



Call for Inputs. Links between “Prostitution” and Violence against sex workers

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Submission can be published on the UN website for public information purposes.

Background

Women who exchange sexual services for money or in kind reject the notion of “prostitution as violence”. The term prostitution stigmatizes women and gender diverse persons who provide sexual services. The Joint United Nations system has over the years, following discussions with communities, legal, health experts and activists; arrived at a consensual term “sex work (er) (s)”²³⁴ to denote adults who exchange sexual services for money or kind. Unfortunately, the SR–VAW’s call for inputs by using the term “prostituted women” is disrespectful to adult women in sex work.

The violence of this discarded language must be immediately revised to use language more in consonance with the dignity of women and accepted UN language.

The call runs counter to the recommendations provided by the UN system itself which, through policy positions and recommendations has called on countries to reform their approach

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² United Nations Human Rights, Office of the High Commissioner and UNAIDS. *International guidelines of HIV/AIDS and Human Rights: 2006 consolidated version*. Geneva, UNAIDS, 2006 (HR/PUB/06/09). Para 21, sub para d. Guideline 4: Criminal Laws and correctional systems

³ World Health Organisation, United Nations Population Fund, UNAIDS, NSWP. *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low and middle income countries. Recommendations for a public health approach*, 2012. Recommendation 1.

⁴ *Global Commission on HIV and the laws: Risks, rights and health*: July 2012. Chapter Sex workers, para 3.2, recommendations.



towards sex work⁵⁶, work towards decriminalisation of sex work⁷⁸⁹ including the management of sex work and related activities.¹⁰¹¹

CEDAW General Recommendation 35 on Violence Against Women¹² has recommended the repeal of **all legal provisions that criminalise sex work as a measure to reduce violence against sex workers**¹³. The principle of progressive realisation and non-retrogression places a responsibility on those charged with protecting and expanding the application of human rights to desist from reducing or pushing back on those rights that have been recognised or guaranteed¹⁴.

The conflation of adult women and girls ignores the fundamental tenet of International Human Rights- rights of women and girls must be understood and guaranteed through different legal frameworks. In the case of a minor, a protectionist framework of the best interest of the child has been developed in the CRC. In the case of the woman, this understanding is centred around agency of women. In the context of sex work, such a conflation is harmful for girls who are likely to be conflated with women and ignored by corrupt officials. The conflation of women and girls in the context of “prostitution”, infantilises women whilst causing grave injustice to girls.

Health consequences

Criminalization of sex work impedes access to health-care services, including effective HIV prevention, treatment, care and support services¹⁵¹⁶¹⁷¹⁸. Criminalization of any aspect of sex work, including the criminalization of the clients of sex workers, negatively affects sex workers’

⁵ Supra note 2 Para 21, sub para c.

⁶ Supra note 3 Recommendation 1, 2.

⁷ Supra note 2

⁸ Supra note 3

⁹ International Commission of Jurists ICJ, *The 8 March Principles for a Human Rights Based Approach to Criminal Law Proscribing conduct associated with sex, reproduction, drug use, HIV, homelessness and poverty*, March 2023. Part III, application to the criminalisation of conduct associated with sex, reproduction, drug use HIV, homelessness and poverty. Principle 17 sex work.

¹⁰ UNAIDS Advisory group on HIV and sex work. *Report of the UNAIDS Advisory Group on HIV and sex work*: December 2011, Geneva: UNAIDS.

¹¹ Supra note 4

¹² CEDAW General recommendation No. 35 on *gender- based violence against women, updating general recommendation No. 19*, 14 July 2017. CEDAW/C/GC/35. Para 12.

¹³ Ibid. Para 31 a.

¹⁴ Office of the High Commissioner for Human Rights. *CESCR General Comment No. 3: The nature of State Parties obligations* (Art.2, Para. 1, of the Covenant), Doc E/1991.23, 9.

¹⁵ Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, et al. Associations between sex work laws and sex workers’ health: a systematic review and meta-analysis of quantitative and qualitative studies. *PLOS Med*. 2018;15(12):e1002680.

¹⁶ Shannon K, Strathdee SA, Goldenberg SM, Duff P, Mwangi P, Rusakova M, et al. Global epidemiology of HIV among female sex workers: influence of structural determinants. *Lancet*. 2015;385(9962):55–71.

¹⁷ World Health Organization (WHO), UNFPA, UNAIDS and NSWP. *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: recommendations for a public health approach*. Geneva: WHO; 2012.

¹⁸ WHO. *Consolidated guidelines on the HIV prevention, diagnosis, treatment and care for key populations*, 2016 update. Geneva: WHO; 2016.



safety and health, including reducing condom access and use, and increasing the rates of violence¹⁹²⁰²¹²².

Consent (Ques 8)

Every adult woman is guaranteed the right to exercise choice regarding decisions that impacts her bodily autonomy. Irrelevance of consent to establish offence of trafficking must not be extended to exclude the agency and consent of adult women on decisions regarding their livelihood choices. Consent of an adult woman must not be rendered void by forcible detention in protection homes and the like.

The challenge to consent of sex workers emerges from governments, UN mechanisms, abolitionist groups and individuals that view their work as exploitation, trafficking, slavery and immoral. Despite State Parties in South Asia not criminalising sex work; this call seeks to treat sex work as exploitation and calls for criminalisation of third parties without any discussion with sex workers. This leads to an erasure of their consent and renders them victims who are forcibly rescued and rehabilitated as victims²³. Erasure of consent prevents sex workers from approaching law enforcement when they face violence. Women in sex work consent to providing sexual services like other workers who opt for different forms of work.

Violence and Violations (Ques. 3, 4, 5)

Violence faced by sex workers is central to this call and it comes at an opportune moment. At a time when we call for greater State responsibility towards affirming, protecting and promoting the human rights of all, it is the abrogation of this State responsibility that has resulted in aggravated violence against sex workers. Sex workers in Bangladesh, Nepal, Sri Lanka and India have provided evidence that laws, especially provisions criminalising third parties, continue to be used indiscriminately against them as tools of harassment and violence²⁴²⁵²⁶²⁷. Crucial to the State abrogation is the non-recognition of the recommendations of national courts, UN bodies, Special Rapporteurs, CEDAW Committee observations International

¹⁹ Global Commission on HIV and the Law. Risks, rights & health, 2012 and 2018 supplement.

²⁰ Lyons CE, Schwartz SR, Murray SM, Shannon K, Diouf D, Mothopeng T, et al. The role of sex work laws and stigmas in increasing HIV risks among sex workers. *Nat Commun.* 2020;11(1):773.

²¹ Argento E, Goldenberg S, Braschel M, Machat S, Strathdee SA, Shannon K. The impact of end-demand legislation on sex workers' access to health and sex worker-led services: a community-based prospective cohort study in Canada. *PLoS One.* 2020;15(4):e0225783.

²² Bhattacharjya, M. et al. *The Right(s) Evidence – Sex Work, Violence and HIV in Asia: A Multi Country Qualitative Study.* Bangkok: UNFPA, UNDP and APNSW. (2015)

²³ SANGRAM, *Raided: how anti- trafficking strategies increase sex workers' vulnerability to exploitative practices*, March 2018. Findings, Part B, Brutality of Raids, Page 56. <https://sangram.org/resources/RAIDED-E-Book.pdf>

²⁴ SWASA, Grassrooted Trust, *Status of sex workers in Sri Lanka, 2022-2023.* Section 4, Law, page 32. <https://www.swasasouthasia.org/399-resources/192247-Status-of-Sex-Workers-in-Sri-Lanka>

²⁵ Jagriti Mahila Mahasangh - National Federation of Sex Workers, Nepal, 2018. *Status of sex workers in Nepal*, Submission to the CEDAW Committee by. Consideration of State Party Report to CEDAW Committee. INT_CEDAW_CSS_NPL_32558_E.pdf. (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FCSS%2FNPL%2F32558&Lang=en)

²⁶ SANGRAM, MASUM, NNSW. *Status of women in sex work in India*, June 2014, submission to the CEDAW Committee, <https://www.sangram.org/upload/resources/status-of-women-in-sex-work-in-india-submission-to-CEDAW-committee.pdf>

²⁷ SANGRAM, NNSW. *Violations faced by sex workers in India*, Submission to the Universal periodic review process for India, 20 September 2016. <https://www.sangram.org/upload/resources/UPR-Submission-Sex-Work-Final-Submission-22-Sep-2016.pdf>



Commission of Jurists' that call on nation states to recognise and act against violence against sex workers misusing existing legal provisions^{28,29}, read down or repeal those provisions and laws and impose penalties on the police officers who misuse the law³⁰, desist from conflation of sex work and trafficking³¹, decriminalise all aspects of sex work³² to ensure timely access to justice.

Sex workers in India and Nepal reveal that client criminalisation has resulted in violence from clients, harassment by the law enforcement. In India, sex workers report that law enforcement officials have threatened clients with filing cases under anti – trafficking laws, if they do not pay hefty amounts as bribes.

When sex work is seen as exploitation, State agencies, police and anti-trafficking groups have used the provision to forcibly raid and rescue sex workers and incarcerate them in rescue homes for long periods of time without consent and often through violent measures³³. Many women who were released after long periods of forced detention reported being pushed into debt bondage and consequently forced to work under risky situations³⁴. This anti-trafficking practice of conflating sex work with trafficking was denounced by the Special Rapporteur on Violence Against Women, and recommended that laws de facto criminalising sex work, be reviewed³⁵.

Lessons Learned (Ques 13)

Criminalising demand or clients negatively impacts sex workers, increases violence and reduces access to justice.

Positive public health and human rights outcomes have been achieved in jurisdictions that have decriminalised sex work³⁶.

Organised collectives of sex workers have shown evidence of effectively combating trafficking through community-led empowering approaches.

Involvement of sex workers in efforts to improve legal environments ensure better results.

Recommendations (Ques 15)

Ensure the progressive realisation of Human Rights Principles through meaningful process involvement of sex workers.

²⁸ Concluding observations of the Committee on the elimination of Discrimination against Women, Sri Lanka, 8 April 2011, CEDAW/C/LKA/CO/7. Para 28.

²⁹ Concluding observations of the Committee on the elimination of Discrimination against Women, Sri Lanka, 9 March 2017, CEDAW/C/LKA/CO/8. Para 26

³⁰ Ibid. Para 27 g.

³¹ Report of the Special Rapporteur on violence against women, its causes and consequences, mission to India, 1 April 2014. A/HRC/26/38/Add.1. Para 20, 78 c

³² Supra note 9.

³³ Supra note 23. Findings, Part C, Incarceration in the name of rescue, Page 63

³⁴ Supra note 23. Findings, Part C, Increased debt bondage post rescue, Page 79

³⁵ Supra note 31.

³⁶ UNDP, UNAIDS, UNFPA. Godwin, John. October 2012. Sex work and the law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work. Page 29-30.



Implement recommendations of UN bodies, previous Special Rapporteurs, CEDAW recommendations, International Commission of Jurists to decriminalise all activities related to sex work. Repeal laws that prohibit provision and access to sexual services and ancillary laws that prohibit brothel keeping, living off the earnings of sex workers³⁷.

End the conflation of women and girls. Provision of sexual services is an activity between two consenting adults and the threshold for consent is 18 years. The conflation of women and girls infantilizes women and is harmful for girls who are likely to be ignored by corrupt officials.

End the conflation of sex work and trafficking. Ensure that anti–trafficking laws are targeted to prohibit and punish those who use force or coerce people into exploitation of sex work, through debt bondage, violence, deprivation of liberty³⁸.

³⁷ *Global Commission on HIV and the laws: Risks, rights and health*: July 2012. Chapter Sex workers, para 3.2, recommendations.

³⁸ *Ibid.*