

**Universal Periodic Review of Nepal
51st Session
Joint submission by:**

Jagriti Mahila Mahasangh (JMMS) - National Federation of Sex Workers, Nepal

Jagriti Mahila Maha Sangh (JMMS) is the national federation of sex workers in Nepal. It comprises 34 affiliated community-based organizations (CBOs) across the country, all of which are led by sex workers themselves. JMMS and its member organizations are dedicated to advancing the health rights, human rights, and the decriminalization of sex work in Nepal.

and

SWASA Nepal (Sex Workers and Allies of South Asia Nepal)

SWASA Nepal is a health- and human rights-based NGO located in Kathmandu. SWASA Nepal works in 7 provinces of Nepal with a federation of 20 sex worker led organizations, a sex worker led NGO and a collective of sex workers.



In collaboration with 27+ sex worker activists and organisations in Nepal¹



and the Sexual Rights Initiative

The Sexual Rights Initiative is a coalition of national and regional organisations based in Canada, India, Egypt, and Argentina that work together to advance human rights related to gender and sexuality at the United Nations.

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Introduction

1. This stakeholder submission was prepared with inputs from sex workers belonging to 21 organisations in Nepal and focuses on the human rights of sex workers, who continue to be a particularly marginalized and vulnerable group. It highlights the pervasive discrimination, violence, and lack of access to justice, health services, education and identity documentation (and thus heightened risk of statelessness) faced by sex workers, and calls for urgent action to address these issues.
2. Despite the constitutional right to equality for all before the law, a sex worker in Nepal experiences multiple and intersecting forms of discrimination, limiting their full enjoyment of their economic and social rights, such as the right to work and the right to social protection. Central to the denial of their rights is the de facto criminalisation of sex work, coupled with the continued conflation of sex work and trafficking in the country, and the prevailing issues surrounding nationality and access to citizenship certificates. This has the cumulative impact of undercutting sex workers' ability to make any rights claims towards the state. This disabling legal environment contributes to the lack of action by the state to eliminate the discrimination faced by sex workers, including through the wrongful use of anti- trafficking laws² and the arbitrary application of sections of the National Penal Code against them.
3. Sex workers in Nepal are significantly affected by sex role stereotyping and prejudice against them in laws and policies. Indeed, the persistence of patriarchal attitudes and gender stereotypes concerning the roles and responsibilities of men and women in the family and within broader society clearly influence the approach of the state towards sex work- conflating it with human trafficking which has led to discrimination against sex workers and rampant human rights violations against them.
4. These patriarchal attitudes are also clearly reflected in Nepal's approach to citizenship and nationality, which demonstrates a generalised undervaluing of women and girls. The centrality of the citizenship certificate to navigating Nepalese society means that barriers to acquiring or accessing the certificates amounts to a structural barrier, and compounds the marginalisation of the most marginalised groups. As will be discussed further in this stakeholder summary, there is an overlap between the experiences of discrimination and marginalisation of sex workers, and the inability to access national identification, and indeed the rampancy of statelessness in Nepal.
5. Further, the de facto criminalisation of sex work through the criminalisation of soliciting, the criminalisation of clients and other third parties have increased the vulnerability of sex workers, barring their access to services, housing, and employment hampering their ability to work freely without fear.
6. Nepal was recently reviewed by the Committee on the Elimination of Discrimination against Women, with the concluding observations generally distributed in February 2025. In the seventh concluding observations, as in the sixth, they highlighted continuing human rights challenges undercutting the rights of women in the country, including the issues discussed in this stakeholder report. Relevant concluding observations will be indicated throughout the report.³ It is clear that Nepal must do more to address multiple and intersecting forms of

² Human Trafficking and transportation (control) act, 2007's section 4 (1)

³ Concluding observations on the seventh periodic report of Nepal, 28 February 2025, CEDAW/C/NPL/CO/7

discrimination impacting sex workers.

Lack of access to identity documentation and nationality as a significant barrier to the enjoyment of human rights by sex workers

7. The question of the right to pass on citizenship and access to identity documentation remains a pressing one in Nepal, and- despite repeated law reform - the law on nationality continues to discriminate against women, their (foreign) spouses, and any children they may have. Nepal received and accepted a number of recommendations focused on addressing the gender bias in its nationality laws, including:
 - 159.166 Ensure full equality between men and women with respect to conferring citizenship on their children and spouse, including by amending provisions in the Constitution and Citizenship Act amendment bill 2020 (Canada);
 - 159.174 Ensure that the rights to acquire, transfer and retain citizenship are extended equally to all women and their children (Finland);
 - 159.176 Amend the Citizenship Act to enable citizenship documentation at birth and to repeal gender discriminatory provisions (Germany);
 - 159.193 Amend the provisions of its normative framework that contravene the Convention on the Elimination of All Forms of Discrimination against Women in order to guarantee a non-discriminatory approach to the granting of citizenship (Panama);
8. As the CEDAW committee concurred in its concluding recommendations,⁴ there is significant law reform necessary to ensure that all types of discrimination against Nepali women and their children are ended. It is difficult to overstate the importance of nationality, access to national identification- in this case the citizenship certificate, in the enjoyment of human rights in Nepal, which is yet to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention of the Reduction of Statelessness.
9. One of the key barriers to the enjoyment of human rights in Nepal, particularly as relates to economic and social rights, is access to documentation, particularly the all-important citizenship certificate. Over 60% of sex workers in a study in Nepal did not have access to citizenship documents.⁵ In Nepal, citizenship is currently accorded primarily through jus sanguinis, and there is no longer a right to citizenship by birth or jus solis. The question of citizenship has practical administrative and human rights ramifications, determining whether or not people in Nepal are able to access services such as education and healthcare, whether they are able to access housing and indeed whether or not they can access formal employment. Thus it is evident that access to Citizenship Certificates has tremendous significance for poor, single, marginalised and rural women in sex work. Crucially, the right to transmit nationality without needing to meet further conditions is restricted to men: the child of a Nepali man is automatically entitled to citizenship, whilst the child of a Nepali woman is entitled to citizenship essentially in exceptional cases.
10. Article 11 (2b) says a person whose father or mother was a citizen of Nepal at his or her birth can get citizenship by descent. A recent amendment to the Citizenship Act to bring it in line with article 11(5) of the constitution sets out the instances where a woman can exceptionally transmit her nationality to her children. Article 11 (5) of the constitution says a person who is born in Nepal to a woman who is a citizen of Nepal and has resided in Nepal and whose father is unidentified shall be provided the citizenship of Nepal by descent. It further says citizenship by descent will be converted into naturalised citizenship if his/her father is found

⁴ Concluding observations on the seventh periodic report of Nepal, 28 February 2025, CEDAW/C/NPL/CO/7

⁵ Impact of citizenship laws on women in sex work, Nepal. Conducted by SWASA, SWAN,

to be a foreign citizen. 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 that effect. If the declaration is found to be false- that is, if the father is eventually traced, the woman could face prosecution. There is no automatic right of the woman to pass on her citizenship to her child, for example where the father is known, but is a foreigner. The children of a Nepali mother born to a foreign father can only obtain naturalised citizenship, similar to the citizenship foreign men married to Nepali women can obtain. But a Nepali man wouldn't even need to mention the citizenship of the mother of their children for them to get citizenship.

11. Per article 11(6) of the constitution, women also lack the right to transfer citizenship to their spouse on the same terms as Nepali men. Instead, foreign men married to Nepali women have to abide by provisions applied to any other foreigners for naturalisation. They can apply for naturalised citizenship if they have any contribution in science, philosophy, arts, literature, world peace, human welfare, industrialisation, economic or social sectors and have lived for 15 years continuously in Nepal, renounced the citizenship of their country of origin, and be able to speak Nepali or other languages spoken in Nepal to qualify for naturalisation.
12. It is clear that the constitution itself must be revised to ensure equality in obtaining citizenship, which includes repealing articles 11(5) and 11(7) of the Constitution that prevent Nepali women from transferring citizenship on an equal basis with men to their children, recognising the independent right of each parent to transfer citizenship by descent.
13. Despite the recent amendment, the impact of the historical discrimination against women in nationality issues may continue unless corrected, and will have a 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.
14. 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.
15. Research on citizenship⁶ 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 paternal lineage post attaining 18 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.
16. 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 (42.2%) or family members (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.⁷ As a result, 71.6% sex workers are not able to access mainstream job opportunities, they are unable to open bank accounts (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%).

⁶ 2024, SWAN, Sex Worker's and Allies South Asia, JMMS. Impact of Citizenship laws on women in sex work, Nepal.

⁷ Ibid.

17. Sex workers access to voting rights is limited by the lack of citizenship certificates, a compulsory document. 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 own property in the new location. The pre-condition of property ownership discriminates sex workers. Sex workers often migrate from rural areas to urban areas and, despite having citizenship certificates, they may not be able to exercise their votes.
18. Marriage laws in Nepal pose unique challenges to those sex workers who are otherwise marginalised and without Citizenship and birth certificates. Section 74 of the National Civil Code 2074 (2017) recognises informal marriages between consenting adults. 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.
19. This situation has a 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 themselves 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.
20. The resulting emotional trauma and alienation faced by sex workers make them feel that they are not part of mainstream Nepali society.⁸ Many women report that without official documentation, they and their children face stigma and are vulnerable to exploitation.

Impact of a legal context of de facto criminalisation: police violence, harassment and impunity

21. Nepal received and accepted the following recommendation during the last review:
 - 159.188 Continue working to ensure that the police provide a safe and confidential environment for women and girls to report incidents of violence, including sexual violence, and that such complaints are recorded and investigated and those responsible are brought to justice (Malta);
22. This recommendation has not been implemented and in fact, in the case of women sex workers it is the police themselves, and their allies, who are often purveyors of violence as a consequence of the hostile legal and policy environment that sex workers, and sex worker activists work and organise in.
23. Nepal is a context of de facto criminalisation of sex work in that whilst selling sex itself is not criminalised, a range of activities implicated in sex work is criminalised. Sex workers continue to be prosecuted for engaging in sex work, despite the legal status of their work.
24. For example, soliciting for 'prostitution' is criminalised under Article 119 of the National Penal (Code) Act 2017 which makes seeking clients for sex work both publicly and privately illegal. Buying sex is criminalised under the Human Trafficking and Transportation (Control) Act 2007 (HTTCA), and it is a criminal offence under Article 120 of the National Penal (Code) Act 2017 for a person to provide their house, land or means of transport for the purpose of prostitution. By this provision the act also penalizes providing facilities for sex work and advertising for it under sections concerning crimes against public good. These laws targeting clients and third parties create a hostile environment, making it nearly impossible for sex workers to operate freely. There is no law that expressly forbids a sex worker from signing

⁸2024, SWAN, Sex Worker's and Allies South Asia, JMMS. Impact of Citizenship laws on the rights for women in sex work, Nepal.

contracts or legal documents. However, once a sex worker's identity is known she is denied rooms for rent or participation in contracts.

25. It remains unclear if article 120 could be used against brothels in commercial premises. There are no specific laws against brothel-keeping but police do raid and arrest sex workers working in brothels using public order or public morals laws. Additionally, many sex workers have also reported being subjected to arbitrary detention by law enforcement authorities, illustrating the unclear nature of Nepal's legal framework regarding sex work. Sex workers also indicate that they are criminalised through the use of public order offences in the Public Offences and Penalties Act 1970.
26. The conflation between consensual adult sex work and human trafficking continues with stark negative consequences. The HTTCA legal framework's definition of human trafficking includes engaging in or arranging for someone to enter into prostitution,, although this remains inconsistent with the Palermo Protocol under the United Nations Convention against Transnational Organized Crime, which Nepal ratified in 2011. The CEDAW committee noted that the, "legal definition of trafficking conflates trafficking with sex work, which significantly impedes the rights of sex workers."⁹
27. The de facto criminalisation of sex work and the conflation of sex work with human trafficking leaves sex workers at the mercy of law enforcement agencies and associated anti-trafficking organisations. Sex workers continue to be harassed and arrested by the law enforcement agencies who charge them under the anti-trafficking law. Sex workers encounter abuse of power, intimidation, physical assault and violence including sexual violence and demand for monetary and sexual favours¹⁰.
28. Sex workers facing violence and extortion from law enforcement agencies have no effective recourse to justice. 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 undercutting the seriousness of the complaints. All of this points to lack of training for the police to identify trafficking victims from adult women engaged in sex work voluntarily.
29. This situation persists despite ongoing recommendations made to Nepal by human rights expert bodies such as CEDAW on the need to ensure that sex workers themselves are not prosecuted for engaging in sex work, and that there should be adequate investigative systems in place that ensure the prosecution and punishment of law enforcement officers who engage in the harassment and extortion of sex workers.¹¹
30. Sex workers who are arrested may struggle to secure legal representation, and 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.
31. Meanwhile, non-state actors contribute to the harm and harassment that sex workers experience. Well known anti-trafficking organizations based in Kathmandu are using illegal measures, including violence, forcible raid and illegal detention of sex workers¹². Anti-trafficking organizations are engaged in rights violations of sex workers with complicit arrangements with the police¹³ who permit them to illegally 'capture' sex workers and forcibly take them to their anti-trafficking "shelter home", where sex workers are held against their

⁹ Para 28(a) Concluding observations on the seventh periodic report of Nepal, 28 February 2025, CEDAW/C/NPL/CO/7

¹⁰ Ibid.

¹¹ Para 28(d) Concluding observations on the seventh periodic report of Nepal, 28 February 2025, CEDAW/C/NPL/CO/7

¹² Focus Group Discussion, Hamro Sangathan, Kathmandu, 2024

¹³ Ibid.

will, illegally detained and subjected to harassment and blackmail. Sex workers are threatened by anti- trafficking NGOs with disclosure of their identities to their families, which prevents them from pursuing legal remedy.¹⁴ These non-state actors operate with impunity. Conversely, when sex workers are facing violence and need access to a safe space and survivor services, they do not have access to shelter homes unless they are booked under anti-trafficking laws.

32. The privileged position of anti-trafficking organisations within the Nepalese law enforcement institutional framework is also evident in that as indicated by sex workers, anti-trafficking organisations are the only NGOs conducting any form of training for police. Law enforcement agencies in the country lack awareness and sensitivity training to make the distinction between sex work and sex trafficking. This serious gap in their understanding and practice continues to cause human rights violations of sex workers in Nepal.
33. Trainings received by 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. 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.
34. With regards to reporting police abuse and complicity¹⁵, sex workers have limited avenues for 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.
35. Data on crimes against sex workers is not accessible and is not publicly available. The database maintained by the police does not reflect any violations against sex workers in Nepal. Police continue to regularly violate the 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 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.
36. 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 or even at all. It was noted by the CEDAW committee that the National Women Commission continues to “lack the necessary resources to discharge its mandate effectively, including the consideration of complaints.”¹⁶ Nepal must adequately equip these human rights institutions by providing them with adequate human, technical, and financial resources to be able to be effective in carrying out their mandates.
37. 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 than as victims.
38. However, there is no respite from the extent and forms of violence that sex workers face from law enforcement. These include arrests for being seen in public places, harassment and

¹⁴ Ibid.

¹⁵ 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

¹⁶ Para 16(b) Concluding observations on the seventh periodic report of Nepal, 28 February 2025, CEDAW/C/NPL/CO/7

extortion, demands for bribes, raids on street workers in public places and handing them over to anti – trafficking NGOs for detention. While running away from the police, sex workers have been involved in serious accidents.”

39. 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 sex¹⁷. This is followed by violence by anti-trafficking NGOs (15%), clients (17%) neighbours and acquaintances (12%), and 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%).
40. There are narratives of a sex worker living with HIV 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 and anti–trafficking NGOs, forcing sex workers to pay heavy fines/ bribes to be released. Violence against sex workers is tolerated due to the negative stereotyping of sex workers in society. Sex workers live in fear of violence, public exposure of identity and criminalisation. The hostile environment even has a knock on effect on sex worker organising. 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 exposure and stigma.

Impact of criminalisation on the right to work, to health, and to just and favourable conditions of work

41. Nepal received a number of recommendations pertaining to the right to work, right to health and on access to social protections including the following recommendations:
 - 159.105 Continue to take measures to further strengthen implementation of the Right to Employment Act and the contributory social security system and, in particular, implement targeted interventions for vulnerable groups (Bhutan); (Accepted)
 - 159.121 Pursue the good management of policies related to the basic needs of citizens such as the rights to food, adequate housing, drinking water, education and work (Nicaragua); (Accepted)
 - 159.232 Register and verify all Tibetan, Bhutanese and other refugees followed by issuance of identity documents with the formal right to work and access services (United States of America); (Noted)
42. The prevailing legal and policy environment undercuts sex workers’ right to work, and their right to just and favourable conditions. Indeed in the recent review of Nepal, the CEDAW committee noted with concern, the “discrimination against women sex workers and the lack of measures taken by the State Party to ensure safe working conditions.” Due to criminalisation, sex workers are not able to readily access their occupational health service needs, nor are they able to enforce the agreements that they have entered into with their clients, nor can they report them for acts of violence in the course of their work.
43. 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 sector workers are extremely vulnerable and denied legal remedies when their rights are violated.
44. No measures are taken to include sex workers in the decent work agenda and afford them protection as informal workers. Sex workers and other informal sector workers- who tend to

¹⁷ Violence faced by sex workers in Nepal in 2024. Study conducted by SWASA Nepal, JMMS, SWAN and CBO partners, 2025.

be women, 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. During the COVID-19 pandemic many sex workers were without access to support programs and driven to destitution.

45. Not only are sex workers barred from working freely, openly, and making arrangements for their work to augment their safety, criminalisation of clients and third parties can also have far reaching consequences for 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. This can include sex workers not carrying vital safer sex commodities such as condoms with them, because when they are stopped by the police, carrying these commodities can be used as evidence of “prostitution”, leading to arrest.
46. Meanwhile the criminalisation of clients heightens the vulnerabilities of sex workers to interpersonal violence and the transmission of disease. When 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. This is particularly concerning in a country where there can be limited access to antiretroviral treatment, and where persons living with HIV/AIDS can experience stigmatisation.
47. Sex workers face stigma and discrimination in health settings, and are routinely denied access to health services if their identity is known to providers. 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 infections (STIs) and mental health issues¹⁸. 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.
48. The stigma associated with sexually transmitted infections (STIs) exacerbates the situation, as sex workers experience a lack of privacy and confidentiality when seeking STI services¹⁹ or maternal health services. Abusive and insensitive treatment from healthcare providers further discourages them from accessing necessary medical care. Instances of verbal abuse and mistreatment by medical staff are common, particularly when sex workers seek help after experiencing violence.²⁰ Sex workers prefer accessing more expensive services in private clinics as a result.
49. Vital health commodities like condoms and Pre-Exposure Prophylaxis (PrEP) are not easily accessible to sex workers. When they do have them, they may be reluctant to carry them as they are often arrested for carrying condoms and PrEP). Condoms continue to be used as evidence against them, leading to arrests. This has led to fear amongst sex workers in carrying condoms, often leading to pregnancies and unsafe abortions. Further, there is limited access to affordable contraceptives, and limited access to safe abortion services despite the legalisation of abortion in the country. 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.
50. Comprehensive health policies specifically addressing the broader health and rights needs of sex workers, such as mental health care and support for violence survivors, is still lacking. Migrant sex workers seeking health care in other towns and cities are asked to show identity

¹⁸ Situation Assessment report published in June 2021 by SWASA Nepal

¹⁹ 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>

²⁰ Focus group discussion, Hamro Sangathan, 2024

documents and citizenship documents and thereby denied access.

51. Finally, sometimes, clients run away without paying,²¹ a crime for which sex workers are unable to access a legal remedy. The distrust and fear of police among sex workers deters them from approaching law enforcement for justice altogether. Sex workers are chased or harassed by police even when engaging in unrelated activities like eating in public spaces or walking with family members. Street based sex workers fear being noticed by the police and this makes them avoid going to police stations for other reports as well²². Sex workers are compelled to tolerate various forms of violence, having no recourse to justice.

Impact of lack of national documentation on the right to education for the children of sex workers

52. Nepal received a number of recommendations on ensuring access to quality education including:
- 159.155 Guarantee access to compulsory and free education for all children (France); (Accepted)
53. The Constitution of Nepal²³ and the National Education Policy (2019)²⁴ guarantees compulsory and free education up to secondary level.²⁵ The strategy includes, ensuring access, participation, adequate institution capacity and quality enhancement.²⁶ There is a gap between the de jure and de facto situations in dealing with stigma in educational institutions, and the impact on access to education for children of sex workers. Further, many sex workers are illiterate.²⁷
54. Access to national documentation acts as a barrier to accessing education in Nepal. For a start, there are challenges in acquiring birth certificates in the country, particularly as a single parent, despite the adoption of the National ID and Civil Registration Act (2020) and the National ID and Civil Registration Regulation (2021). The CEDAW Committee has recommended that Nepal take measures to ensure universal birth registration for all children, including by amending article 11(3) of the Constitution to allow for birth registration by the “father or mother” rather than the “father and mother” with a view to preventing statelessness.
55. In order to attend school, children need to have birth certificates. Many sex workers’ children do not have birth certificates, so they are at high risk of being expelled from school. Other risk factors for expulsion include HIV stigma, with some children living with HIV being excluded from education on the basis of their status, or not given admission on the basis of their status, whilst other reasons are officially cited.
56. Further, access to documentation acts as a cap to how much education they are able to receive. The children of sex workers 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 after passing grade 12. Children of sex workers are particularly affected by this rule if they wish to pursue higher education.

We call on the government of Nepal to:

²¹ Sex worker, Kathmandu, Hamro Mahila Sangathan, Kathmandu, FGD, 18 October 2024.

²² Individual narrative, BT, Humro Sanghthan, 2024

²³ Constitution of Nepal, 2072 (2015), Article 31.

²⁴ Strategy 9.3, The National Education Policy, 2076 (2019).

²⁵ 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

²⁶ The National Education Policy, 2076 (2019); Strategy 10.4.

²⁷ Situation Assessment report SWASA Nepal, Female sex workers and Covid-19 pandemic, June 2021

1. Decriminalise all aspects of adult consensual sex work, including third parties and clients.
2. Amend the legal definition of trafficking in the Human Trafficking and Transportation (control) Act, 2007 to ensure that it no longer conflates trafficking with sex work, and sensitise law enforcement agencies about the difference between sex work and trafficking, including trafficking for sexual exploitation.
3. Implement the CEDAW Committee's recommendations 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.
4. Consult sex workers rights organisations to design and implement training programmes for law enforcement agencies.
5. Implement the CEDAW Committee's recommendations 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.
6. Adequately equip the National Women's Commission and the Human Rights Commission by providing them with adequate human, technical, and financial resources to be able to be effective in carrying out their mandates so that they can investigate and address complaints made by sex workers facing violations of their rights.
7. Amend the Constitution to ensure gender equality in obtaining and transferring citizenship, which includes repealing articles 11(5) and 11(7) of the Constitution that prevent Nepali women from transferring citizenship to their children on an equal basis with men, recognising the independent right of each parent to transfer citizenship by descent.
8. 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.
9. Remove obstacles faced by sex workers in obtaining their citizenship irrespective of marital status, and regardless of whether their parents have their Citizenship Certificates or refuse to provide them with documentation.
10. Remove Citizenship Certificate-related conditions for accessing services such as social security protection, healthcare, and free higher education opportunities, and remove all systemic barriers and policies which prevent access to higher education.
11. Fully decriminalise abortion at all levels without conditions, and allocate resources to raise awareness on safe abortion clinics and services.
12. Provide regular gender sensitive training to all medical personnel and monitor, investigate and take timely action against complaints of discriminatory practices by health care providers against sex workers.
13. Adopt a life cycle approach to health care provision and provide free medications and psychosocial counselling, with policies based on disaggregated data on sex workers' access to healthcare services, in addition to HIV/AIDS programmes.