

## **Joint Action Group for Gender Equality (JAG) Press Statement**

### **Nirmala's Acquittal Welcome, but Reproductive Rights Still a Concern**

**21 September 2015**

The Joint Action Group for Gender Equality (JAG) welcomes the decision by Sessions Court Judge Puan M. Vijayalakshmi to acquit Nepali migrant worker Nirmala Thapa of the charge laid against her under Section 315 of the Penal Code (an act involving intent to prevent a child being born alive, or, to cause it to die after birth). We are grateful that justice has finally prevailed.

The quest for Nirmala's freedom began in October 2014 when she was initially sentenced to a year's imprisonment in November 2014 under Section 315. Neither a lawyer nor a Nepali court interpreter was present in court to explain the proceedings to Nirmala at that time. A revision was held in early 2015 and she was freed from Pokok Sena Prison on bail awaiting trial, after having served 2 months imprisonment. Over the last nine months, Nirmala has gone to court over ten times to clear her name.

Nirmala was prosecuted under S315 despite fulfilling the legal requirements for having a termination of pregnancy (TOP) as stated in the exemption clause of S312 of the Penal Code. This allows a doctor to conduct a TOP when the mental and physical wellbeing of the woman is at stake. Nirmala sought advice from a doctor and based on his assessment, her 6 week old pregnancy was terminated. This fell well below the 22 week cut off point stipulated by the Ministry of Health (MOH) TOP guidelines. There was nothing illegal about the process. It was completely unnecessary to have had Nirmala charged in court for the above offence.

#### *Overzealous and poorly informed enforcement personnel*

Nirmala's case highlights the overzealousness of enforcement personnel who do not understand (i) their role or the existing legislation pertaining to TOP (ii) the realities of the life of women in the country or their right to seek reproductive health services. Furthermore the prosecution's office should have better understood the law and how it impacts on women. Women across the country seek such services out of sheer necessity and survival. Such prosecution, should it become a practice, would have serious repercussions on the reproductive health of women at large as they would be forced to seek such services outside of medical facilities which are not regulated and hence unsafe.

The MOH must take responsibility for what has happened. They must educate their staff on the aims of medical support and what the law provides for. Additionally MOH should take steps to work with the Attorney General's Chambers to ensure that no other woman (Malaysian or otherwise) is criminalised for having a procedure which has both existing legislation and guidelines from the MOH to ensure its legality.

#### *Unjust contracts and migrant women workers*

Over and above this is the urgent need to revamp the terms of reference in migrant workers' contracts. Current terms pertaining to reproductive health heavily penalise female migrant workers. Under this, pregnancy is seen as an illness and used as a reason to terminate a worker. Malaysia is a signatory to the United Nations Convention of Elimination of All Forms of Discrimination Against Women (CEDAW) and is bound by Article 11 Clause(2)(A) which specifically provides for State parties to take appropriate measures to prohibit dismissal on the grounds of pregnancy.

The entire saga of arrest and prosecution has taken almost a year out of Nirmala's life. She has been subjected to the trauma of incarceration, treated as a criminal, and been denied employment and

hence an income which has been desperately needed by her family in Nepal. It has been so unnecessary and has been a huge waste of the courts' and the taxpayer's time and money.

JAG fervently hopes that there will be no appeal by the prosecution. Instead an apology from the agencies which persecuted her and compensation for the trauma and loss of earnings that Nirmala has suffered would be a positive step forward.

JAG would like to thank defence counsel E. Gnasegaran and the legal firm Amerason and Meera for their pro bono work and acknowledges the efforts by Tenaganita Penang, Women's Centre for Change (WCC) and Reproductive Rights Advocacy Alliance (RRAAM) in sheltering, supporting and fighting for Nirmala's freedom through the entirety of her struggle.

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The Joint Action Group for Gender Equality (JAG) consists of the following organisations:

Women's Centre for Change, Penang  
Women's Aid Organisation  
Association of Women's Lawyers  
All Women's Action Society  
EMPOWER  
Perak Women for Women Society  
Persatuan Kesedaran Komuniti Selangor  
Sabah Women Action Resource Group  
Sarawak Women for Women Society  
Sisters in Islam  
Tenaganita