

## **Joint Submission by**

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**1. STATE PARTY TO WHICH INFORMATION RELATES: NEPAL**

**2. Can the Submission be posted on CEDAW**

**WEBSITE FOR PUBLIC INFORMATION PURPOSES: YES**

## CEDAW NGO REPORT FROM SEXWORKERS IN NEPAL

### 1. Introduction

- a. This NGO report from Nepal focuses on the experiences of sex workers, a particularly marginalized and vulnerable group. It highlights the pervasive discrimination, violence, and lack of access to justice faced by sex workers and calls for urgent action to address these issues. This report is prepared with inputs from sex workers belonging to 21 organisations.

### 2. Discrimination faced by sex workers and need for policy measures. (Articles 1, 2)

- a. There is no clear definition of discrimination against sex worker that aligns with Article 1 of the Convention. Although there is equality before law for all, a sex worker in Nepal experiences multiple and intersecting forms of discriminations.
- b. There are no policy measures taken by the State to eliminate the discrimination faced by sex workers, the wrongful use of anti – trafficking laws<sup>1</sup>, arbitrary implementation of sections of National Penal Code against them.
- c. Law enforcement agencies in the country lack awareness and sensitive training to make the distinction between sex work and sex trafficking. This serious gap in their understanding and practice continue to cause human rights violations of sex workers in Nepal. Training received by the law enforcement agencies are conducted/designed by organisations and institutions focused on anti-trafficking activities and reflects their narrow perspective on voluntary adult sex work as a form of human trafficking. The law enforcement agencies are only provided with the understanding of sex work from an anti-trafficking point of view. Sex workers and their groups are not consulted for any training by law enforcement agencies.
- d. Sex workers are arrested illegally on fake charges and criminal charges under *prohibition of indecent conduct*. They are often arrested for carrying condoms and HIV prevention medication (PrEP).
- e. The data base maintained by the police does not reflect any violations against sex workers in Nepal. Police continue to violate human rights of sex workers regularly with impunity. Such impunity is accorded by negative societal views about sex work and by hiding behind anti trafficking laws. Sex workers and their organisations are routinely intimidated by the law enforcement machinery impacting their ability to seek justice against arbitrary arrests and

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<sup>1</sup> Human Trafficking and transportation (control) act, 2007's section 4 (1)

violence against them. Sexual bribery is rampantly sought by the agencies from sex workers arbitrarily detained by them. Data on crimes against sex workers is not easily accessible and is not publicly available.

- f. Well known anti-trafficking organizations based in Kathmandu are using illegal measures, including violence, forcible raid and illegal detention of sex workers<sup>2</sup>.
- g. Some complaints have been made to the Nepal Women's Commission and the Human Rights Commission by sex workers. However, it is not clear how and whether those were taken up by these commissions with the Police.
- h. No effective measures have been implemented to tackle intersectional and multiple forms of discrimination faced by sex workers in Nepal.
- i. Recommendations:
  - i. Sensitise law enforcement agencies about the difference between sex work and trafficking, including trafficking for sexual exploitation. Consult sex workers rights organisation in design and implementing training programmes for the law enforcement agencies.
  - ii. Safe mechanisms for complaints against law enforcement agencies should be created. Investigate, prosecute and punish the offenders
  - iii. Provide gender sensitive protection and support to the sex workers who are victims of police abuse
  - iv. NWC and Human Rights Commission should take proactive measures to sensitively deal with complaints from sex workers facing violations of their rights.

### **3. Stereotyping sex workers resulting in prejudicial attitudes in law and practice. (Article 5)**

- a. Sex workers in Nepal are significantly affected by sex role stereotyping and prejudice against them in laws and policies. De facto conflation of sex work with human trafficking has led to discrimination of sex workers/ women in prostitution. The criminalisation of clients and other third parties have increased the vulnerability of the sex worker while accessing services, housing, and employment and to work freely without fear.
- b. There are reported cases of sex workers avoiding seeking medical care due to fear of judgment or discrimination, leading to increased health risks, including sexually transmitted

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<sup>2</sup> Focus Group Discussion, Hamro Sangathan, Kathmandu, 2024

infections (STIs) and mental health issues<sup>3</sup>. Stigma against sex work is a major barrier to sex workers accessing government welfare schemes and identity documents, when they fear being exposed to their family. Violence against sex workers is tolerated due to the stereotyping of sex workers in society. Non-state actors like anti-trafficking-groups in the country are routinely involved in extra-legal ‘capturing’ of sex workers and violating their rights with the tacit support of law enforcement agencies.

#### **4. Intersecting forms of Discrimination and impunity of State and Non – State actors lead to pervasive cycle of violence (General Recommendation 35)**

- a. CEDAW clearly recognises discrimination faced by women because of being in sex work leads and recommends that legal provisions that criminalise women in sex work must be repealed. The Committee has called attention to harassment, violence by law enforcement and called for investigation and prosecution of such law enforcement officers<sup>4</sup>.
- b. However, there is no respite to the extent and forms of violence that sex workers face from law enforcement including arrests for being seen in public places, harassment and extortion, demands for bribes, raids on street workers in public places and handing them over to anti – trafficking NGOs for detention.
- c. An ongoing study tracking the types and extent of violence faced by sex workers in 2024 alone, finds that over 25% of the reported incidents are of police violence which includes arrest for “loitering, public offences”, extortion, demand for free sex<sup>5</sup>. This is followed by violence by anti -trafficking NGOs (15%), clients (17%) neighbours and acquaintances (12%) family members (11%). Sex workers report that once their identity is known they are evicted from homes by their own family members, owners and villagers (10%).
- d. There are narratives of an HIV positive sex worker who was hounded out of the village after her identity was revealed. Revealing their identity to their families is a common threat used by the law enforcement, anti – trafficking NGOs, forcing sex workers to give heavy fines / bribes to be released. Possession of condoms continue to be used as evidence of commission of offence.

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<sup>3</sup> Situation Assessment report published in June 2021 by *SWASA Nepal*

<sup>4</sup> Para 26, Para 27 (a), (c). Concluding observations on the sixth periodic report of Nepal, 9 November 2018, CEDAW/C/NPL/CO/6

<sup>5</sup> Violence faced by sex workers in Nepal in 2024. Study conducted by SWASA Nepal, JMMS, SWAN and CBO partners, 2025.

## 5. Conflation of Trafficking and Sex Work continues to harm lives of sex workers ARTICLE 6

- a. Despite recommendations<sup>6</sup> made by the CEDAW Committee, no progress has been made its implementation to secure the rights of adult sex workers.
- b. Para 27 (a) Not implemented. Sex workers continue to be prosecuted for engaging in sex work. Sex workers continue to be harassed and arrested by the law enforcement agencies. Non-state actors like anti-trafficking NGOs operate with impunity and forcibly pick up sex workers and detain them in rescue homes against their consent. Sex workers facing violence do not have access to shelter homes unless they are booked under anti-trafficking laws.
- c. 27 (c) Not implemented. Sex workers facing violence and extortion from law enforcement agencies have no effective recourse to justice.
- d. The State party response to the list of issues has evaded the question<sup>7</sup>. The conflation between consensual adult sex work and human trafficking continues. While the law in Nepal does not criminalize a sex worker, it criminalizes the clients of sex workers<sup>8</sup> and third parties.<sup>9</sup> Sex workers report that the police continue to arrest and harass them and charge them under the anti-trafficking law<sup>10</sup>. Sex workers encounter abuse of power, intimidation, physical assault and violence including sexual violence and demand for monetary and sexual favour.<sup>11</sup> Police collude with anti-trafficking organisations when they illegally 'capture' sex workers and forcibly take them to their shelter homes, illegally detain them and subject them to harassment and blackmail<sup>12</sup>. Sex workers are threatened by anti – trafficking NGOs with disclosure of their identities to their families, which prevents them from pursuing legal remedy.<sup>13</sup> Anti-trafficking organizations are engaged in rights violations of sex workers with complicit arrangements with the police<sup>14</sup>. For instance, in a two-year period between August

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<sup>6</sup> Para 27 (a), (c). Concluding observations on the sixth periodic report of Nepal, 9 November 2018, CEDAW/C/NPL/CO/6

<sup>7</sup> Para 74, Page 29 Reply to paragraph 11(a), Replies of Nepal to the list of issues and questions in relation to its seventh periodic report, 17 December 2024, CEDAW.C/NPL/RQ/7

<sup>8</sup> Section 4, Human Trafficking and transportation (control) Act, 2007. National penal code's section 119 Prohibits soliciting for prostitution.

<sup>9</sup> National penal code section 120 Prohibits providing house, land to be used for prostitution or sexual intercourse with prostitute.

<sup>10</sup> Case study#68 P65, #69 P65, #70 P65, #76 P67, #102 P72, #104 P73, #118 P77, Annexure 1.

<https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>11</sup> Ibid.

<sup>12</sup> Case studies #55 P62, #66 P64, #103 P72, #105 P74, #113 P76, Annexure 1.

<https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

2022 to 2024, 10 raids and forced rescue were conducted by anti – trafficking NGOs and the police in four districts of Kathmandu, Lalitpur, Bhaktapur and Jhapa; and over 55 sex workers were picked up against their consent.<sup>15</sup> However none of the anti – trafficking NGOs are held accountable for their egregious and unlawful acts.

- e. Sex workers and CBOs cannot ensure that their complaints are properly recorded by the police in an atmosphere of fear, stigma and intimidation. The police often file their complaints under improper sections thereby manipulating the data and serious of the complaints.
- f. All of which point to lack of training for the police to identify trafficking victims from adult women engaged in sex work voluntarily. Sex workers reported that anti-trafficking organisations are the only NGOs conducting any form of training for police. Sex workers rights organisations are not included by the law enforcement agencies for sensitising the police despite the role that they play in anti–trafficking work.
- g. In the list of issues of data regarding police abuse and complicity<sup>16</sup>, sex workers have limited avenues and recourse when it comes to complaining about police abuse and corruption. Some have approached the National Women’s Commission and Human rights Commission. It is not clear how actions may be initiated by these commissions. Sex workers live in fear of violence, public exposure of identity and criminalisation. Data on crimes against sex workers is not accessible and is not publicly available.
- h. Criminalisation of clients have heightened the vulnerabilities of sex workers. Clients visit workers in fear, they insist on quick transactions, and don't wear condoms properly thereby increasing risk of HIV, STIs and unwanted pregnancy. Sometimes, they run away without paying.<sup>17</sup> While running away from police, sex workers have been involved in serious accidents.”<sup>18</sup>
- i. **Recommendations**
  - i. Decriminalise all aspects of adult consensual sex work, including third party and clients.

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<sup>15</sup> Data provided by 10 sex worker CBOs in Kathmandu, Bhaktapur and Lalitpur, Jhapa, Nepal

<sup>16</sup> Para 75, Page 29 Reply to paragraph 11(b), Replies of Nepal to the list of issues and questions in relation to its seventh periodic report, 17 December 2024, CEDAW.C/NPL/RQ/7

<sup>17</sup> Sex worker, Kathmandu, Hamro Mahila Sangathan, Kathmandu, FGD, 18 October 2024.

<sup>18</sup> Ibid.

- ii. Amend Human Trafficking and Transportation (control) Act, 2007 and make clear distinction between sex work and Trafficking.
- iii. Sensitise law makers, enforcement agencies and anti-trafficking organisations about the difference between women engaged in sex work/prostitution and women who are victims of trafficking.
- iv. Implement recommendations of the CEDAW Committee to develop a policy, legislative and regulatory framework that provides legal protection from exploitation of women who engage in sex work and ensure that they are not prosecuted for engaging in such activities.
- v. Implement recommendations of the CEDAW Committee to investigate, prosecute and punish law enforcement officers for the harassment and extortion of sex workers, and ensure that victims are provided with gender – sensitive protection and support.
- vi. Ensure that anti – trafficking organisations that abuse and violate human rights of sex workers and illegally detain them; with impunity are investigated and prosecuted
- vii. Ensure safe and comprehensive redress mechanisms to report on and address various forms of violence faced by women engaged in sex work by State and non – State actors.

## **6. Barriers to participation in public and political life (Article 7)**

- a. Sex workers access to voting rights is limited by the lack of citizenship certificates, a compulsory document. Over 60% of sex workers in a study in Nepal did not have access to citizenship documents.<sup>19</sup> Sex workers often migrate from rural areas to urban areas and despite having citizenship certificates they may not be able to exercise their votes.
- b. Voting rights are linked to one’s domicile marked in the Citizenship Certificate. A citizen can change their domicile through a migration certificate issued by the local government, provided they have own property in the new place. The added pre-condition of property ownership discriminates sex workers.
- c. Sex workers undergo multiple barriers in organising and forming NGOs. They face excessive questioning and scrutiny during the registration process. They risk fear of surveillance, public

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<sup>19</sup> Impact of citizenship laws on women in sex work, Nepal. Conducted by SWAN, SWASA South Asia, JMMS, SWASA Nepal; 2024

exposure and stigma. Sex workers are arbitrarily arrested and ‘prohibition of indecent conduct’ and trafficking related offenses imposed on them. This becomes a barrier when they try to register NGOs.<sup>20</sup>

## **7. Barriers to Nationality a stumbling block to mainstreaming (Article 9)**

- a. Access to Citizenship Certificates has tremendous significance for poor, single, marginalised and rural women in sex work.
- b. A recent amendment to the Citizenship Act claims that it has made it possible for women holding Nepali citizenship to pass on citizenship to their children by descent if they have acquired citizenship by birth before 12 September 2015. However, this is a severely limited right as the woman can only pass the citizenship to her child if the father is untraceable, and she gives a declaration to the effect. There is no automatic right of the woman to pass on her citizenship to her child.
- c. Despite the recent amendment the impact of the historical discrimination against women in nationality issues may continue unless corrected and will have disproportionate impact on sex workers and their children. Sex workers will not be able to pass on citizenship to their children. Many sex workers married to foreigners will not be able to pass on citizenship to their husbands under the amended Act.
- d. The amended Act is silent on how sex workers who have not been able to acquire citizenship hitherto due to intersectional discrimination and absence of documents will benefit. Sex workers who are single women are further disadvantaged and they and their children will be rendered stateless unless the discriminatory provisions in the Act are reformed, and citizenship processes simplified. These laws violate the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child.
- e. The State’s reply<sup>21</sup> has not addressed these crucial aspects of gender discrimination that remains in the Amended Act. Research on citizenship<sup>22</sup> conducted by SWAN, SWASA and JMMS with 3753 sex workers from seven provinces of Nepal indicate that over 63% of sex workers still do not have access to Citizenship Certificates. Since Citizenship is dependent on

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<sup>20</sup> Case SW#112 P75, Annexure 1. <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>21</sup> Para 15, Page 9, Replies of Nepal to the list of issues and questions in relation to its seventh periodic report, 17 December 2024, CEDAW.C/NPL/RQ/7

<sup>22</sup> 2024, SWAN, Sex Worker’s and Allies South Asia, JMMS, SWASA Nepal. Impact of Citizenship laws on women in sex work, Nepal.

paternal lineage post attaining 16 years of age, and women in sex work who have been married before that or who have been thrown out of their families and so have no access to their citizenship papers [for whatever reason] are all falling through the cracks.

- f. Sex workers are often thrown out of their parental and marital homes once their identity is known. Parents and husbands refuse to provide them with documentation. Lack of documents (52.6%), father (42.6%) or husband<sup>23</sup> (42.2%) or family members<sup>24</sup> (41.6%) refusing to give documents to support citizenship of the sex worker are some reasons that many sex workers continue to be deprived of citizenship.<sup>25</sup> As a result, 71.6% sex workers are not able to access mainstream job opportunities<sup>26</sup>, they are unable to open bank accounts<sup>27</sup> (69.4%) and are consequently cheated of their money (54.6%), unable to vote (44.9%), unable to purchase property (51.4%), unable to access government safety net programs (33.2%).<sup>28,29</sup>
- g. The resulting emotional trauma and alienation faced by sex workers make them feel that they are not part of mainstream Nepali society.<sup>30</sup> Many women report that without official documentation, they and their children, face stigma and are vulnerable to exploitation.<sup>31</sup>

## 8. Denied access to quality education (Article 10)

- a. Constitution of Nepal<sup>32</sup> and the National Education Policy (2019)<sup>33</sup> guarantees compulsory and free education up to secondary level.<sup>34</sup> The strategy includes, ensuring access, participation, adequate institution capacity and quality enhancement.<sup>35</sup> However, many sex workers are illiterate.<sup>36</sup>

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<sup>23</sup> Case CR#2 P2, CR#6 P7, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>24</sup> Case CR#5 P5,P6 , CR#10 P12, Annexure 1

<https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>25</sup> Ibid.

<sup>26</sup> Case CR#3 P3, P4, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>27</sup> Case CR#5 P5,P6 CR#8 P9, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>28</sup> Ibid.

<sup>29</sup> Case CR#1 P1, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>30</sup> 2024, SWAN, Sex Worker's and Allies South Asia, JMMMS, SWASA Nepal. Impact of Citizenship laws on the rights for women in sex work, Nepal.

<sup>31</sup> Cases CR#8 P9 , CR#9 P10, CR#10 p12, Annexure 1

<https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>32</sup> Constitution of Nepal, 2072 (2015), Article 31.

<sup>33</sup> Strategy 9.3, The National Education Policy, 2076 (2019). "

<sup>34</sup> Para 20 (h), page 10, replies of Nepal to the list of issues and questions in relation to its seventh periodic report. CEDAW/C/NPLRQ/7; 17 December 2024

<sup>35</sup> The National Education Policy, 2076 (2019); Strategy 10.4.

<sup>36</sup> Situation Assessment report SWASA Nepal, Female sex workers and Covid-19 pandemic, June 2021

- b. The enrolment rates of children from marginalized groups, including those of sex workers, remain low, and there is an increasing dropout rate among those who do enrol. Children are not able to benefit from the policy measures for higher education because they do not have Citizenship Certificates which is compulsory for enrolling in university.<sup>37</sup>
- c. HIV infected children are expelled from school, or not given admission citing other reasons.<sup>38</sup> Birth certificates are compulsory, and children are expelled from schools for not producing it. Many sex workers' children do not have birth certificate, so they are at high risks of being expelled from school.
- d. After passing grade 12, Citizenship Certificate is compulsory to be enrolled in universities. Children of sex workers are particularly affected by this rule if they wish to pursue higher education.<sup>39</sup>
- e. The gap between de jure and de facto situation in dealing with stigma in educational institutions impact access to education for children of sex workers.
- f. Recommendation
  - i. Remove Citizenship Certificate related conditions for accessing free higher education opportunities and remove all systemic barriers and policies which prevent access to higher education.

## 9. Access to Safe Working conditions. (Article 11)

- a. Sex workers and other informal sector workers are not recognised under the Labour Act 2017, severely affecting their ability to benefit from social security, health benefits and other protection measures. This exclusion also leaves sex workers without a safe working environment without access to safety net programs and vulnerable to exploitation.
- b. During the COVID-19 pandemic many sex workers were without access to support programs and driven to destitution. The informal entertainment workforce comprises of many sex workers. Due to the absence of policy on working conditions, sex workers are forced to work in precarious settings exposed to violence and exploitative practices.
- c. No measures are taken to include sex workers into the decent work agenda and afford them protection as informal workers. Vital safety commodities such as condoms are used as

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<sup>37</sup> Case SW#111 p75, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>38</sup> Case SW#110 p75, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>39</sup> Case SW#111 p75, Annexure 1. <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

evidence of “prostitution” and women arrested. The state response<sup>40</sup> that no gender discrimination shall be made while sending workers for employment does not consider that marginalised women like sex workers do not possess identity documents like Citizenship Certificates to apply for a passport.

#### **10. Barriers to access to health care for sex workers remains. (Article 12)**

- a. CEDAW recommendations<sup>41</sup> and WHO guidelines, to end discrimination by health care providers have not been implemented. The State has not adequately responded to the question on measures taken to end discrimination against sex workers.<sup>42</sup> They are routinely denied access to health services if their identity is known to the providers.
- b. Vital health commodities like condoms and Pre-Exposure Prophylaxis (PrEP) are not easily accessible to sex workers.<sup>43</sup> Condoms continue to be used as evidence against them, leading to arrests.<sup>44</sup> This has led to fear amongst sex workers in carrying condoms, often leading to pregnancies and unsafe abortions.<sup>45</sup>
- c. The stigma associated with sexually transmitted infections (STIs) exacerbates the situation, as sex workers experience a lack of privacy and confidentiality when seeking STI services<sup>46</sup> or maternal health services.<sup>47</sup> Abusive and insensitive treatment from healthcare providers further discourages them from accessing necessary medical care.<sup>48</sup> Instances of verbal abuse and mistreatment by medical staff are common, particularly when sex workers seek help after experiencing violence.<sup>49</sup> Sex workers prefer accessing more expensive services in private clinics as a result.

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<sup>40</sup> Para 17, Page 9, replies of Nepal to the list of issues and questions in relation to its seventh periodic report. CEDAW/C/NPLRQ/7; 17 December 2024

<sup>41</sup> Para 39 (d), P 12, Concluding observations on the sixth periodic report of Nepal, CEDAW/C/ NPL/CO/6; 9 November 2018

<sup>42</sup> Para 126, page 42, reply to paragraph 18 ( c), replies of Nepal to the list of issues and questions in relation to its seventh periodic report. CEDAW/C/NPLRQ/7; 17 December 2024

<sup>43</sup> Case study SW#115 p76, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>44</sup> Case study SW#62 p63, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>45</sup> Case study SW#60 p63, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>46</sup> SWASA Nepal, March 2023, Situational analysis on sexual and reproductive health rights of female sex workers in Nepal. <https://www.swasasouthasia.org/399-resources/192249-The-situation-analysis-on-Sexual-and-Reproductive-Health-Rights-of-Female-Sex-Workers-in-Nepal>

<sup>47</sup> Case study SW#84 p68, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>48</sup> Case studies SW#79 p67, #80 p67,p68, #81 p68, #82 p68, #116 p76, Annexure 1.

<https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>49</sup> Focus group discussion, Hamro Sangathan, 2024

- d. Abortion services are not accessible and denied to sex workers as clear information about the availability is not provided. Many sex workers are forced to access private clinics to terminate pregnancies.<sup>50</sup>
- e. Comprehensive health policies, specifically addressing the broader health and rights needs of sex workers, such as mental health care<sup>51</sup> and support for violence survivors, are still lacking. Stigma, legal challenges and limited health care access remain significant obstacles to sex workers.
- f. Migrant sex workers seeking health care in other towns and cities are asked to show identity documents, citizenship documents<sup>52</sup> and thereby denied access.
- g. Recommendations:
  - i. Fully decriminalise abortion at all levels without conditions and allocate resources to raise awareness on safe abortion clinics and services.
  - ii. Ensure regular gender sensitive training to all medical personnel.
  - iii. Monitor, investigate and take timely action against complaints of discriminatory practices by health care providers against sex workers.
  - iv. Provide free medications and psychosocial counselling.
  - v. Enrol sex workers in social security funds and use temporary measures to get social security to sex workers without needing documents.
  - vi. Adopt a life cycle approach to health care provision. Formulate policies based on disaggregated data on sex workers' access to healthcare services, in addition to HIV/AIDS programmes.

## 11. Denied access to social security and safety nets (Article 13)

- a. According to a study, many sex workers in Nepal are aware of social security and protection measures.<sup>53</sup> However, social stigma and discrimination against sex workers pose significant barriers to their accessing rights and welfare services. Sex workers have reported that they do not get information about schemes from official sources. Such information is usually

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<sup>50</sup> Case study SW#83 p68, SW#60 p63, Annexure 1

<https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>51</sup> Case study SW#50 p61, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>52</sup> Case studies CR#10 p12 , CR#16 p20, CR#20 p25, CR#30 p37, p38 ,CR#33 p42, CR#44 p56, CR#46 p58  
Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>53</sup> The Human Rights Frameworks, Social Protection, and Sexual and Reproductive Health and Rights of Female Sex Workers in Nepal, Jagriti Mahila Maha Sangh (JMMS) Kathmandu, 2023

provided by non-governmental organisations. The application processes are confusing and difficult to navigate for the sex workers.

- b. Lack of birth certificates and citizenship documents prevents many sex workers from accessing social security measures especially for benefits like single mother allowances and health insurance. Many do not have access to bank accounts to receive financial assistance from the government. Due to the stigma associated with sex work, they fear that their identities will be disclosed during the application process. This fear often discourages them from accessing social security programmes.
- c. Recommendation
  - i. The state must ensure that sex workers and others who do not have Citizenship Certificates are not left out of National Identity Card and Registration Act, 2019 aimed as a mechanism to deliver social security benefits to citizens.

## **12. Lack of Recognition and Equality Before the Law. (Article 15)**

- a. While sex work is not explicitly criminalised in Nepal, the legal settings around it creates barriers for sex workers in enjoying equal rights in civil and business matters. Sex workers are disproportionately targeted under laws like the National Penal Code and the Human Trafficking and Transportation (Control) Act, 2008 which penalize those facilitating their work e.g., landlords providing house or space for sex work<sup>54</sup>, clients of sex worker.<sup>55</sup> These laws create a hostile environment, making it nearly impossible for sex workers to operate freely.
- b. There is no law that expressly forbids a sex worker from signing contracts or legal documents. However, once a sex worker's identity is known she is denied rooms for rent or participate in contracts. Despite the lack of explicit criminalization, law enforcement agencies and anti-trafficking organizations, interpret these laws to criminalize sex workers, deny them access to justice.
- c. The Free Legal Aid Policy of the government does not account for the unique needs of marginalized groups like sex workers who face intersectional discriminations. There is distrust and fear of police among sex workers which deters them from approaching law enforcement for justice altogether. Sex workers are chased or harassed by police even when

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<sup>54</sup> National Penal code, 2017's section 119

<sup>55</sup> National Penal code, 2017's section 120

engaging in unrelated activities like eating in public spaces or walking with family members.<sup>56</sup>

- d. Street based sex workers fear being noticed by the police and this makes them avoid going to police stations for other reports as well.<sup>57</sup> Sex workers are compelled to tolerate various forms of violence having no recourse to justice.<sup>58</sup>
- e. Lack of sensitivity among law enforcement and judiciary in handling cases involving sex workers is a barrier to access to justice. Their complaints are dismissed, or they are treated as the cause of violence rather victims.<sup>59</sup> Sex workers have reported that sexual favours were sought from them by the police after cases were registered against them. Having no labour laws protecting them, sex workers and other informal sectors workers are extremely vulnerable and denied of legal remedies when their rights are violated.

### **13. Access to justice for sex workers remains a dream (General Recommendation 33)**

- a. Sex workers face multiple barriers to access free legal aid.<sup>60</sup> Primarily amongst them is the lack of awareness about the service. Free legal aid is primarily provided by court appointed lawyers (*Baitanik wokil*). They are very limited in numbers and sex workers are not aware of their service. Similarly, National Women Commission provide legal aid through Bar Associations and a few NGOs. Sex workers are not aware of these services.
- b. Secondly, sex workers are arrested under the trafficking Act as traffickers. She is assumed guilty and not considered poor upon arrest and free legal aid is not applicable to her until a court decides otherwise. Sex workers are also charged under Section 118 'prohibition of indecent conduct', cases under which are heard in district administrative offices, a quasi-judicial body. No legal aid is provided in this office. Stigma around sex work continues to be a major barrier for sex workers to access quality legal support.
- c. The criteria of identifying the economically and socially disadvantaged persons for free legal aid are more likely to elude marginalised and stigmatised groups like sex workers for factors mentioned above.<sup>61</sup> Having the criterion of 'recommendation provided by the local government or those having legal ID card to prove that they belong to disadvantaged group'

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<sup>56</sup> SW#55 p61, Annexure 1 <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>57</sup> Individual narrative, BT, Humro Sanghthan, 2024

<sup>58</sup> Focus Group Discussion, Hamro mahila Sangathan, 2024

<sup>59</sup> SW#52 p61, SW#55 p62, Annexure 1. <https://www.swasasouthasia.org/405-cedaw/192305-CEDAW---Nepal>

<sup>60</sup> Para 21, Page 10 Reply to paragraph 3 (a) of the list of issues and questions

<sup>61</sup> Para 21(a), Page 10

are barrier for sex workers as they often do not have proofs of identity of any kind. In addition, they fear being exposed to their communities and families if they must be recommended by local government bodies.

- d. Sex workers report gender insensitive and dehumanising treatment from law enforcement agencies which are not reflective of gender sensitive investigation and interrogation procedure. In addition, they face various forms of violence from the police and arbitrary detentions.<sup>62</sup> The police do not provide disaggregated data on crimes against sex workers.<sup>63</sup>

#### **14. Inclusion of sex workers in marriage and family laws and practices. (Article 16)**

- a. Marriage laws in Nepal pose unique challenges to those sex workers who are otherwise marginalised and without Citizenship and birth certificates.
- b. Section 74 of the National Civil Code 2074 (2017) recognises informal marriages between consenting adults.<sup>64</sup> The National Civil Code, 2074 (2017) mandates that all types of marriages must be registered. Many women enter marriages without knowing whether their husbands were already married. Men in bigamous marriages are not willing to provide documentation support to obtain their wives' and children's Citizenship certificates for fear of punishment.
- c. This situation has specific impact on sex workers and their children wishing to acquire citizenship through their husbands. Sex workers face extreme challenges to secure Citizenship Certificates for self and their children through their husbands who may be missing or have abandoned them and their children. The existing laws also lack comprehensive protection for women in unregistered marriages.
- d. Recommendations
  - i. Remove obstacles faced by sex workers in obtaining their citizenship irrespective of marital status, and in the absence of their parents not having their Citizenship Certificates/ or refusing to providing them with documentation.

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<sup>62</sup> Para 24, Page 12 Reply to paragraph 3 (b) of the list of issues and questions

<sup>63</sup> Para 66, Page 24 Reply to paragraph 9 of the list of issues and questions

<sup>64</sup> Section 74, National Civil Code, 2074 (2017)