



RECOMMENDATION ON UN WOMEN'S APPROACH TO SEX WORK, SEX TRADE AND PROSTITUTION

This response is being jointly submitted by CREA, India; All India Network of Sex Workers (AINSW), India; Centre for Advocacy and Research (CFAR), India and Lawyers Collective (LC), India and 43 sex worker¹ led community based organisations.

Three regional consultations with sex worker groups were held in the eastern, western and southern regions of India with participants from West Bengal, Bihar, Jharkhand, Orissa, Gujarat, Maharashtra, Madhya Pradesh, Andhra Pradesh, Tamil Nadu, Karnataka and Telangana and this response is an outcome of it.

The participants of these consultations and other partner organisations are calling UN Women to ensure that the development of any policy decision by it on issues which directly or incidentally impact sex workers should to be made through meaningful and inclusive consultation with sex workers. The process should be well-planned and participatory with the engagement of sex worker organizations and sex workers as well as women's rights organizations that support sex worker's rights in various regions representing various class, race, ethnicity, health status, age, nationality, disabilities, and many other factors.

Sex workers' groups have reached consensus on the following principles which they consider *non-negotiable* for formulating any policy on sex work.

1. Sex workers rights need to be recognized as human rights.²

Sex workers emphasized that their rights should be respected in relation to all areas of life, including in relation to their sexuality, reproduction, employment, access to services and information, freedom of movement and assembly. Their right to participation in legal, policy and programmatic processes in relation to sex work shall be guaranteed at international and national levels.

2. Sex work needs to be separated from sex trade and trafficking.³

¹ Annexure I

² <http://www.nswp.org/sites/nswp.org/files/UN%20Women%20Consultation%2C%20NSWP%20-%202016.pdf> ; UN Women. Note On Sex Work, Sexual Exploitation And Trafficking. 2013

It has been emphasized that the conflation of sex work and trafficking also severely undermines the human rights of sex workers while failing to secure rights of people who are trafficked; by misdirecting resources into policing sex work, rather than identifying people who are coerced and providing them appropriate support. It exacerbates the lack of legal remedies to redress violence and erodes the efforts of sex workers fighting for legal and social recognition of their rights to dignity and livelihood.⁴

Sex worker groups at the consultations recognized that sex trade and trafficking is illegal, and that no one should be forced into sex work. However, the rights and entitlements of consenting adults who enter into sex work on their own volition should be recognised and not confused with the rights and needs of people who are forced into sex work and/or are underage.

When sex work is conflated with trafficking, governments superimpose their idea of rehabilitation and the results are disastrous. The consultation revealed instances of sex workers being picked up against their will and put into rehabilitation homes for periods ranging from 3-6 months and outing of their choice of profession to their family members as a part of the “rehabilitation” process. In view of the often unsuccessful rehabilitation processes, attention must be paid to the comprehensive mechanisms that sex worker groups have themselves adopted to ensure that persons who are either underage and/or have been brought into the fold of sex work against their will, have a dignified way out. Most of the community based organisations who were a part of the consultation reported having either a Self Regulatory Board (SRB)⁵ model or at least some form of counselling and legal assistance that they provide to non-consenting adults and minors.

3. Laws or policies directly or indirectly criminalizing sex work needs to be expunged and an enabling legal environment for sex workers needs to be guaranteed.⁶

During the consultations, the narrative that cut across the regions was that due to criminalisation of sex work, sex workers’s rights are often violated, including their rights to health and safety. Due to the societal stigma attached to criminalisation, they, their children and families often face stigma, discrimination and violence.

Sex workers clearly expressed, that decriminalization of sex work needs to extend to all

³ UN Women. Note On Sex Work, Sexual Exploitation And Trafficking. 2013; UNAIDS Guidance Note On Hiv And Sex Work, 2012; UNFPA Guidance Note On Hiv/Aids, Gender And Sex Work – complete reference; NSWP Consensus Statement reaffirms NSWP’s global advocacy platform for sex work, human rights and the law. 2013.

⁴ See also: Understanding the De- Criminalisation Demand: Aarthi Pai and Meena Saraswathi Seshu; The feminist and the sex worker: Lessons from the Indian Experience by Srilatha Batliwala

⁵The SRB model is a multi stakeholder model, comprising of members across Department of Health, Labour and Social Welfare, medical practioners, lawyers, social workers, sex workers and others. This mechanism helps to identify whether the person is there by choice or coercion. For minors and non-consenting adults, their wishes are taken into consideration to rehabilitate them accordingly; http://www.sexworkeurope.org/sites/default/files/resource-pdfs/dmsc_innovative_approaches_trafficking.pdf - Durbar Mahila Samanwaya Committee’s SRB; http://durbar.org/html/anti_trafficking.aspx

⁶ See also: ‘Ain’t I a Woman’. A Global Dialogue between the Sex Worker’s Rights movement and the Stop Violence Against Women Movement held from 12-14 March in Bangkok. CREA, India

areas of sex work, including to keeping or renting of brothels⁷, those living on the earnings of sex workers, pimps and madams, customers of sex workers, and soliciting. They emphasized that criminalisation of sex work only leads to further stigmatization and becomes an unwieldy weapon in the hand of law enforcement officials to arbitrarily harass and abuse them and extort money from sex workers. This in turn exposes sex workers to greater physical, mental and sexual harm. Hence, a comprehensive structural response is needed in order to eliminate violence against sex workers, which must mandatorily include sensitisation and capacity building of all relevant stakeholders.

4. Sex work is work and needs to be recognized as a form of labour⁸

Sex workers unequivocally emphasized that due recognition needs to be given to their right to work and sex work needs to be recognised as work.

It should be considered that almost a third of the families of sex workers in India survive solely on their income thereby coming under the woman-headed household category. Hence their work should be considered under the labour rights framework.

Sex workers need to be considered as informal sector workers, and their labour rights, including ensuring minimum wages, right to highest standard of health and social benefits guaranteed. During the consultation, there was demand that, at a minimum, this should include setting up of welfare funds, access to government retirement benefits on par with other informal sector workers.

One of the most important aspects of right to work which came up during the consultation was having a safe and fear free work environment. This is not possible as long as sex work continues to be criminalised.

5. Sex workers' rights to social entitlements and benefits should be ensured.⁹

Sex workers emphasized during the consultation that alongside comprehensive decriminalisation, sex workers access to social benefits and entitlements should be ensured. With their occupation being criminalised, sex workers are currently not able to obtain government issued identity documents such as voter cards or Aadhar cards¹⁰. This further leads to sex workers not being able to rent houses to live in, buy or sell property, get access to various government schemes or open bank accounts.

6. Sex workers should be permitted to register as collectives/organisations/associations.

⁷ Includes any house, room, conveyance or place, or any portion of any house, room, conveyance or place.

⁸ UN Women. Note on Sex Work, Sexual Exploitation and Trafficking. 2013; UNAIDS Guidance Note On HIV And Sex Work, 2012; .

⁹ See: Sexual Health, Human Rights and the Law. WHO.2015.

¹⁰ A central government issues universal identity card. The card is also linked to public subsidy and unemployment benefit schemes and MGNREGS

Sex workers expressed their demands to the right to organise themselves and form associations and collectives. As workers their right to form unions and/or collectives needs to be recognized and they should be allowed to register as such. This is a basic citizenship right that cannot be denied to sex workers merely because of their occupation.¹¹

7. Availability and accessibility of health services without any stigma and prejudice should be ensured.¹²

Sex workers called for the equal recognition of their right to the highest attainable standard of health that is being recognised in the Constitution and in international treaties that India has ratified. Yet, it has been expressed by sex workers during the consultations that they are routinely discriminated against by health care professionals in both government and private hospitals. Their access to comprehensive health services, including sexual and reproductive health services, HIV treatment and counselling are often obstructed and denied.

Sex workers access to health services must be ensured and supplemented by a robust health education program as well as care and support centres specifically designed for sex workers. It has been stated that sex workers should be free from any forced interventions, such as forced HIV testing.

8. The right of sex workers to marriage, custody, adoption and guardianship of children should be guaranteed.

Due to the stigma attached to sex work and because of criminalisation of sex work, sex workers' rights to marry, get custody of their own children or adopt are often denied.

Sex workers emphasized that they have equal right to marry, have custody and guardianship of their children and to adopt children. Most importantly, sex workers rights to a supportive environment, where they can raise their children according to the best interest of the child, should be guaranteed and child care services should be made available.

9. The rights of children of sex workers should be ensured.

Children of sex workers face discrimination and stigma at multiple levels including their actual or presumed HIV status. During the consultations, sex workers highlighted that health care professionals often refuse treatment to children of sex workers. Further, it is difficult for children of sex workers to obtain birth certificates, either because they are born at home due to hostile environment in hospitals, or because paternity may be difficult to establish in some cases. This endangers the right of sex workers to raise their children, and

¹¹ During the consultation, members from Usha Multipurpose Cooperative Society (Ltd.)¹¹, discussed their experiences of being rejected for registration solely on the basis of the occupation of its members. It was only after years of intensive advocacy that the bylaws were changed to accommodate the registration of Usha Cooperative. Similarly, Binodini Shramik Union, a union taking up the cause of sex workers and other marginalised entertainers and performers, such as bar dancers, have been refused registration despite two appeals.

¹² A/HRC/14/20

violates the citizenship rights of their children, including their right to education since schools do not want to admit them. In cases where they are admitted into schools, they face discrimination from teachers and students alike.¹³ Furthermore, many drew attention to the lack of equal access to scholarships and exemption in school fees.

10. Right to privacy and confidentiality of the identity of the sex worker should be guaranteed.

Sex workers emphasized, that no private person or public official, including media personnel, health care provider or law enforcement official shall infringe upon a sex worker's right to privacy and confidentiality. For instance, many sex workers reported that media persons, despite refusal, often take photos of sex workers showing their complete faces, which is then broadcast or printed in a sensational manner, exposing them and their families to stigma and ostracisation¹⁴. For transgender sex workers who were a part of the consultation, this amounted to dual violation of their privacy- of both their transgender identity and profession. There was a clear demand that no personal information, including the name, address, photograph, HIV/ AIDS status of the sex worker, should be published, printed or otherwise made public without the prior consent of the sex worker.

¹³Some sex workers reported that not only are their children presumed to be HIV+ at times, but in cases where HIV/AIDS has been transmitted to the child at the time of birth, their HIV status is outed by the teachers. See also, The Vamp/Sangram Sex Worker's Movement in India's Southwest by The Sangram/Vamp Team

¹⁴ Similar instances have been reported in a letter by the Lawyer's Collective: See [http://www.lawyerscollective.org/files/Press%20Council%20of%20India%20letter%20\(website\).pdf](http://www.lawyerscollective.org/files/Press%20Council%20of%20India%20letter%20(website).pdf)

ANNEXURE I

List of Community Based Sex Workers Organisations who attended the regional consultations

Organization	District	State
Durbar Mahila Samanwaya Committee	Kolkata	West Bengal
Usha Co-operative Multipurpose Society Ltd	Kolkata	West Bengal
Amra Padatik	Kolkata	West Bengal
Komol Gandhar	Kolkata	West Bengal
Balaram Dey Street Anandam	Kolkata	West Bengal
Shristi	Kolkata	West Bengal
Sonagachi Researach and Training Institute	Kolkata	West Bengal
Binodini Sramik Union	Kolkata	West Bengal
Durbar Disha	Kolkata	West Bengal
Mrignayani Seva Sansthan	Ranchi	Jharkhand
Amrapali Mahila Samiti	Purnia/ Patna	Bihar
Sakhi	Bhadrak	Odisha
Fellowship	Bhadrak	Odisha
Swadheen	Baripada	Odisha
National Institute Social Welfare	Jajpur	Odisha
Disha Mahila Bahuuddesiya Sagathna	Nasik	Maharastra
Manmilan Bahudeshiy Samajik Sanstha	Nasik	Maharastra
Kranti Mahila Sangh	Solapur	Maharastra
Mahila Jagruti Sevabhavi Sanstha	Parbhani	Maharastra
Stri Shakti Bahu Sevabhavi Sanstha	Hingoli	Maharastra

GSNP+	Ahmedabad	Gujarat
Shakhya Foundation	Gandhi Nagar	Gujarat
Ekta Mahila Mandal	Surat	Gujarat
Sahyog Mahila Mandal	Surat	Gujarat
Sakhi Jyot Sangathan	Ahmedabad	Gujarat
Vikas Jyot Sangathan	Vadodara	Gujarat
Ekta Sangathan	Vadodara	Gujarat
WADA Seva Sanstha	Jhabua	Madhya Pradesh
Ashodaya Samithi	Mysore	Karnataka
Soukhya Sanjeevini Samsthe (SSS)	Kollar/ Chikballapur	Karnataka
Namakkal Mavatta Sabarmathi Pengal Mempattu Sangam	Karur	Tamil Nadu
Sudharoli Pengal	Chennai	Tamil Nadu
Thozhi	Chennai	Tamil Nadu
Snegithi	Chennai	Tamil Nadu
SARA Theni	Theni	Tamil Nadu
SLPMS	Madurai	Tamil Nadu
VMPWS	Kareem Nagar	Telangana
Chaitnya Mahila Mandali	Hyderabad	Telangana
Navya Sri (NSMWS)	Warangal	Telangana
Nari Saksham	East Godavari	Andhra Pradesh
SMAS	West Godavari	Andhra Pradesh
Pratibha Mythri (PMMSS)	Ananthpur	Andhra Pradesh
Lakshmi Bhanushri Service & Development Society	Guntur	Andhra Pradesh

Annexure 2

Developing the *non-negotiables*

