties for the purchase of sex, management of sex workers and other activities related to sex work.
  - b. Public order laws or regulation should not be applied in ways that violate sex workers' rights.
  - c. Ensure the maintenance of confidentiality, especially where the identity cards and other identifiers are used by law enforcement agencies and health authorities to "track" sex workers.
  - d. Eliminate the practice of confiscating condoms and using possession of condoms as evidence of sex work.
  - e. Ensure that national laws differentiate between sex work and human trafficking; train law enforcement officials to understand and respect the distinction in order to ensure that anti-trafficking initiatives do not impinge on the rights of people in sex work.
  - f. Implement the International Labour Organisation's recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) in relation to sex work.
  - g. Ensure effective HIV prevention that ensures the availability of condoms, build social norms that encourage condom use by clients and supports sex workers to negotiate condom use.
6. Repeal discriminatory provisions that prevent women from retaining citizenship.
7. Recognise the independent right of parents to provide citizenship to their children based on lineal descent.