

The Convention for the Elimination of all Forms of Discrimination
Against Women
(CEDAW)
71st Session Geneva 19-23rd October, 2018



Follow Up Report

Submitted by:

Society for Women Awareness Nepal (SWAN)

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Abbreviations

NSWP	:	The Global Network of Sex Work Projects
CEDAW	:	Convention to eliminate all forms of Discrimination against Women
FSW	:	Female Sex Workers
HIV	:	Human Immunodeficiency Virus
JMMS	:	Jagriti Mahila Maha Sang
STI	:	Sexually Transmitted Infections
SW	:	Sex Workers
SWAN	:	Society for Women Awareness Nepal
TG	:	Third Gender

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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.

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 TG Women SW
- Social justice in relation to stigma and negative stereotypes

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

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.

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

Process of Consultation with Sex workers:

NSWP sponsored SWAN for to conduct a CEDAW consultation meeting with cisgender and transgender female sex worker representatives from six regions throughout Nepal. These representatives met in Bagaicha Restro, Jawalakhel, Lalitpur, Nepal and were invited to share ideas regarding issues that impacted on female sex worker and TG Women sex workers, and which should be included in a shadow report to CEDAW. We did not direct these representatives through use of a formal template but rather encouraged them to express freely their ideas to capture a broad spectrum of issues. In this process, through group work on the issues participants faced and narrative information sharing, we managed to capture a sense of key issues. It became apparent that there were key issues that we all agreed were most important and would go into our shadow report to the CEDAW committee. The key issues that female sex worker and TG Women sex workers representatives raised related to relating to health and social justice.

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, who do not allow 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.

NSWP supported SWAN to finalize the CEDAW shadow report in time. NSWP contacted with SWAN in September 2018 and SWAN has only 4 weeks' time for final report submission. SWAN need to selected consultant for shadow report writing and conduct consultation meeting and we do it. Instead of time limitations we cannot go through all area of Nepal and collect the at least one participant in Kathmandu from six providence out of seven. There was so much back and forth with NSWP, and SWAN has addressed all comments of NSWP and finally submitted to CEDAW committee.

A general summary of the experiences of the sex worker representatives before the CEDAW Committee:

Day one & Two (Oct 19-20): Training with IRWAW:

Shova Dagol and Simran travelled to Geneva to present their shadow report and represent sex workers in Nepal. Prior to the session, they attended the IRWAW-AP Global to Local Training. The training itself is an important training for activists who trying to raise their voice in different international platform. The training was informative, providing clear information about the functionality of office of the United

Nations high commissioner for Human Rights (OHCHR), CEDAW and CEDAW committee. Personally, Shova Dangol and Simran learnt many things through this training. The first three days of Shova and Simran's time in Geneva, they learned basic information of CEDAW, why it is important, its background history and methodology, process linking, networking and opportunities. They also learned how to prepare oral statements, and the training's mock session help to build confident.

Day Three (Oct 21): Coordination Meeting with NGOs & CSOs of Nepal Organized by IRWAW:

At the end of the final training day, IRWAW organized an NGO Coordination Meeting with Nepal's Civil Society Organizations (CSOs) were overwhelmingly more than 70 people participated. Through this meeting, Nepal's CSO delegates decided who were going to present their statement front of CEDAW committee in lunch briefing meeting and NGO briefing meeting. It was tough to claim a space to deliver our issues, because the majority wanted to keep their priority issues and luckily, we were able to secure our space after fighting for this in a moral way.

Day Four (Oct 22): Developed a position oral statement and lunch briefing:

On 22nd October 2018, SWAN and JMMS³ jointly developed an oral position statement, which was delivered during the lunch briefing meeting by JMMS and during the NGO briefing meeting by SWAN. Participants actively participated during both meetings. SWAN distributed the oral position statement paper to the CEDAW committee and other participants. During the lunch meeting and NGO briefing meeting representatives of sex worker raise the voice of sex worker, which is as follows:

71st Session of the Committee on the Elimination of Discrimination against Women – Review of Nepal Joint Statement by

Society for Women Awareness Nepal and Jagriti Mahila Maha Sang

Delivered by Nabin Sherchan (22 October 2018)

Good Afternoon Madame Chair, I am representing Female and Transgender Sex Workers the Key Issues are as follows:

1. Regardless of decriminalization of Sex Work in Nepal, Female Sex Workers, including transgender sex workers, are marginalized and facing multiple forms of discrimination.
2. Sex workers are being neglected by the community in any social functions and occasions. They are being discriminated in education and employment, and their children are being humiliated by society.
3. The law fails to distinguish between voluntary sex work and trafficking. As a result, the state misdirects resources into policing and punishing consensual sex work rather than identifying and supporting trafficking victims. Police harass and arrest sex workers for no reason. Because of this, sex workers cannot practice safe sex habits and have to face problems such as physical violation.

³ JMMS is another sex worker organization in Nepal and its National Network of Female Sex Workers.

4. The prevalence of HIV among sex workers is significantly high. Sex workers do not get proper health education and health care from government; they face discrimination by health workers. They face harassment by police for carrying condoms. They cannot afford regular blood tests and health checkups.

Therefore, our recommendations are:

1. Take measures to eliminate negative stereotypes, discrimination and stigma against female and transgender sex workers.
2. Take measure to stop harassment and exploitation from police, employers, clients and society and provide them access to justice and rehabilitate (socialize) in community.
3. Formulate a separate law to control sexual exploitation of female and transgender sex workers.
4. Ensure sex workers have access to HIV services and expand sexual and reproductive health services, education and labor protections throughout the country.

After delivering the statement to CEDAW committee, different NGOs representatives spoke about different issues and then there was time for question and answer i.e. CEDAW committee asked the question about whether sex worker organizations had talked with the government about sex worker issues, including decriminalisation and other ways issues. Representatives from sex workers said that due to the discrimination and some other factors this has still not happened. There was not sufficient time to answer completely during the session, so we sent a full answer to the question via email to CEDAW committee via email which was as below:

Dear Sir,

I would like to give response on the question of Sex Workers Issues raised by CEDAW Committee member.

Discussion on decriminalization of sex workers with the government.

Specifically, we had discussion on the decriminalization of the sex worker rights with government since 2006 through various formal and informal meetings and forums. Sex worker organization and activist advocate to improve legal protections for the human rights of sex workers; argued for the new constitution of Nepal to include consideration of sex workers rights to security and non-discrimination and conducted advocacy seminar with stakeholders and government bodies.

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 professions. Although there are no laws in Nepal criminalization sex work specifically, there are some laws that were enacted throughout the 1980s that criminalization trafficking within and outside of Nepal that are used towards sex work and in 1986, the Traffic in Human (Control) Act was passed in Nepal and was aimed at stopping trafficking in the form of prostitution.

Criminalization makes it harder for sex workers to access health services, safety negotiate with clients, carry condoms without fear that they will be used as evidence of prostitution and difficult for sex workers to report the rights violations especially by police which continue stigma, violence which further endanger their health and safety.

Legalization creates narrow regulatory regimes based on other concerns and objectives, such as the health of clients, taxation or public morality. As a result, legalization may include regulations that limit sex workers rights and protections, such as mandatory HIV testing. These may further stigmatize sex workers.

So, decriminalization to be the most effective way to ensure their rights, to end police violence, ensure access to legal services, increase access to appropriate social services and reduce HIV infections among sex workers.



Simran Sherchan (transgender) delivered the oral statement female sex workers and transgender sex workers issues which was lived by meeting hall.⁴

Other NGO representatives Tulsa Lata Amatya also spoke on issues of Sex Work in her statement in NGO briefing - "sex worker and LGBTI who couldn't have and also transfer citizenship to their children her demand was no discrimination to have citizen in mother name also choice of right to marry."

Day Five (Oct 23):

On the date of 23 October 2018, the committee conducted a review of Nepal with the Nepal Government's high-level delegation, which was headed by Her Excellency, Ms. Tham Maya Thapa, ministry of women, children and senior citizen and included representatives of law, justice and

⁴ https://www.youtube.com/watch?v=30p_2dio2u8&t=10s

parliamentary affairs and permanent mission of Nepal to the United Nations offices and other international organization in Geneva.

National Women Commission of Nepal was planning to conduct national stakeholders meeting on issues of women and rights and they has promised to include violence against and extortion of sex workers, and to eliminate discrimination they faced in access to justice and health services.

Concluding Observations

The CEDAW Committee included the following recommendations for the Nepal Government:

Concluding Observations - General

The committee welcomes the progress achieved since the consideration in 2011 of the state party's combined fourth and fifth periodic reports (CEDAW/C/NPL/4-5) in undertaking legislative reforms, in particular the adoption of:

- a) The Right to Safe Motherhood and Reproductive Health Act, in 2018;
- (b) The Sexual Harassment at the Workplace (Elimination) Act, in 2015;
- (c) The Act to Amend Some Nepal Acts for Maintaining Gender Equality and Ending Gender Based Violence, in 2015;
- (d) The Witchcraft-related Accusation (Crime and Punishment Act), in 2015.

The Committee welcomes the State party's efforts to improve its policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption of the following:

- (a) The Agriculture Development Strategy, 2015, with defines the achievement of gender equality in agriculture as an integral component;
- (b) The Election Commission's Gender and Social Inclusion Policy, 2013, which seeks to achieve gender equality at all stages of the electoral process;
- (c) The National Strategy and Action Plan for the Elimination of Gender-based Violence and Women Empowerment, 2013;
- (d) The National Action Plan against Human Trafficking Especially of Women and Children, 2012.

Concluding Observations on Sex Work Legislation and Police Violence

The Committee recommends that the State party:

- (a) Formulate a comprehensive policy, legislative and regulatory framework that ensures monitoring and legal protection from exploitation of women who engage in prostitution, and ensure that they are not prosecuted for engaging in such activities;
- (b) Investigate, prosecute and punish law enforcement officers for the harassment and extortion of women in prostitution, and ensure that victims are provided with gender-sensitive protection and support;
- (c) Strengthen exit programmes for women who wish to leave prostitution

Concluding Observations on Healthcare for Sex Workers

38. The Committee...is concerned, however, that...There is persistent discrimination by healthcare providers against Dalit women, indigenous women, women with disabilities, LGBTI, women in prostitution and women from remote areas.
39. The Committee recommends that the State party...End discrimination by health-care providers against Dalit women, indigenous women, women with disabilities, LGBTI, and women in prostitution, by raising their awareness, with the support of Female Community Health Volunteers, on the rights of these groups of women and encouraging reporting.

Conclusions and Future work:

After attending the CEDAW , our strong suggestion for other sex worker who will go to Geneva to the CEDAW committee is that they should identify the most burning issues which must be addressed. They need to collect much evidence and develop a, specific and short statement and must to demand the space for it and voice the experiences of their community loudly in Geneva. List out the issues and recommendations that they would like the CEDAW committee to make and advocate for it.

The concluding observations is one of the advocacy tools for us for to use as evidence advocacy of what the government has said and what recommendations have been made from committee.

After the attending the CEDAW meeting, we internalized that we should make our clear vision and stand for it and collect the support and collaborate with others to gather information and create advocacy reports. For this reason, we were again trying to re formulate RIGHT to HEALTH women's group which was a form for advocacy and collect the data within the group of Key Affected women, which SWAN is a member of. In addition, Shova Dangol is a Global Fund country coordination mechanism (CCM) alternative member from the sex worker community, so she will use recommendations of the CEDAW committee for advocacy in this role.