CEDAW List of Issues

Submission by Sex Workers and Allies South Asia – Sri Lanka

**General**

Women, people who identify as women and trans-persons in sex work in Sri Lanka are defined as adult consenting persons who exchange sexual services for money. They are extremely stigmatized and face multiple discriminations because of being in sex work. In addition to the extreme social marginalization, they are absent from the ambit of government social safety nets and are unable to access justice and exposed to high levels of violence from State and non – State actors.

General Recommendation 19 recognizes that people in sex work are especially vulnerable to violence because of their status, which may be unlawful and subject to social stereotypes and that tends to marginalize them. It specifically underlines that people in sex work need equal protection of the laws against rape and other forms of violence. It clearly articulates the need for State Parties to review laws and policies and to take positive measures to eliminate violence against people in sex work.

The participation of sex worker communities or organisations in consultations with the state on CEDAW related issues have not happened. Further, the framework of Trafficking and Prostitution being the only available way through which sex workers’ lives are to be addressed does not represent sex workers’ lives. We submit this list of issues and questions in the hope of inclusion of sex workers themselves and sex workers’ issues in the CEDAW process in Sri Lanka.

**Discriminatory laws**

Vagrancy Act

We welcome the ongoing process of amending the Vagrants Act and the acknowledgement of the misuse of the law by police officers to subject women to violence[[1]](#footnote-1). However, women who face this violence have not been consulted in this process. Such participation is imperative. Further, this law is also used against the Transgender Community in Sri Lanka, some of whom are engaged in Sex Work. We would like to urge that the colonial nomenclature used within this law has created confusion and has made both the letter of the law and the use thereof being violative of the CEDAW. Beyond amendment, we urge for a consideration of the removal of this law and a future process of identifying legitimate crimes that this law may have helped address and put in place efficient and clear legislation for those purposes.

Brothels Ordinance

This law that remains unaddressed within CEDAW proceedings thus far in Sri Lanka and is also used to victimize sex workers in a similar manner as the Vagrancy Act. This law is used to repeatedly criminalise sex workers thus compounding their punishment. The fines levied are a huge financial challenge and being wrongly implicated in crimes prevent sex workers from being able to pursue social and economic stability.

Misuse of Drug Laws

Sri Lanka has been cracking down upon drug sale and usage in the country. Much of this cracking down involves a quota to police stations to fill in terms of the number of cases they must compulsorily file. Sex Workers have become easy targets for local policemen to fill the quotas. Most, if not all of these arrests are wrongful.

Cheating and impersonation

Sec 399 of the Sri Lankan Penal code that addresses ‘cheating and impersonation’ is used against trans folks. In spite of positive developments in Trans people being able to access relevant medical care to ensure their medical transition to their chosen gender, this process takes time. This law is unjustly used in the interim period or against those who choose not to transition medically but identify as trans. Any person identifying as trans at huge social cost must not be further violated by the use of this law.

Trafficking

Under both 360C of the Penal Code and the Act that gives effect to the Trafficking convention, women are viewed as the perpetrators rather than the victims of trafficking. This subjects sex workers to sexual and gender-based violence and violates their right to work freely. It also does not address the problem of trafficking adequately. The framing of ‘Trafficking’ as the only way to understand sex work is not conducive to ensuring the rights of sex workers or addressing the problem of trafficking. The separation of the two among state officials and security forces is essential to ensure both these essential changes.

**Access to Justice**

Sex workers are denied access to legal services and representation as they are not able to afford it and due to social stereotypes and stigma. They are often forced to rely on local lawyers who treat them unfairly, provide sub-par legal services and push them further into penury with their legal fees. In a context where sex workers’ rights will continue to be violated under the above-mentioned laws, it is imperative that the Sri Lankan state ensures easy access for them to state provided legal services without any discrimination or stigma.

Efforts to build capacity among all those that are part of the judicial system on CEDAW must specifically including the issues of sex workers and their status as a particularly vulnerable group that is to be protected under CEDAW.

**Stereotypes and Social stigma**

Sex workers often are engaged in their work in a secretive manner. Those in their own families and communities view them through social stereotypes and enact stigma upon them. Their children are also forced to face the brunt of these stereotypes and stigma and are not able ensure their education and future employment. These stereotypes makes sex workers, women and trans folks, vulnerable to sexual and gender based violence without any recourse to turn to – legal or social.

Many sex workers seek to work in larger urban settings in order to avoid such stigma. This internal migration, sometimes in places where they may not know the language. This further compound their vulnerability.

Multipronged stereotyping and stigma against Transgender Sex Workers

Transgender sex workers fight the battle to live in their chosen gender, access health care, ensure proper government documents in their chosen gender etc. also have to face social stigma for engaging in sex work thus making them vulnerable to sexual and gender-based violence.

**Denial of existing state provided safety nets**

Sri Lanka prides itself on a holistic state provided social safety net that is to address all essential needs of a citizen from birth until death. Sex workers are unable to access these services in all parts of the country. The stereotyping and stigma mentioned above is rampant among government officials at every level, including at the local level. Sex workers who are widowed, abandoned and single mothers who fall within the ambit of these measures are unable to access them. They are unable to access support extended to older persons, persons living with disabilities etc. even when they fulfill the conditions of the category. Sex workers fall very much within the ambit of those living in poverty that this safety net is meant to address. Their inclusion within this system is imperative.

Specific denial of such rights to Transgender sex workers

Transgender sex workers face a similar plight but it is further compounded by non-recognition of their chosen gender by local government officials. Presenting of government documents with their gender is reducing these challenges to some extent but not in entirety.

**Health**

We welcome the addressal of health of sex workers within the ambit of HIV, where information and condoms have been provided for them to engage in safe sex. The main point of contact for this work has been the Sexually Transmitted Diseases Clinic in government hospitals all over Sri Lanka. In many parts of the country a visit to the STD clinic in itself has become a reason to enforce stereotypes about sex work on a woman or transgender person. Given the social stigma attached to sex work many sex workers access the clinic less and less. Further, the clinics which were earlier in their own separate premises have been moved within the main hospital premises in most parts of the country. This is not conducive to battling the social stigma and accessing essential health care.

Sex workers’ health beyond sexual health has not been a priority to health services. They have not been included in the effort at the local level by the Ministry of Health to disseminate information on sexual and reproductive health. Many workers have faced discrimination while accessing basic reproductive health services at the hospital. They have been denied services like that of a midwife during pregnancy that is extended to all other women in Sri Lanka.

Social stereotyping and stigma has meant profound harm to the psychosocial welfare of sex workers. This very stereotyping and stigma denies sex workers the right to access psychosocial care that is provided through the state.

**Education**

The level of education in Sri Lanka is high. However, children of sex workers are forced to discontinue their education. One of the main reasons cited for this is the stereotyping and social stigma they have to face from teachers, school officials and parents of fellow children. In spite of excellent mechanisms to ensure that all children in Sri Lanka continue their education till the end of school, sex workers’ children are often ignored and fall through the gaps. Poverty in their households impinges upon their education. This reality which has now expanded to a large number of children in Sri Lanka in the current economic crisis has been a continuing reality for the children of sex workers.

**Women, peace and security**

Sex workers in post war areas must be explicitly included within the challenges already identified for all women who have survived the war. This includes issues of Internally Displaced Persons, denial of land rights, lack of adequately developed health care facilities in rural areas etc. The primary ongoing issue is that of surveillance by the state. Sex workers are easy targets for local investigative officers who use their power to intimidate and exploit sex workers regularly.

**Impact of the COVID and economic Crisis**

Many existing challenges have been exacerbated due to the pandemic and the ongoing economic crisis. Beginning with when most people in the country were in queues for essential goods for weeks on end, sex workers have been facing brutal violence from the general public and law enforcement. They have been pushed into even more precarious and dangerous working conditions given their economic desperation and the collective frustration that prevails in the country. In the absence of any safety net many sex workers and their dependents have been pushed into starvation. Many among them are unable to recover from the debts they are incurring to survive. The limited supported provided by the state during these periods of crises could not be accessed by sex workers as they were not within the ambit of the state’s social safety nets. Money, dry food items and other such assistance that was provided did not reach sex workers’ homes although they are amongst the communities living in dire conditions of poverty.

Misuse of quarantine laws

During the COVID crisis, Quarantine Laws that were enforced by the armed forces was used on sex workers to harass and detain them illegally. They were often separated from their children during such a difficult time and were unable to engage in any work for weeks on end, thus causing starvation.

**Employment**

The Government’s commitment to extend protections under existing laws to women working in the informal sector must extend to women and trans folks engaged in sex work. Sex work must be acknowledged within the ambit of work in the informal sector. Demand for Sri Lanka’s ratification of Convention 190 further strengthens this possibility with its sound definition of a worker and a workplace. Through this inclusion sex workers must be extended fundamental labour rights and be ensured safe and fair working conditions.

**Questions / Issues:**

1. Can the State furnish evidence that it has respected, protected and fulfilled the rights of women and trans persons in sex work? Can it prove it has not violated the human rights of sex-workers through violence by security officials and denial of adequate legal measures? Has the State sufficiently protected the rights of women in sex-work by addressing violence, stigma and discrimination by non-State actors?
2. Has the State made all available resources for the betterment of lives of women in sex work and their children, along with upholding the dignity and human rights of those in sex-work?
3. What measures has the State taken to prohibit all forms of discrimination against sex-workers?
4. What measures has the state taken to specifically include sex workers within the ambit of women in all its measures to address sexual and gender-based violence, conflict related violence, in ensuring fundamental right to health, education, employment etc. including within temporary measures to enable women to emerge out of the extreme duress of the COVID crisis followed by the economic crisis?
5. What measures has the state taken to eradicate stereotypes that are used against sex workers by state and non-state actors that make them vulnerable to sexual and gender-based violence and deny them basic dignity and human rights?
6. What measures has the State taken to ensure the full participation and benefit for women in existing state provided social safety nets (Samurdhi, old age pension, disability benefit, benefit for pregnant mothers etc.) so that these programs may truly reach all those living in poverty that they are intended for?
7. What measures have been taken to ensure equal access to health care, education and employment to sex workers without stigma and discrimination against sex workers?
8. What measures has the State taken to ensure elimination of discrimination from the lives of sex-workers? How has it complied with General Recommendation 19 in the case of sex-workers?

1. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsvxlfhYepfIYmW0eRMA3oVv2xdJzsZtTKN8eK75C1iNQooF9AirTXDj9HawjktCVHiHVE%2FeyPxza7u8nj4xb4QOhA17MaQIRCSWAB%2BvAO4ka> [↑](#footnote-ref-1)