

## **Statement from the National Consultation on Sex Work, HIV and the Law**

5<sup>th</sup> November 2007, New Delhi

We, the undersigned, are a diverse group of scientists, doctors, health and community workers, activists and advocates, vitally concerned with the spread of the HIV epidemic in India. We have been supporting the Government in its efforts to prevent HIV among populations at risk. Today, we have come together to *express, consolidate and present* concerns over legislative developments to the **Immoral Traffic (Prevention) Act, 1956 (ITPA)** that could *undermine* HIV prevention, *increase* transmission and *endanger* the health of millions in this country.

During the day long deliberations, we reviewed the public health rationale and evidence for HIV interventions in sex work and examined its interface with law. In this backdrop, we discussed how changes proposed to the ITPA would affect ***HIV prevention among sex workers and clients under the National AIDS Control Programme***. While welcoming legislation to counter trafficking, we questioned how the proposed legal response that conflates trafficking with sex work would prevent human trafficking in all forms. Our findings are summarized below:

### **Need for HIV Prevention in Sex Work**

Epidemiologically, unsafe commercial sex is the key driver of HIV especially in the four high prevalence states of *Tamil Nadu, Maharashtra, Karnataka and Andhra Pradesh*. High rates of partner change, sexually transmitted infections (STIs) and unprotected sex expose persons in sex work to HIV infection. Men who resort to unprotected paid sex are susceptible to contracting and further transmitting HIV to their sexual partners including spouses. Therefore, it is imperative that ***persons who buy and sell sex*** be provided with prevention services – information, diagnosis and treatment for STIs, voluntary counseling and testing and most importantly, ***condoms*** for safer sex.

### **Sex Work Interventions Work**

There is growing evidence that effective and large scale interventions in commercial sex can reduce HIV among sex workers and clients as well as the general population. High rates of condom use resulting in low HIV prevalence among sex workers in parts of *Kolkata*, notably, the *Sonagachi* red light are already known. Experts have now confirmed that *Tamil Nadu*, a state that has implemented rigorous condom promotion in sex work is witnessing an overall decline in HIV infection. Similar trends are emerging from other sites in southern India, where prevention programmes have covered over 90% of the target population. Evidence for sex work interventions is now *stronger* than ever.

### **Community Mobilization is Critical**

Reaching individuals at risk with services involves a number of difficult but essential steps to identify, make contact, gain trust and encourage use of HIV services. The task is harder where sex work is *hidden, invisible or underground*. It is here that ***peers*** step in – tracking, communicating and influencing behaviors amongst each other. Programme assessments show that mobilizing communities is critical to HIV prevention, which requires sex workers to *collectively* refuse unsafe sex and insist on condom use. The

National AIDS Control Programme, *rightly* builds on this strategy and aims to reach sex workers through community led programmes.

### **Law is a Barrier to HIV Prevention**

Buying and selling sex is heavily *stigmatized* and *criminalized* in varying degrees. The Immoral Traffic (Prevention) Act, 1956 (ITPA) does not proscribe sex work *per se* but penalizes soliciting, brothel keeping, avails of sex work and commercial sex, if carried out in public or notified areas. It empowers Police to arrest, enter, search, raid and impose mandatory testing on sex workers – practices unhelpful for HIV prevention. Affirmative provisions for health, protection and safer sex are non-existent. As a result, sex workers exercise little or no control over their working conditions and negotiate condom use *without* legal support. For a sex worker with a client, the immediate hazard of getting apprehended by the police while negotiating condom use far outweighs the risk of acquiring/transmitting HIV. Punitive measures hinder sex workers' contact with peers, access to health services and condom use – *critical* for HIV prevention. It is amply clear that the current law does not facilitate safer sex in sex work settings.

### **The Legal Response is *unmindful* of Public Health**

Recent attempts at sex work law reform have been informed by concerns of trafficking *alone*; *unmindful* of public health. Undoubtedly, human trafficking is deplorable and calls for stringent legal action. At the same time, it cannot be equated with sex work. While the existing legislative framework has done little to inhibit trafficking, community led interventions are proving effective in containing, even reducing STIs and HIV. That this has happened despite an unfavourable legal environment is due largely to strategies that are *pragmatic, non-judgmental and respect rights of sex workers*. On the contrary, anti-trafficking measures have been moralistic and antithetical to rights, and above all, ineffective in preventing trafficking. Raid, rescue and rehabilitation are *post facto*, by which time trafficked persons have already experienced considerable harm. 'Rescued' persons are confined in 'homes' for indefinite periods, without regard to civil or fundamental rights. Immediate and long term effects of anti-trafficking strategies have not been examined. Regrettably, the proposed legislative changes overlook these findings and disregard the contribution of sex workers in averting trafficking and HIV. Worse still, the amendments threaten to nullify advances in HIV prevention and squander successes in community empowerment.

### **Concerns with the Immoral Traffic (Prevention) Amendment Bill, 2007**

Importantly, *recent revisions to the ITPA Amendment Bill ignore many recommendations of the Parliamentary Standing Committee* for Human Resource Development, which heard concerns of civil society and community representatives. The proposed amendments will intensify criminal sanctions against sex work through suggested definitions for *Prostitution* and *Trafficking in Persons for Prostitution* as well as *penalties against clients*. Key concerns expressed are:

1. The meaning of 'prostitution' in Section 2 (f) is being expanded to cover all transactional sex including that which is consensual and non-exploitative.

2. The definition of ‘Trafficking in Persons for Prostitution’ under Section 5A renders any person engaging in sex work for economic reasons ‘trafficked’. All entry into sex work will be construed as ‘trafficking’ and ‘trafficked’ sex workers will be subjected to coercive ‘exit’ measures.
3. The proposed Section 5C penalizes persons found in or visiting a brothel for ‘sexual exploitation’ of a ‘trafficked victim’ – terms undefined in the Act. While sexual exploitation is synonymous with prostitution (under Section 2 (f)), sex worker(s) engaging in sex work for money (to escape poverty) will be considered trafficked victim (under Section 5A) with the end result of criminalizing all sex work.

There is little evidence to support that penalties against clients reduce trafficking for sex work or sex work itself. Instead, the proposed measure will have deleterious effects on HIV prevention. Clients wanting to avoid arrests will be driven underground; obstructing attempts to promote safer sex. With fewer clients and diminishing earnings, sex workers will find it harder to insist on condom use, resulting in escalation of STIs and HIV.

### **Recommendations**

In view of the above concerns, we, urge the Group of Ministers (GOM) to *reject the Amendments in their present form* and as suggested by the Parliamentary Standing Committee, *examine ITPA in its entirety*. Alternately, we request that the following changes be made in the Amendment Bill:

- (i) The proposed change in the meaning of prostitution be dropped and the original definition under *Section 2 (f)* be retained.
- (ii) The expression “*position of vulnerability*” from the new *Section 5A* be deleted.
- (iii) *Section 5C* that seeks to penalize clients be dropped
- (iv) Penalties against brothels be restricted to where there is exploitation and use of under age persons. The words “*mutual gain of two or more prostitutes*” be dropped from the definition of brothel under *Section 2 (a)*
- (v) Amend *Section 4* that criminalizes persons living on earnings from prostitution to exclude voluntary spending by sex workers on parents and adult dependents.
- (vi) The composition of anti-trafficking authorities for Centre and States proposed under *Sections 13 A and 13 B* include sex worker representatives as well as officers from NACO and the State AIDS Control Societies.

In making these recommendations, we reiterate many of the *observations of the Parliamentary Standing Committee* in its 182<sup>nd</sup> Report on the ITPA Amendment Bill. .

We take this opportunity to recommend that the GOM commission a review of the ITPA from trafficking, HIV and enforcement perspectives and initiate **comprehensive reform** with civil society and community inputs.