

Discrimination and violence to Female Sex Workers and Third Gender Women Sex Workers of Nepal

Shadow Report

Submitted to the Committee on the Elimination of Discrimination against Women
(CEDAW)

For consideration at the 71st Session

Submitted by:

Society for Women Awareness Nepal (SWAN)

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Abbreviations

CEDAW: Convention to Eliminate all forms of Discrimination Against Women

FSW: Female Sex Workers

HIV: Human Immunodeficiency Virus

STI: Sexually Transmitted Infections

SW: Sex Workers

SWAN: Society for Women Awareness Nepal

TG: Third Gender

Introduction

Society for Women Awareness Nepal (SWAN) is Nepal's major and first sex worker-led non-governmental organization (NGO) operating in Nepal for more than 12 years to support and empower women who are involved in or vulnerable to economic or sexual exploitation. SWAN aims to create awareness about the situation of these women by providing them with education and information on HIV, SRHR, their rights, economic empowerment, and the care and support they so desperately need. SWAN also works with national policy makers to ensure that women's voices are heard at the decision-making level.

This shadow report is presented as a complement to the sixth periodic report presented to the CEDAW committee by the Government of Nepal incorporating the list of issues raised by the committee.

The report is based on information gathered through a consultation with the Female Sex Workers (FSW) and Third Gender (TG) Women Sex Workers and TG and sex worker activists.¹ It is also based on the organization's experience protecting the rights of FSW and TG Women SW. The prevailing constitution, laws and policies were also taken into consideration.

The report addresses two of the major concerns of the FSW and TG Women SW:

- Health right of FSW and TW Women SW
- Social justice in relation to stigma and negative stereotypes

The report focuses on articles 1, 2, 3, 5, 6, & 9 of the CEDAW convention and tries to articulate the emerging issues of FSW and TG Women SW relating to health and social justice and provide necessary recommendations.

¹ An consultation was conducted in Kathmandu on September 21, 2018. 22 participants participated in the program, including 10 FSW and 12 TG Women SW and TG women activists, representing 6 of the 7 provinces of the country. The discussion was held to identify the issues of FSW and TG Women SW and recommendations to protect and ensure their human rights.

Contents

Abbreviations 2

Introduction 3

General background:..... 5

Relevant articles of CEDAW 7

 Article 1, 2 and 3: Discrimination against Women, State Obligation and equal participation 7

 Discrimination in law and policies 7

 Police violence and misconduct..... 8

 Article 5: Negative stereotypes..... 8

 Humiliation by society: 9

 Humiliation by state..... 9

 Article 6: Exploitation of Prostitution 10

 Article 9: Nationality 10

 Article 12: Health 11

 Prevalance of HIV and STI 11

 Unsafe sex and less use of condom: 11

 Behavior of health workers:..... 12

 Condom and Lubricants: 12

 Expenses in blood test and medication 13

 Non disclosure of HIV..... 13

 Mental health..... 13

Recommendations 14

General background:

Nepal has not yet made any legal provisions regarding sex workers. The government does not recognize it as an occupation; neither does any existing law directly criminalize the profession.

Although there are no laws in Nepal criminalizing sex work specifically, there are some laws that were enacted throughout the 1980s that criminalize trafficking within and outside of Nepal that are used towards sex work. Many of these laws are sometimes interpreted to accuse sex workers as well, which comes from a lack of knowledge in the distinction between the sex trafficking scene and sex work. This distinction is one that is not truly understood; thus, many of the policies and laws enacted within Nepal against trafficking—many argue—should not be applied to sex work. Authorities and laws trying to stop true slavery—trafficking—get misapplied to sex workers, clients and others involved in the sex industry.

In 1986, the Traffic in Humans (Control) Act was passed in Nepal and was aimed at stopping trafficking in the form of prostitution. However, this act, like many others, proved to be ineffective, mainly due to the fact that the act was “largely aimed at criminalizing prostitution rather than curbing trafficking activities.”²

In 2007, the Human Trafficking and Transportation (Control) Act, criminalized prostitution, paying for sexual services and living of the earnings of prostitution by including it in the definition of human trafficking.³

The profession is not commonly acceptable in Nepalese society, but there are large numbers of female and TG sex workers in the country. A UNAIDS report 2017 estimated 67300 sex workers throughout the country.⁴

However, the government of Nepal has recognized the TG identity. Nepal was the first country in South Asia to recognize the identity of TG in 21 December 2007. 'Gender and sexual minority' are mentioned in article 18 (right to equality) and in article 42 (social justice) of the Constitution. The phrase 'gender identity' is mentioned in article 12 (citizenship ID) of the Constitution.

Despite the achievements in law, TG individuals face numerous problems regarding attainment of legal rights and establishing their dignity in the society. Moreover, TG Women SW face double jeopardy for being TG and sex workers both from state and the society. Lack of awareness in society about the identity of the TG and traditional and stereotypical mindsets hinder acceptance of TG individuals as part of society. Similarly, lack of awareness and sensitivity among service providers and law implementers on TG issues is also one of the prominent reasons of discrimination towards TG.

² Hennink, Monique; Padam Simkhada (2004). "Sex Trafficking in Nepal: Context and Process"

³ Human Trafficking and Transportation (control) Act, 2007, Article 4(1)(d). https://www.unescogym.org/wp-content/uploads/2017/06/Nepal_Human_Trafficking_and_Transportation_Control_Act_2007.pdf

⁴ <http://www.unaids.org/en/regionscountries/countries/nepal>

The government of Nepal has not still taken the issue of sex workers as a serious issue; as a consequence; their issues are not kept in a primary place in any of the reports presented to CEDAW. CEDAW itself has not addressed the issues of sex workers specifically in its sessions and the recommendation. Therefore, this shadow report is prepared for putting forward the issues of Female and TG sex workers of Nepal so that the matter is discussed in the 71th session of the committee with high priority.

Relevant articles of CEDAW

Article 1, 2 and 3: Discrimination against Women, State Obligation and equal participation

To comply with articles 1, 2 and 3 of CEDAW, the constitution of Nepal 2015 has amended some of the acts on gender equality and repealed 31 discriminatory provisions.

However, the state is unable to ensure the elimination of discrimination to FSW and TG Women SW. FSW and TG are neglected by their own family and community, not allowing them to participate in social and family functions. Families of TG individuals disown them from the family, they are looked down by the society, discriminated and humiliated at educational places, employers hesitate to provide employment to them; hence leaving them with no option but to adopt sex work.

Though the constitution of Nepal has recognized the identity of the TG, the non-discriminatory behavior does not exist in practice. The law enforcers are not yet sensitive enough to address the issues of TG individuals with gender sensitive lens.

Though Nepal has made a non-discriminatory constitution providing identity to TG, same sex marriage is not yet permitted. This is violating the rights of TG as assured by constitution. Do we always have to keep on fighting for acquiring our rights?

Simran, TG woman activist

Discrimination in law and policies

- Sex work is still not taken into legal consideration; no special law has been developed for regulating and monitoring sex works.
- Sex work is not identified as an occupation.
- Sex work and trafficking are conflated.
- Same sex marriage is not permitted.
- TG are still not included in the government mainstream by providing reservation for allowing them to fight for government jobs and other dignified jobs.
- The provision of social security allowance does not cover TG women.
- Even if the constitution acknowledges the existence of TG women, there is still difficulty in changing gender identity in citizenship. The long process of documentation and requirements of medical certificates makes it difficult to acquire citizenship as a TG.

Police violence and misconduct

My friend, who is also a sex worker agreed to engage in sex work with a client and went to a hotel. There, some staff of the hotel propositioned her for sex work, which she refused. They tried to force her for sex, so she ran away and made a complaint to police. Police made an investigation, but eventually imprisoned my friend for conducting sex work. This made us reluctant to report the cases of violence to the police.

Kamala (Name changed), FSW, Kathmandu

- Police arrest sex workers on false accusations of disturbing and polluting the surrounding environment.⁵
- Police do not give priority to the serious issues of sex workers such as rape, violence, theft, burglary, etc. Sex workers even hesitate to report such crimes against them due to non-supportive behavior of police and to keep themselves away from the reach of police.
- Police use condoms as an evidence of sex work to arrest sex workers, affecting their ability to practice safe sex.
- The practice of illegal arrest by police through false accusation, holding in police custody for more days for no reason and demanding deposits more than required for bail.
- Biased behavior of police against sex workers and TG women even if they are the victims and have not done anything illegal.
- There is also a tendency towards public shaming of FSW and TG women SW and their clients, not respecting their privacy and confidentiality.

TGs don't have any specific place for conducting our occupation. So they have to depend upon the popular spots of the city to find the clients. Police arrest TG for no reason and keep them for more days in custody. They demand more amount for bail and deposits. They even mistreat the activists advocating for the rights of TG. So, they have to take out a loan from their friends for the deposit and have to work even more for repayment of such loan. This causes them mental stress.

Simran, TG Women activist

Article 5: Negative stereotypes

I am a TG woman. I am not accepted by the society and even my family disowns me. In this situation, I have no any alternative than to adopt sex work for living.

Melina, TG Women SW

⁵ Though police cannot arrest sex workers on the basis of sex work, they arrest them on the basis of other acts. They create a false report of community members complaining about sex workers creating a disturbance. Mostly, they charge them against Public Security Act, 1989, violating public peace; Public Security Act 1989 Article 3.1. <file:///C:/Users/User/Downloads/NPL87501.pdf>

Article 5 of CEDAW confronts state parties to take all appropriate measures to eliminate prejudices and customary and all other practices based on the idea of inferiority and superiority or on stereotyped works of men and women.

However, efforts to eliminate such negative stereotypes towards FSW and TG women SW have not been adopted by the state. Sex work, though not completely illegal, is not accepted by the society and by law enforcers. Due to the stigma and the fear of being discovered by other society members, most of the FSW do not carry condoms with them, which increase their risk of HIV and other sexual diseases.

The traditional and social norms of the society do not accept the existence of any other gender apart from male and female. So, it is difficult to make people understand the identity and needs of TG. It is even harder for the TG Women to establish their individual identity in the society as the society considers all TG as one. Thus, FSW and TG women SW face humiliation in various sectors in public and private life.

Humiliation by society:

- FSW are not well accepted in society. They are not welcomed in private and public functions.
- FSW and TG Women SW are addressed by various humiliating and vulgar words.
- The children of FSW are humiliated in school by friends and teachers for being the child of sex worker.
- Members of society ask inappropriate questions, disregarding their privacy and confidentiality, to humiliate them.
- Sex workers are discriminated against by private landlords and lodges, who refuse to provide them room on rent after knowing their occupation
- Sex workers are discriminated against by private employers, and they do not have the opportunity for alternative employment or additional income generation opportunities outside of sex work.

My son is admitted to a private school nearby and the teachers and principle are aware that I am a sex worker. Even then, they ask me about the whereabouts of my husband to humiliate me. My son is also bullied by his friends for not having a father.

Mina, FSW

Humiliation by state

- FSW and TG women SW are humiliated by law enforcers while seeking support from government service mechanisms.
- Law enforcers are biased against them; hence making them difficult to file cases and get justice.
- FSW and TG women SW are discriminated against in public and government jobs.
- The biased behavior of law enforcers strengthens the stigma against FSW and TG women SW.

Article 6: Exploitation of Prostitution

The constitution of Nepal addressed the right against exploitation in Article 29. The country has also enforced Human Trafficking and Transportation (control) Act, 2008 to monitor and criminalize prostitution as trafficking and forced labor. However, the law fails to distinguish between voluntary sex work and trafficking which further violates the rights of sex workers. As a result, the state misdirects resources into policing and punishing consensual sex work rather than identifying people who are trafficked into sex work and providing them appropriate and necessary support. Over-policing of consensual sex work as part of so-called anti-trafficking initiatives exacerbates sex workers' lack of access to legal remedies or redress when crimes and violence are committed against them and erodes the efforts of sex workers fighting for legal and social recognition of their rights to dignity and livelihood. Therefore, there is a tendency of not seeking support from police or not report violence against them to the police.

This leads to increase in exploitation by various parties such as clients, brothel owners, employers, brokers, middlemen, and even by police. When clients do not make payment after taking service, sex workers cannot go anywhere to place a complaint against them. The large part of their income is being absorbed by the brokers and employers. They are not given full payment of their service, which makes their living hard and they have to work more than they can.

Due to the ambiguous legal status of sex work, there is no specified area determined for sex workers where they can freely conduct their occupation. There is always a risk of a police raid during their work. So sex workers have to keep on changing their places for conducting sex work, which increases their vulnerability to of exploitation and violence. Constant displacement leaves sex workers at high risk of not being paid or otherwise exploited by clients, violence, rape, murder, theft and other abuses.

Some of government and non-governmental organizations are taking initiatives for their 'rescue and rehabilitation' by providing them livelihood trainings to FSW. But the low income generating jobs they are trained for and offered are not very promising, and fail to fulfill the financial needs of the FSW; hence not being able to attract FSW to join the initiative.

Article 9: Nationality

The provision of nationality and citizenship in the constitution of Nepal remains discriminatory to women as women cannot provide citizenship to their children without mentioning father's name. If women cannot indicate the father of their children, they are provided with citizenship indicating "unidentified" for their father's name. Mostly FSW are suffering from this provision as they are being unable to provide their children with citizenship.⁶ For most of the children of FSW, either their father are

⁶ Article 11(5) of the constitution of Nepal, states that "the persons born in Nepal to Nepali mothers can acquire citizenship by descent but only if their fathers cannot be indicated" clearly means that the name and citizenship of father is compulsory or the mother should provide the evidence of father being unidentified, whereas the name and citizenship of mother is not mandatory. Our demand is that the mothers should have equal right to provide

unidentified, not in contact or don't want to give their name to those children, they are deprived of being citizen of the country and exercise the rights provided to citizens and are deprived of opportunities of education and employment.

Though government has identified the legal identity of TG, the process of changing their citizenship is not easy. They have to submit adequate legal and medical documents for verifying their identity. This leads them to face discrimination in acquiring citizenship and exercising their right as being a citizen of the country.

I am a Nepali National with two children. Why can't I provide citizenships to my children solely with my identity as men can? Where is the value of my identity when I still have to depend upon a man?

Shova, FSW Activist

Article 12: Health

Health is one of the primary issues of FSW and TG women SW. The constitution of Nepal, article 35 (right relating to health) ensures the right to free basic health service to every citizen. There are many organizations in Nepal that are working for the betterment of health of FSW and TG Women SW. However, they face numerous problems and discrimination relating to health.

Prevalence of HIV and STI

It is estimated that 2.1%⁷ of the FSW are living with HIV in Nepal compared to general population which has a prevalence rate of 0.2%.⁸ The percentage of the TG population living with HIV is even higher at 8.5%.⁹ Despite these findings, the majority of sex workers who are living with HIV are unable to access comprehensive care and treatment due to stigma and discrimination. The prevalence of STIs among FSW in Terai highway is more than 10%¹⁰. The percent of Female sex workers who had ever accessed an HIV test was 55.2 percent in Kathmandu Valley.¹¹

Unsafe sex and less use of condom:

Most FSW do not carry condoms¹² as they fear being recognized and harassed by police. The police even use a "used condoms" as evidence of sex work and arrest the sex workers.¹³ The non supportive behavior of the state discourages condom use and puts them in greater risk of pregnancy, HIV and sexual diseases-

citizenship to their children as men. The practice of mentioning "unidentified" in the citizenship is not suitable as it will cause humiliation and discrimination among children.

⁷ 1390 FWS out of 67300 are detected with HIV. <http://www.ncasc.gov.np/WAD2017/FACTSHEET-2017-FINAL/Factsheet-2-Reported-HIV-cases-2017.pdf>

⁸ <http://www.unaids.org/en/regionscountries/countries/nepal>

⁹ <http://www.unaids.org/en/regionscountries/countries/nepal>

¹⁰ <http://www.ncasc.gov.np/WAD2017/FACTSHEET-2017-FINAL/Factsheet-4-STI-diagnosis-and-treatment-2017.pdf>

¹¹ http://www.aidsdatahub.org/sites/default/files/publication/Nepal_IBBS_Factsheet_IBBS_FSWs_2017.pdf

¹² For instance, data from the IBBS 2017 Survey in Kathmandu Valley found only 38.8 of FSW consistently carry condoms.

¹³ <https://www.ippf.org/stories/there-are-around-40000-sex-workers-nepal-around-1300-are-living-hiv>

I am a FSW but I can't reveal my identity to my family and society, otherwise I will be disowned by my family and society. I know the risk of unsafe sex but I can't carry condom with me every time due to social stigma. On the other hand, if police discovers me with condom, I will have to deal with unwanted complications with police.

Sharmila (Name Changed), FSW

Behavior of health workers:

FSW and TG Women SW face discriminatory behaviors by health workers in hospitals and health centers. Once identified as FSW, the behavior of health workers becomes rude and disrespectful.

TG women are asked inappropriate questions to humiliate their dignity and identity. They are mistreated and even refused treatment for being TG. There is no proper education, awareness and sensitization to health workers on TG, therefore they cannot identify their needs and understand their problems and provide solutions accordingly. They are also suffering from traditional stigma and taboo that views TG not as part of society.

For reporting such behaviors, there is no proper complaint mechanism at or within healthcare institutions. Sex workers can complain of such behavior at a police station; this seems impractical, as there should be a complaint mechanism within the institution to address such issue. Even if they file a complaint of such discrimination to police, their complaints are not taken seriously and no further investigation is done.

When I was detected with STI few years back, even doctors neglected me and avoided my treatment. They even didn't tell me that it is a curable disease. I was bound to live with humiliation and mental torture for long time along with physical pain. Later, an NGO supported my treatment and I realized that it was a curable disease.

Rihana (Name Changed), TG Woman activist

Condom and Lubricants:

Condoms and lubricants are the most important devices for the FSW and TG Women SW to safeguard them from unwanted pregnancy, HIV and STIs. The government distributes free condoms through public health centers and medical shops. However, getting free condoms is always not very easy for SWs. They have to face humiliation by the health workers and distributors while demanding free condoms. Medical shop owners are reluctant to distribute it for free and they do not keep those free condoms in public or even sell it.

Lubricants are not distributed freely by the government. Though, some of LGBTI rights organizations distribute it for free, the quantity is inadequate and they have to buy it.

Promotion of use of condom and lubricants to prevent HIV and STI is not being significantly done by the government and no plans and strategies has been developed to increase the use of condom and lubricants by FSW and TG Women SW.

Expenses in blood test and medication

As government assures free basic health right to all citizens, antiretroviral therapy (ART) is free for all HIV patients. However, expenses are incurred in blood test and other tests for identifying and managing HIV and other medications for STI is comparatively high, especially for low earning FSWs and TG Women SW. So, it is hard for low income FSW and TG women SW to identify their disease and have proper treatment.¹⁴

Even if some of the NGOs provide free blood testing, the risk of being identified as a person with disease and being discriminated and humiliated by their own community impede sex workers' access to these services.

Non disclosure of HIV

FSW and TG Women SW are reluctant to have routine blood tests. They fear that if they are identified with HIV or STI, it would negatively impact their occupation and they would be disregarded by the community. Therefore, many FSW and TG women SW are living with HIV or have an STI, and there is a significant number of FSW and TG women SW living with HIV who do not know their status.

Mental health

Mental health is one of the important, yet neglected aspects of overall health of FSW and TG women SW. There are numerous factors that affect the mental health of FSW and TG women SW, which lead to anxiety, depression, mental retardation and even lead to the condition of committing suicide. The major causes that deteriorate mental health of FSW and TG Women SW are:

- Social humiliation and non-acceptance by society
- Negative stereotypes
- Unclear legal provisions and lack of a proper environment to conduct their occupation freely
- Police harassment and unauthorized detention
- Humiliation and harassment by service providers
- Frequent detention and costly penalties, fines and deposits demanded by police and court from FSW and especially to TG women SW; which deteriorates their economic condition and compels them to engage in more in sex work to compensate for the expenses
- Humiliation due to infection with HIV and STI
- No legal provisions for same sex marriage, which causes them to involve with multiple partners and thus negatively impact their mental health

¹⁴ According to IBBS Surveys conducted among FSW in three different regions of Nepal in either 2016 or 2017, the percentage of FSW who visited an STI clinic in the last 12 months ranged from 7.6% to 37.3%.

Recommendations

This report recommends to the CEDAW Committee to call on the Nepali government to take the following action directed towards the rights and wellbeing of FSW and TG women SW:

- Establish strong initiatives to eliminate negative stereotypes and harmful practices against FSW and TG women SW and formulate a strong plan to integrate FSW and TG Women SW into society, including through provision of education opportunities and access to other occupations.
- Amend the provision in the “Human Trafficking and Transportation (Control) Act, 2064(2008)” that conflates sex work to trafficking.
- Take measures to stop harassment by the police, including false accusations, use of condoms as evidence, unauthorized detention on the basis of false evidence, putting in custody for longer time, and demand of higher amount for bail.
- Increase in awareness raising activities to make police, health professions and other service provider sensitive to FSW and TG women SW.
- Establish appropriate mechanism for lodging complaints on harassment, violence and exploitation of SWs, including by the police and healthcare workers.
- Establish appropriate measures to raise awareness and safeguard FSW and TG women SW against HIV and STI.
- Mainstream the issues of FSW and TG Women SW in the National Health Policy.
- Provide reservations for LGBTI community in government mechanism.
- Respect Sex workers privacy and confidentiality.
- Amend the provision of nationality so that children of FSW and TG women have easy access to citizenship and rights associated with it.
- Amend law to permit same sex marriage.