

SEX WORKERS AND CEDAW

Recommendations on Ensuring and Protecting the Human Rights of Sex Workers

For the consideration of the CEDAW Committee

Aarthi Pai, Meena Seshu

Centre for Advocacy on Stigma and Marginalisation, SANGRAM, India

Overview

Sex work is defined as adult consenting workers providing sexual services for money.

Sex Workers across the world call on the CEDAW Committee to address the absence of articulation of positive and affirmative rights for women and trans-women in sex work within the recommendations made to State Parties.

Policy frameworks based on tradition and culture, religion and fundamentalist ideologies that support a limiting role for women in society, place sex work within moral value ridden restrictions and seek to criminalise sex work. This leads to pervasive gender based violence against sex workers, rights violations and a culture of impunity.

States must be held accountable to all acts and omissions and the culture of impunity against sex workers, resulting in lack of access to justice including denial of free legal aid, appeal and insensate court rulings.

Continued violence against sex workers by state and non - state actors, conflation of trafficking and sex work leading to anti trafficking strategies that impact the rights of adult women in sex work by forced raids and rehabilitation, stigma and discrimination, denial of social entitlements including identification documents, denial of a safe working environment and labor protection for women and trans women in sex work

1 *WOMEN AND TRANS WOMEN IN SEX WORK, FACE A HIGH DEGREE OF VIOLENCE, HARASSMENT, EXTORTION FROM LAW ENFORCEMENT AND HAVE NO AVENUE TO REDRESS THESE COMPLAINTS. CRIMINALISATION OF SEX WORK MAKES IT DIFFICULT FOR SEX WORKERS TO ACCESS JUSTICE.*

1.1 Ensure that sex workers who are human rights defenders are able to receive protection from harassment, threats, retaliation and violence (*General Recommendation 33, Clause 15 i*)

1.2 Abolish discriminatory criminalisation, review and monitor all criminal procedures to ensure that they do not directly or indirectly discriminate against sex workers; act with due diligence and provide redress for crimes that affect sex workers whether such acts were perpetrated by State or non – State actors. [*General Recommendation 33, Access to Justice, Clause 51 L*]

1.3 Establish an oversight mechanism allowing for the monitoring of violence against women in sex work by law enforcement. [CEDAW CC, 2015, Kyrgyzstan]

2 PROVISIONS OF ANTI –TRAFFICKING LAWS, CRIMINAL LAWS (PUBLIC DECENCY, OBSCENITY, PUBLIC NUISANCE) AND END DEMAND LEGISLATION ARE USED TO ARREST, DETAIN, HARASS SEX WORKERS.

2.1 Review existing laws to decriminalize women and trans women in sex work and ensure that they have access to legal assistance, social and legal entitlements.

2.2 Review Anti trafficking and other criminal laws that de facto criminalize sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.

2.3 Ensure that existing civil and administrative offences such as “loitering without purpose”, public nuisance”, and public morality are not used to penalise sex workers.

2.4 Trafficking for exploitation is a criminal offence and should not be conflated with sex work.

2.5 Repeal or amend laws, policies and guidelines that seek to criminalise clients under the guise of ending trafficking. These laws and policies are used widely to harass sex workers, extort money from sex workers and their clients.

3 ADULT CONSENTING SEX WORKERS ARE PICKED UP IN RAID AND FORCED RESCUE OPERATIONS. DESPITE STATING THAT THEY ARE ADULTS AND CONSENTING IN SEX WORK – THEY ARE FORCIBLY DETAINED IN REHABILITATION HOMES FROM ANYWHERE BETWEEN 21 DAYS TO FIVE YEARS. ADULT WOMEN IN SEX WORKERS ARE ASKED TO PRODUCE THEIR FATHERS, HUSBANDS, AND BROTHERS INTO WHOSE CUSTODY THEY ARE RELEASED. IN MANY CASES THESE VERY SEX WORKERS ARE THE WAGE EARNERS FOR THE HOUSEHOLDS.

3.1 Stop compulsory detention of adult consenting sex workers who are picked up under raid and rescue operations, or arrested under soliciting offences.

3.2 Respect the agency, consent and choice of adult women who wish to remain in sex work and stop forcible rehabilitation programs for sex workers.

3.3 Stop the dehumanising practice of seeking affidavits of family members to vouch for sex workers; as a pre -condition for releasing sex workers from rehabilitation homes / detention settings.

4 MARGINALISED STATUS OF SEX WORKERS NECESSITATES THE IMPLEMENTATION OF TEMPORARY SPECIAL MEASURES AS RECOMMENDED BY GENERAL RECOMMENDATION 25.

4.1 Recognise sex workers as women who face intersecting forms of marginalisation and discrimination. Adopt measures, including temporary special measures to ensure **equal**

rights and opportunities for sex workers who face intersecting forms of discrimination. [*General Recommendation 25, Temporary Special Measures Clause 12*]

- 4.2 Temporary special measures should include the establishment of **anti – discrimination laws and policies** to protect against discrimination and violence, and other rights violations faced by sex workers. Such anti – discrimination laws should guarantee sex workers’ right to social, health and financial services. [*Prevention and Treatment of HIV and other Sexually Transmitted Infections for Sex Workers in Low and Middle Income Countries; WHO, UNAIDS, UNFPA, NSWP 2012*]

5 SEX WORKERS ARE FORCIBLY TESTED FOR HIV/AIDS AND SEXUALLY TRANSMITTED INFECTIONS WHEN THEY ARE ARRESTED. THEIR STATUS IS NOT KEPT CONFIDENTIAL. THEY ARE DENIED TREATMENT OR DISCRIMINATED AGAINST IN HEALTH CARE SETTINGS, ASKED TO PAY EXORBITANT RATES FOR TESTS AND MEDICINES.

- 5.1 Recognising that sex workers are marginalised and the fact that societal factors determine the health status of women and trans women in sex work, special attention must be paid to the health status of sex workers including their physical and mental health. [*General Recommendation 24, Women and Health, Article 12, Clause 18*]
- 5.2 State parties should ensure without prejudice or discrimination, the right to sexual health information, education and services for all sex workers even if they are not legally resident in the countries. Such health programs should be administered by trained personnel that respect the privacy and confidentiality of sex workers. [*General Recommendation 24, Women and Health, Article 12, Clause 18*]
- 5.3 Stop the illegal forced testing of / mandatory testing provisions for sex workers following arrests and raid and forced rescue operations; for HIV/AIDS and other sexually transmitted infections. [*CEDAW CC, 2015, Kyrgyzstan*]
- 5.4 Make all health services available and accessible to sex workers based on the principles of avoidance of stigma, non – discrimination and the right to health. [*Prevention and Treatment of HIV and other Sexually Transmitted Infections for Sex Workers in Low and Middle Income Countries; WHO, UNAIDS, UNFPA, NSWP 2012*]

6 SEX WORKERS WHO USE COMPLAINT MECHANISMS AT THE LOCAL, NATIONAL LEVEL FACE THREATS AND HARASSMENT; THEY ARE DENIED TRAVEL DOCUMENTS TO DEPOSE BEFORE TREATY BODIES AT THE INTERNATIONAL LEVEL.

- 6.1 Accord to sex workers who report to treaty bodies, national human rights institutions constituted under the Paris Principles the status of human rights defenders and ensure their right to represent their communities and report on their status is fully recognised, protected and promoted without discrimination. This includes right to obtain travel documents, travel

to other countries to depose before human rights bodies, communicate with Special Rapporteur mechanisms.

7 SEX WORKERS ARE UNABLE TO COLLECTIVISE AND REGISTER AS TRADE UNIONS IN MANY COUNTRIES. THIS IMPEDES THEIR ABILITY TO NEGOTIATE FOR BETTER WORKING CONDITIONS, REMOVING EXPLOITATIVE PRACTICES WITHIN SEX WORK.

7.1 Repeal or amend laws, policies and guidelines that impede or prevent sex workers from collectivising to form registered unions that will enable them to fight violence, exploitative working conditions and rights violations.

8SEX WORKERS WHO MOVE TO OTHER COUNTRIES IN SEARCH OF WORK ARE OFTEN DETAINED IN DETENTION HOMES WITHOUT DUE PROCESS. IN CASE OF MIGRANT SEX WORKER, HEALTH INFORMATION AND SERVICES ARE ROUTINELY DENIED INCLUDING ART MEDICINES IF THE SEX WORKER IS HIV POSITIVE. THEY FACE HIGH RISK OF ABUSE AND VIOLENCE IN DETENTION HOMES.

8.1 All legal rights of migrant sex workers must be protected including documented and undocumented migrant sex workers. This includes protection from discrimination, gender based violence, access to appropriate health services. (*CEDAW General Recommendation 26*)

8.2 Countries have an obligation to protect the basic human rights of undocumented migrant sex workers, including access to legal remedies, freedom from cruel or degrading treatment including physical or sexual abuse. Detained or arrested migrant sex workers must receive humane treatment and have access to due process including free legal aid. (*CEDAW General Recommendation 26*)

8.3 Repeal or amend laws and policies that prevent undocumented migrant sex workers from using courts and other systems of redress. (*CEDAW General Recommendation 26*)

9DECENT WORK AND SAFE WORKING CONDITIONS

9.1 Decent work according to ILO encompasses four components: employment, social protection, workers' rights and social dialogue. Sex workers have over the years been working towards achieving these objectives within their communities. Government must recognize these efforts of sex workers and include them in the decent work agenda.

9.2 Ensure the full application of labour laws and social benefits in all enterprises in the entertainment sector, especially to women employed in the legally operating enterprises in that sector.[*CEDAW CC, 2017, Thailand*]

9.3 Ensure that sex workers rights to occupational health and safety and their rights to participate in the process of developing workplace health and safety standards is recognised. [*As per ILO Recommendation 200*]