

《消除對婦女一切形式歧視公約》與港府的國際形象

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《消除對婦女一切形式歧視公約》是一項有關兩性平等的國際公約。聯合國在 1978 通過議案，公約於 1981 年起生效，確立規則保障婦女在政治、法律、工作、教育、醫療服務、商業活動和家庭關係等各方面的權利。中、英兩國在公約訂立之初已為締約國，但直至 1996 年，公約才在中、英兩國同意下引入香港。

根據公約第 18 條，締約國有責任在公約對該國生效後一年內以及在以後至少每四年一次，向「聯合國消除對婦女歧視委員會」提出報告，說明已採取何種措施來落實《公約》；而委員會也有權在審議報告後提出建議。委員會除了接受各成員國的政府報告外，也接受非政府組織提供的資料。

理論上，就公約提交報告，乃為締約國徹底審視國內兩性平等狀況提供了一個絕佳機會，而由各國資深人士所組成的委員會在審議報告後提出之建議，則既具國際視野亦富參考價值。然而，港府在 1999 年就公約提交第一次報告後，卻未有認真參考跟進委員會提出的結論意見，令本港在確認婦女權益及發展上一直原地踏步。

就以性工作者權益為例，委員會在 1999 年給予港府的結論意見中提及在本港「賣淫本身並非不合法，但（港府）保障色情業者健康和安全的規定不明確，在對有關犯罪執法方面可能會歧視婦女」。可是，港府多年來對有關建議卻是置若罔聞，警方持續以不公平手法對待性工作者，例如：

- 不論事實是否先由顧客唆使，都只針對性工作者，控以「為不道德目的而唆使他人」之罪名。
- 不論有否真正提供性服務，都以懷疑在港從事賣淫活動為由，不經正式起訴而強行將從內地或外地來港女子遣返原居地。
- 藉「查牌」之名滋擾一樓一性工作者，容許警員在放蛇時索取免費手淫服務。
- 剝削性工作者作為一般被捕人士的權利，出現性工作者在被拘留期間未能致電親友或律師求助、被迫簽署口供、甚至不獲准許上洗手間的多宗案例。

去年警方將被懷疑性工作者囚禁於戶外大鐵籠「公開展覽」，其後又出現性工作者以死控訴警員濫權打壓的「李婉儀案」，都清楚反映出警方在執法過程中，存

在極大的檢討和改善需要。然而，港府卻無視本地輿論批評，未有深入調查上述事件，做法就如較早前就公約提交的第二次報告中，刻意避開委員會就執法程序可能會歧視婦女（性工作者）的關注一樣，明顯企圖淡化議題。

聯合國將在今年八月審議港府就公約提交的第二份報告，並明言會特別關注性工作和人口販賣，以及同值同酬兩個議題。屆時港府多年來罔顧委員會建議，毫無改善問題之意，定必被非政府組織和傳媒所揭露。是否要挽回本港的國際形象，則要看出席官員屆時能否誠懇地與委員會及非政府組織展開對話，正視問題，真正作出改善了。

Alternative CEDAW Report of Hong Kong Special Administrative Region of China on the Issues Concerning Sex Workers

Prepared by Action for REACH OUT* (HKSAR)

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1. RECOMMENDATIONS:

- 1.1 The HKSAR Government has to review law execution procedure by police, immigration department and courts, to guarantee that all formal procedures are properly followed and equal rights of sex workers are protected.
- 1.2 The HKSAR Government has to immediately stop law enforcers from abusing rights of sex workers.
- 1.3 The HKSAR Government has to prohibit police officers from receiving any kind of sexual services during undercover operation.
- 1.4 The HKSAR Government has to investigate and follow up complaints of unfair treatment against sex workers and/or abuse of their rights by police, courts and other government departments. Complaints have to be handled by an independent mechanism and disciplinary act has to be taken accordingly.
- 1.5 The HKSAR Government has to review using condoms as supporting evidence in courts for prosecution against sex workers, to ensure that sex workers are able to safeguard their health, yet enjoy fair and just treatment under the law.
- 1.6 The HKSAR Government has to promote public education to de-link STDs/AIDS from sex work and eliminate discrimination and stigmatization against sex workers.
- 1.7 The HKSAR Government has to establish effective mechanism of communication between concerned NGOs and related government departments (i.e. Hong Kong Police, Department of Justice, the Judiciary and Immigration Department), to guarantee that sex workers are able to enjoy fair and equal treatments under the law and their needs of adequate services are met.

2. ANALYSIS:

Situation of workers in different sectors of sex industry could vary. While some sex workers in Hong Kong may be able to achieve an acceptable or even admirable living standard, as what the general public may assume, many other sex workers, especially migrant sex workers from Mainland China and other Asian countries e.g. Thailand, the Philippines, India etc., are indeed surviving in a condition of poverty. They can hardly sustain a basic living for themselves and their families. Unfortunately, law enforcers i.e. police officers, prosecutors, judges etc. discriminate, stigmatize and mistreat them. Some politicians marginalize and suppress them to earn political scores. This leads these women in poverty to an even more vulnerable situation.

The daily threat of arrest and imprisonment, in which quite a lot of unfair cases, makes sex workers difficult to sustain their livings.

2.1 Work Rights Being Exploited

According to Hong Kong Law, a resident being a sex worker is not illegal, however, work rights of a sex worker are often exploited. They are always being discriminated, unreasonably arrested and mistreated by law enforcers. For instance:

- Streetwalkers get arrested when they are simply walking on the street without any purpose of “soliciting”.
- Police and courts often assume that streetwalkers must be the ones who solicit and thus guilty. But in certain occasions, customers are the ones to solicit. The spirit of “Soliciting for an immoral purpose” is simply being ignored.
- Some police officers, during undercover operations, solicit sex workers to perform certain sexual service e.g. masturbation (which is in the end unpaid) to “collect evidence” for prosecution.
- Women who work independently in a “one-woman brothel”, which is legal according to the law, are harassed by the police. Police officers frequently “check out” their workplaces without notice and intervene their work. Not only this scares away their customers, affects their work, undoubtedly, it also exploits their work rights.

2.2 Migrant Sex Workers Being Marginalized

People who enter Hong Kong with tourist visas may be charged for “Breach of Condition of Stay” if they engage in any form of work in Hong Kong. Therefore, sex workers from Mainland China or other countries who enter Hong Kong with tourist visas become more vulnerable and are further marginalized. There are cases reported to AFRO that:

- Migrant sex workers are stopped on street for I.D. inspection and the rooms they rented as living quarters are raided without being told the reason.
- When migrant sex workers are found with no HKID but valid papers for traveling, without proven evidence, they are immediately arrested and charged with “Soliciting for an immoral purpose” and/or “Breach of condition of stay”.
- In these cases, condoms found in handbags or rooms are usually produced in court as evidence for proof of “Soliciting for an immoral purpose” or “Breach of condition of stay”.
- In some occasions, migrant sex workers are spotted by immigration officers and sent back straight to the place of origin WITHOUT TRIAL, simply because their stay in Hong Kong is defined as “un-welcomed”.

As a result, sex workers, especially migrant sex workers, are afraid to reveal their work identity and seldom report crime against them to the police, e.g. clients refusing to pay, theft,

threatening, robbery, or even cases of severe violence such as physical assault or rape.

2.3 Basic Human Rights Being Unprotected

At the police stations or offices of the Immigration Department, many sex workers fail to enjoy the entitled rights upon arrest and questioning. There are cases reported that the following rights to which sex workers are entitled to are taken away:

- The right of remaining silent
- The right of making phone calls to friends, families and/or lawyers for help
- The right of requesting an interpreter if needed
- The right of requesting toilet facilities and break to rest during questioning
- The right of refusing to sign the cautioned statements

In the court, statements given by sex workers carry less credit. Once a judge even told a sex worker that he would not trust her simply because she was a sex worker! Further, it was reported in a research conducted by the Hong Kong University that the average hearing time in court per female sex workers from Mainland China was only 3 minutes!

In 2005, situation of female sex workers has moved backward. There was an arrest of over hundreds of women being suspected prostitutes from Mainland China were caged in an open area where reporters/media could easily take photographs from an opposite building is a violation of human rights and privacy. The cage did not offer toilet facilities, rest area and the women had to sit on the floor in an open area over 12 hours. These women do not enjoy equal access of respect and protection under such circumstances and were guarded by male police. Such serious violation of women's right must be brought up beyond local level.

Also in 2005, a sex worker who was accused by the police of intimidation, blackmailing and assault with intent to commit offence on police officer committed suicide to save her reputation. Her family publicized the incident and disclosed her complaint against police officer's requesting unpaid sexual service from her per her last wish. A complaint has been filed to the Complaints Against Police Office (CAPO) and the incident is still under investigation. However, as CAPO is not an independent mechanism processing complaints against police but a division under the Hong Kong Police Force, its transparency, reliability and creditability has long been questioned and challenged.

2.4 Discrimination and Stigmatization

Sex workers are being severely discriminated, stigmatized and attached by the public as well as the Government to STDs/AIDS. This "general perception" is already proven invalid by statistics. Discrimination and stigmatization negatively affect the mental health and well-being

of sex workers. Although condoms are generally used for STDs/AIDS prevention and birth control and condom use is promoted by Social Hygiene Clinics under the Department of Health and other institutes, they are commonly used as supporting evidence in courts for prosecution against sex workers. This is simply unreasonable and unjust.

2.5 Conditioned Service

Service/support provision by family service centers was inappropriate for female sex workers without taking into consideration of the nature and specific needs of this marginalized group. Most importantly, the “*Second Report on the Hong Kong Special Administrative Region under the Convention on the Elimination of All Forms of Discrimination against Women*” (the Government Report) submitted by the HKSAR Government mentioned that “Assistance such as financial relief, psychological service, vocational training, employment service and housing assistance can be arranged to help them (sex workers) tide over the hardship they may encounter upon giving up prostitution”. Considering the fact that a resident being a sex worker is not illegal, the above-mentioned conditional offer of service is unacceptable.

Since April 2002, the HKSAR Government levied a fee, which is seven times higher than the usual rate for non-local residents who seek medical assistance in the Social Hygiene Clinic. This denied migrant women equal access to health system and jeopardize public health.

In the Government Report, Action for REACH OUT’s name was quoted as having close liaison with non-governmental organizations. But our support from the HKSAR Government has been very limited and the liaison is only at a level of case referrals and condoms supply. In fact, over the past few years, we have contacted the Hong Kong Police and the Immigration Department for a number of times, requested to meet and discuss about problems faced by sex workers during law enforcement. However, both departments refused to meet us.

***About Action for REACH OUT**

Action for REACH OUT (AFRO) was established as a non-government and charitable organization in 1993 to offer services and support to women working in the sex industry in Hong Kong, one of the most marginalized groups in Hong Kong society.

AFRO believes that for the advancement of society and the community, every individual's personal freedom, dignity and basic human rights should be protected and promoted. Society should embrace diversity and facilitate the efforts of all sectors to bring about necessary social change to enable all persons to enjoy their human rights. We work for the social inclusion of female sex workers, so that they can enjoy equal treatment and access to all legal and health rights. We hold that decriminalization and recognition of "women in prostitution" as "workers in the sex industry" are essential to enable them to speak out on their own behalf and to participate in social and political affairs.

Our main goal is to encourage and enable these women to form their own support groups. We strive to offer an environment of openness and honesty where the women can turn in times of need. We act as a referral agency for health screening, legal advice, counseling and, if necessary, temporary shelter. We conduct informal sessions on legal rights, health education, family counseling as well as skills training.

Action for REACH OUT

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Appendix I

A Survey on Hong Kong Police's Attitudes towards Female Sex Workers

Written and published by: Action for REACH OUT

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(Summary)

Background of the Respondents

A survey was conducted by AFRO during the period from mid-March to late June of 2005. Questionnaires (see Appendix 1) were sent to 73 women engaged in the sexual service industry during their visits to AFRO's Drop-in Centre or AFRO's regular outreach activities at their workplaces. We managed to collect all 73 finished questionnaires back. The 10 respondents, who mentioned in the questionnaire that they experienced arrest and questioning by the police, were invited for an in-depth interview. In the end, we successfully conducted in-depth interviews with 6 of the 10 respondents.

Among all 73 respondents, 29 persons were Hong Kong residents (including Chinese and Thai persons), 38 were non-Hong Kong residents (including women from Mainland China and the Philippines). Status of 6 respondents was unable to be identified.

40 of the 73 respondents were street sex workers, while 27 of them worked in nightclubs/bars/karaokes and 6 of them worked in one-woman-brothels/hair-salons.

60 of the 73 respondents had encounters with the Hong Kong police. 10 of the 60 who had encounters with the police were arrested by them. 6 of the 10 who were arrested by the police experienced lawsuits against them in Hong Kong.

Impolite Treatment by the Police

Among 60 respondents who had encounters with the Hong Kong police, 65% of them considered most or all of the police officers they encountered polite. 30% of them thought half of the police officers they encountered were polite and half of them were not. Those who thought most or all of the police officers they encountered impolite made up 5% of 60 respondents.

For the item "Impolite Treatment", what the respondents mostly referred to were "Unfriendly Look" and "Verbal Assault". Despite the fact that 65% of the respondents who had encounters

with the Hong Kong police considered most or all of the police officers they encountered polite, 22 of them raised concrete examples of impolite treatments towards them by the police. Among them, street sex workers made up the majority (14 persons.) It was mainly this latter group that was subject to assault and personal attack by the police, when they were staying on the streets or simply passing by.

Unreasonable Treatment by the Police

Unreasonable treatment that the respondents experienced most were “Check your I.D./passport without telling you the reason” (31 persons = 51.7%). 16.7% (10 persons) experienced “Raid your work place without telling you the reason.” Some respondents experienced extremely unreasonable treatments, which should be considered misconducts of the police, such as “Take away your property without telling you the reason” (4 persons) and “Severe Physical Conflicts” (2 persons). One respondent was even once threatened by a police officer.

*(The police officer) threatened me. (He) said he could put some heroin inside my bag and he could arrest me anytime. (Originally in Cantonese, translated by AFRO)
(Non-Hong Kong Resident/Streets)*

Among sex workers who experienced unreasonable treatment by the police in the last 12 months, 10% of them (6 persons) had such experiences for 6 – more than 10 times in the last 12 months.

Unreasonable Arrests

Among 10 of the respondents who experienced arrest by the police, 60% (6 persons) were not told reasons for the arrest. Among them, 6 gave in-depth interviews to AFRO. 4 of them in fact were not working when they were arrested. 3 of them were only staying alone inside the premise where they stayed in Hong Kong or walking alone on the street. There was no evidence to prove that they were “soliciting” somebody for an immoral purpose or working in Hong Kong. The arrests by the police were actually groundless. Besides, among these 6 respondents, 1 of them (a Hong Kong resident) suffered violence by the police when she was arrested.

Exploitation of Rights upon Arrest and Detention

After being brought back to the police stations, all respondents were **NOT** told of their “Right of remaining silent” and “Right of refusing to sign the cautioned statements that you do not agree with.” Among them, only 1 respondent was told of the “Right of making phone calls to friends, relatives, or lawyers for help.” 3 of them (all Hong Kong residents) were told of the “Right of

being provided with a copy.” About “Right of requesting an interpreter if needed” and “Right of requesting toilet facilities and break to rest during questioning”, usually respondents were informed only upon their request. 3 and 6 of the respondents were informed such rights respectively.

According to the respondents, they were provided with the “Notice to Persons under Investigation by, or Detained in the Custody of, the Police” and were required to sign it only when the questioning was already finished. No opportunity was provided for them to read the content of it. (There was only an exceptional case.)

Comparative Analysis of Respondents' Experiences

The experiences of being arrested, questioned and detained of the 6 respondents, who accepted in-depth interviews by AFRO (including 3 non-Hong Kong residents who in the end were just sent back to Mainland China without being charged with anything at all, and 3 Hong Kong residents who were charged and prosecuted and had to attend lawsuits against them in Hong Kong), are very similar. The 6 cases in fact can reflect a typical model of how police officers in Hong Kong treat sex workers – exploiting basic rights of them, as persons under investigation by, or detained in the custody of the police.

Among the 6 respondents, only Respondent B was indirectly told the reason for the arrest. She was told, “You did not break any law. But Hong Kong does not welcome you.” However, through the whole process, Respondent B was not explained how and why she was not welcome. Besides her, upon being arrested, all the other 5 respondents were not told by the police reasons for arresting them.

Brought back to the police stations, all 6 respondents were required to sign the “Notice to Persons under Investigation by, or Detained in the Custody of, the Police” after the questioning was finished, given no opportunity to read the content. Before the questioning started, all 3 respondents from Mainland China were told nothing about the basic rights that any person under investigation by the police should enjoy. Among them, only 2 were allowed to use the toilet facilities upon their request. Among the other 3 respondents who are Hong Kong residents, 2 of them were allowed to go to the toilet, 1 of them was told of the “Right of requesting an interpreter if needed.”

Comparing the experiences of the 3 Hong Kong residents and 3 non Hong Kong residents, the only difference identified is that, after questioning, the 3 Hong Kong residents were provided with an opportunity to read the statement, or the police officers would read the statement aloud for them. Also, they were given copies of the statements. (Even though, all 3 of them were

more than once forced /wheeled to sign the statement that they did not agree with.)

Of the 3 respondents from Mainland China, they were given no chance to read the statements at all. Some respondents indicated that the police officers covered the statements so as not to let them see/read the content. They did not read the statements aloud for them, either. The police officers were “furious”. Some even beat those arrested persons who were not cooperative. The number of the police officer was covered therefore the beaten persons were unable to identify the officer(s) to file a complaint.

In addition, some respondents who were detained in detention rooms of police stations indicated that the condition of the detention rooms was bad. When the room was crowded of people, there was even no space for the detainees to rest. Also, the detained persons were forced to eat, rest, sleep and use the toilet facilities in the same small place of the detention room. Attitudes of some staff of the detention rooms were very bad. Some respondents mentioned that they had seen staff of the detention rooms beat the detained sex workers.

The survey result reflects the severe problem of exploitation of basic rights against both local and migrant sex workers (especially street sex workers) during their encounters with the Hong Kong police. Although 65% of the respondents considered most or all of the police officers they encountered polite, there were cases of assaults and threats by the police identified during their encounters.

The problem of exploitation of sex workers’ basic rights during arrest, investigation or detention by the police is now exposed. Besides not telling sex workers the reasons for arrests, after bringing sex workers back to the police stations, the police officers did not inform them of any of the basic rights that sex workers, as other persons, were entitled to. The police officers did not let the arrested sex workers read the written statements, forced them to sign the statements and other documents that they did not have a chance to read, including the “Notice to Persons under Investigation by, or Detained in the Custody of, the Police”. Sex workers suffered misconduct and mistreatment at the hands of the police such as threats, insults and physical assaults. As this survey reflects, this is unjust and unreasonable treatment against sex workers. In addition, the condition of the detention rooms in police stations and attitudes of staff there also deserve further public concern.

Requests and Recommendations

Based on the above-mentioned survey result, AFRO makes the following requests and recommendations to Hong Kong Police:

- 1) Stop immediately all kinds of impolite, unjust and unreasonable treatments towards sex workers.
- 2) Stop using violence towards sex workers.
- 3) Make sure the arrests of sex workers are reasonable and sex workers are explained the full reasons right upon the arrests take place.
- 4) Make sure sex workers are provided with a copy of the "Notice to Persons under Investigation by, or Detained in the Custody of, the Police" and are given enough time to read the content, after they are brought back to the police stations and before the questioning formally starts. Request sex workers to sign it only when they are sure that they understand. The police officers are responsible to give further explanation of the notice, if needed, to sex workers.
- 5) Make sure proper procedure of case handling is followed by every single police officer. Guarantee that throughout the process of arrest, investigation or detention, sex workers are informed of and are not hindered from exercising the basic legal rights that are listed in the "Notice to Persons under Investigation by, or Detained in the Custody of, the Police", and that they are treated by the police in a just, fair and reasonable way, as every person is entitled to be.
- 6) Improve facilities of detention areas in police premises, including temporary holding areas and detention rooms inside police stations, to improve the current condition where detainees are forced to eat, to rest and to use toilet facility in the same limited space, so as to guarantee the basic human rights of all detainees.
- 7) Stop sending migrant sex workers back to place of origin without trial (through the Immigration Department) in cases where that the police fail to collect sufficient evidence to prove that they are/have been working in Hong Kong. (That means the police are unable to charge sex workers of "Breach of Condition of Stay".)
- 8) Arrange regular meetings with Action for REACH OUT and other NGOs concerning sex workers, in order to strengthen connection and enhance communication.
- 9) Accept sex workers' complaints or cases to seek help filed by concerned NGOs with sex workers' privacy and personal information protected. Follow and handle the case/complaint extensively.
- 10) Provide data/statistics about arrests and prosecutions against sex workers to NGOs concerning sex workers on a regular basis (e.g. every 3 months), so as to facilitate NGOs' better understanding on the current situation and better service coordination for sex workers.
- 11) Arrange concerned NGOs to participate in training for police officers, so as to facilitate communication between concerned NGOs and police officers and to mutually enhance understanding on the sexual service industry as well as interaction between sex workers and frontline police officers.