

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

**Prepared by Action for REACH OUT\* (HKSAR)**

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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.

### **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.

### **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 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.

### **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!

In 2005, situation of female sex workers have 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.

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!

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.

### **Discrimination and Stigmatization**

Sex workers are being severely discriminated, stigmatized and attacked 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.

### **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 Hong Kong 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.

### **RECOMMENDATIONS:**

- 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.
- The HKSAR Government has to prohibit police officers from receiving any kind of sexual services during undercover operation.
- 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.
- 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.
- The HKSAR Government has to promote public education to de-link STDs/AIDS from sex work and eliminate discrimination and stigmatization against sex workers.
- 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.

### **\*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.*