



## Reporting to the CEDAW Committee on the Status of Sex workers

Status Update, August 2014.

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SANGRAM, CASAM and VAMP in partnership with MASUM [a women's rights organisation] and National Network of Sex Workers participated in the CEDAW reporting process for India held in July 2014.

The chapter on sex work was part of the National Alliance of Women's Organisations alternate report to the CEDAW committee. This is the first instance of a network of sex workers establishing partnership with women's groups in India. Traditionally Article 6 of CEDAW has been dominated by the trafficking discourse within the CEDAW Committee and within women's groups reporting to CEDAW in India. During the emergence of the HIV/AIDS response, this stress within the movements of viewing the women in sex work as "carriers" or infecting "innocent women" had created a schism in the rights movement in India. From 2012 SANGRAM made a concerted effort to reach out to the women's groups reporting to CEDAW and seeking to centre stage the violence faced by sex workers within sex work. The language of violence and violations had contributed to a confused approach towards sex work and trafficking in India. Some of this initial work bears mention since it was linked to the CEDAW reporting process.

### **RECOGNITION OF THE VIOLENCE AGAINST WOMEN IN SEX WORK, 2013**

Reporting to the CEDAW Committee benefited from two efforts in 2013 –deposition before the Verma Commission (January 2013) and at the international level depositions and status report to the Special Rapporteur on Violence Against Women (April 2013) during her India visit.

#### ***Outcome of the Verma Commission submission - 2013***

The Verma Commission had recommended the formulation of Section 370 of the Indian Penal Code, defining the offence of trafficking. The section included "prostitution" as a form of exploitation, a formulation that would have led to viewing sex work through the lens of trafficking and victimization. Timely intervention by SANGRAM, CASAM led to a clarification by the Verma Commission stating that, the intention of the recast Section 370 IPC was not to harass sex workers who engage in prostitution of their own volition and their clients. For the first time a government appointed commission made a clear distinction between women and children being trafficked and adult consenting sex workers and their clients.

#### ***Outcome of the SR – VAW, India Mission – 2013***



The Report of the Special Rapporteur on Violence Against Women, underscored the need to address the violence faced within sex work from state and non - state actors and the lack of avenues for legal redress. It notes that sex workers in India are "*exposed to a range of abuse including physical attacks, and harassment by clients, family members, the community and State authorities*". It further states that "*sex workers are forcibly detained and rehabilitated and consistently lack legal protection*"; and that they "*face challenges in gaining access to essential health services, including for treatment for HIV/AIDS and sexually transmitted diseases*".<sup>1</sup>

Calling for the separation of efforts to combat trafficking from sex work the report reiterates that conflating sex work with trafficking has led to assistance that is not targeted for their specific needs. It has also led to **coercive rehabilitation measures by the State**.

*"In her discussions with interlocutors, the Special Rapporteur noted a tendency to conflate sex work with trafficking in persons and when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs."*<sup>2</sup> The Report states that violence against women in custodial settings is a matter of concern and notes that sex workers are also sent to rehabilitation centres.<sup>3</sup> In other references to marginalized women, the report notes that women are often "unregistered citizens" and "lack identification cards", a status that results in the normalization of violence against them.<sup>4</sup>

The Report calls for a review of the trafficking legislation. *The Special Rapporteur recommends that the Government review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes 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.*<sup>5</sup>

The observations in the report emerge from a sustained effort by VAMP (*Veshya Anyay Mukti Parishad*), the collective of sex workers in Sangli and the National Network of Sex Workers, India to draw attention to the violence faced by sex workers in India. The members submitted detailed case studies of violence and rights violations occurring in all spheres prior to the Special Rapporteur's visit. VAMP members and SANGRAM deposed in Delhi and Mumbai and gave recommendations including review of laws and policies that criminalized sex work, shutting down detention centres for sex workers, separating adult and child trafficking amongst others.

## **LIST OF QUESTIONS, CEDAW COMMITTEE PRE SESSION, OCTOBER 2013**

<sup>1</sup> Para 20, Page 6, Report of the Special Rapporteur on Violence Against Women its causes and consequences, Rasheeda Manjoo, Human Rights Council, Twenty sixth session, A/HRC/26/38/ Add.1

<sup>2</sup>Ibid.

<sup>3</sup> Para 21, Page 7

<sup>4</sup> Para 70, Page 17

<sup>5</sup>Para 79, Page 21



As part of the pre – session list of questions for the Government of India, SANGRAM, VAMP and CASAM sought responses on the steps taken to redress the violence faced by sex workers and measures taken to guarantee their entitlements<sup>6</sup>. The CEDAW Committee raised the following question to the Government of India under Article 6 – Trafficking and exploitation of prostitution

*“Please provide information on exploitation of prostitution in the State party, including whether prostitution is criminalized and on measures taken to guarantee the rights of women engaged in prostitution.”<sup>7</sup>*

The Government of India did not provide any specific response except to state that a Supreme Court Panel was seized of the matter. (The SC Panel is currently studying three recommendations to address a response to trafficking and sex work i.e. measure to prevent trafficking, rehabilitate victims of trafficking and those sex workers who wish to leave sex work of their own volition and conditions conducive for sex workers to live with dignity.)

### **COMMUNICATION TO THE CEDAW COMMITTEE**

A detailed report highlighting the violence and rights violations was presented to the CEDAW Committee in June 2014. The report shared testimonies of sex workers and collectives across India<sup>8</sup>. A concise version of the status report was also included in the Alternative Report prepared by Indian Women’s Organisations. The following areas were highlighted in the report

- lack of access to justice including denial of free legal aid and appeal and insensitive court rulings. Despite the 2007 concluding observations that the State party should provide free legal services to poor and marginalized women in rural and urban areas.
- continued violence against sex workers by state and non - state actors.
- conflation of trafficking and sex work leading to the violence of forced raids and rehabilitation
- stigma and discrimination faced in health care
- denial of social entitlements including identification documents
- denial of a safe environment and labor protection for women in sex work

Key recommendations included

- Avoid conflation of sex work and trafficking

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<sup>6</sup> List of Issues submitted to the CEDAW Committee for the Government of India, SANGRAM, CASAM, VAMP, October 2013.

<sup>7</sup> List of Issues and questions in relation to the combined fourth and fifth periodic reports of India, CEDAW/C/IND/Q4-5, 28 October 2013

<sup>8</sup> Status of women in sex work in India, 2014



- Decriminalise sex work and related activities
- Strengthen sex workers access to justice including the strengthening the National Human Rights Institutions to respond to complaints of State and non - State violence. Ensure free legal services are available in rural areas for marginalized women including sex workers
- Implement Supreme Court recommendations on social entitlements and identification documents.

During the session in Geneva, the SANGRAM team had discussions with the CEDAW Committee members during the closed door lunch briefing with the Indian NGOs, rapporteurs meetings to highlight the concerns of sex workers caught in conflation of trafficking and sex work. The oral statement made by the Indian delegation made a specific reference to the marginalisation faced by sex workers. A separate oral statement on sex work raised the following concerns.<sup>9</sup>

- What measures has India taken to prevent violation, humiliation, dispossession and disenfranchisement of sex workers during raids and rescues?
- What measures have been taken to ensure that sex workers are not alienated from their children, homes, assets, livelihood options and health care services?
- What measures has India taken to ensure the principle of due diligence or prevention and investigation of discrimination, prosecution of perpetrators and compensation of victims/survivors?
- What measures has India taken to address the impunity of State and non – State actors in instances of violence and discrimination against sex workers?

Some of the CEDAW Committee members were of the view that issues relating to sex work could not be raised under Article 6 of CEDAW since it primarily dealt with trafficking and the exploitation of prostitution. In response, SANGRAM highlighted the observations made by the Committee under General Recommendation 19 recognizing the vulnerability of sex workers to violence and the need for measures to protect them. SANGRAM also prepared a brief note highlighting the Committees engagement with the violence faced by sex workers in other countries and the Committees Concluding Observations therein.<sup>10</sup> In addition, the Committee members also requested for information on approaches to prevent trafficking and a note was submitted highlighting the role of and partnerships with sex work organisations in preventing trafficking<sup>11</sup>.

## INDIA SESSION, GENEVA

<sup>9</sup> Oral Statement on Sex work, CEDAW Committee, Lunch briefing, July 2, 2014, Geneva

<sup>10</sup> CEDAW and global engagement with issues of sex workers through the treaty body reporting process, 2014. Prepared by SANGRAM, CASAM, India

<sup>11</sup> Rights Based approach to prevent trafficking – VAMP experience



At the 58<sup>th</sup> CEDAW Session with the Government of India on July 3, 2014, the Committee posed the following questions to the delegation on its treaty obligations under Article 6 and Article 12.

*“In the absence of adequate monitoring of ITPA, what is being done to ensure that ITPA is not used to violate the rights of or to harass sex workers who are adult consenting women? Especially in light of the Special Rapporteur on Violence Against Women’s recommendation that Trafficking response should not overshadow the need to protect the rights of sex workers.”* Ismat Jahan, CEDAW Committee Member.

*“What efforts have been made to provide sex workers access to occupational health services?”* Niklas Brunn, CEDAW Committee Member.

However, the Government delegation did not respond to either of these questions. The summary records of proceedings published by the Office of the Commissioner on Human Rights will reflect these questions to the Government of India.

### **CONCLUDING COMMENTS, INDIA**

Some of the Committee's general and specific recommendations that are important from the perspective of sex work rights in India.

- India adopt comprehensive anti - discrimination legislation which prohibits discrimination on all grounds; (b) protects women from multiple or intersectional forms of discrimination and other grounds.
- India must strengthen the efficiency of the police and ensure that police officers fulfil their duty to protect women and girls against violence and are held accountable.
- Provide systematic training on women's rights to all law enforcement personnel, medical staff and judicial officials.
- Under Article 6, the CEDAW Committee stated that the persecution of "women in prostitution" as a result of measures taken to address trafficking such as raid and rescue operations is a matter of concern.
- Monitor the availability and efficiency of the Legal Services Authorities, implement legal literacy programs, increase the awareness of Dalit women and girls from scheduled tribes of all legal remedies available to them and monitor the results of such efforts.
- Provide training to medical, health professionals to ensure that Dalit and ST women are attended by trained health care personnel.



- India encouraged to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their families.

## CONCLUSION

### *Concerns with CEDAW Committee's engagement*

a. The advocacy process to gain recognition for the violence faced by sex workers has been extremely challenging. This is more so in the context of a treaty body which does not refer to sex workers and only recognises the "exploitation of prostitution". Violence within sex work is thus not addressed in the convention itself. Since the definition of exploitation itself is contested within the UN, it is very difficult to articulate violence against sex workers as exploitation. The WHO definition of violence is as "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation."

b. Though the chapter on sex work in the India 4<sup>th</sup> and 5<sup>th</sup> NGO Alternate report on CEDAW draws on this definition to include Violence Against Sex Workers and though the Committee asked three questions based on this chapter to the Indian delegation, the concluding remarks refrain from mentioning the issue of violence against sex workers thereby silencing the voices of a large number of women and denying them access to justice. The Committee fails to translate its own intent on posing questions in October 2013 to the Government to "guarantee the rights of women in prostitution"; into a tangible recommendation for the State party. Both of the above are a setback and in some ways can be seen as a push-back to the sex worker rights movement by the CEDAW Committee and also a duality in its approach.

c. For instance, the CEDAW Committee falls back on the Supreme Court Judgment (Suresh Kumar Kaushal versus Naz Foundation) and its commitment in the UPR to call on India to stop the criminalisation of same sex relations. However the same yardstick of an existing Supreme Court judgment (Budhadev Karmaskar case) is not used to recommend that India address the continued violence against sex workers and protect their human rights. Even its recommendation on criminalising same sex relations are extremely conservative and stop way short of expressing concern at the regressive Supreme Court ruling which impacts the rights of millions of LGBT people.

d. The CEDAW Committee does not make any reference to the harassment and violence faced by trans women or lesbians in its observations and recommendations on sexual violence.

e. In its observations and recommendations on Article 6, the CEDAW Committee continues to ignore the need to protect the rights of women to migrate and assuring safe migration policies rather than continuously focusing on "stop migration" initiatives.



In that sense these observations are not in keeping with the expectations of large groups of marginalised women.

### **Gains**

Some gains have been made at the national and international level which need to be strengthened in the coming months. The fact that sex workers were included in the alternate reporting process by women's groups in India such as the NAWO India, where there has been a traditional articulation of sex work as violence, is a major gain in and of itself. Others include

- Recognizing the clear distinction between consenting people in sex work and women and children who have been trafficked (SR - VAW)
- Recognition of the violence faced by sex workers by the Special Rapporteur on Violence Against Women in India.
- Calling for the review of ITPA and requiring measures to protect the human rights of sex workers and not confuse with the trafficking response. (SR - VAW; CEDAW Concluding Comments).
- Seeking occupational health services for women in sex work. (Summary Proceedings, CEDAW)

The CEDAW Committee has sought a follow up report in 2016 on its recommendations to combat sexual violence and Violence against women in border areas and conflict zones. However, given the complete absence of certain marginal groups including sex workers in its observations and recommendations, it remains to be seen how this space can be leveraged.

### **Annexure**

- Status of Women in Sex Work in India, SANGRAM, CASAM, MASUM, VAMP

**Declaration** - SANGRAM, CASAM, VAMP and MASUM were funded by United Nations Development Program - Asia Pacific Regional Office, Bangkok; Fund for Global Human Rights and South Asia Women's Fund for the consultation with sex worker groups and experts, data collection, report writing, and travel to Geneva for the 58th CEDAW Session.