

Joint Submission
to the Committee on the Elimination of Discrimination against Women
on the implementation of the CEDAW
in the Hong Kong Special Administration Region, China

by
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JJJ Association
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Article 6- Exploitation of women

Sex Workers' Right to Life

In the year 2008 and year 2009, 10 sex workers in Hong Kong were murdered and among them 9 worked in “one sex worker apartments”. According to Hong Kong laws, it is not illegal for an individual Hong Kong resident to work as a sex worker. However, any premises within which two or more persons provide commercial sexual services are considered a “vice-establishment”, and are therefore deemed to be illegal. Sex workers are therefore forced to work alone in an isolated setting, yet without any support, exposing their personal safety to real and substantial risks like being robbed, raped or murdered by their customers,.

In its report, the Hong Kong Government claims that “the current legislative regime tolerates the operation of ‘one sex worker apartments’ while criminalising the operation of vice activities involving more than one sex worker. This arrangement strikes a reasonable balance between the human rights and privacy of sex workers on the one hand, and the well-being of other members of community and the prevailing moral values of community on the other.” (*Para 154*)

We hold that the Hong Kong Government is obligated to explain in further details why the legal definition of “vice establishment” has to make it unlawful if sex

workers co-work in one single premises, in particular the rationale behind such a law, and examine the impacts such a definition cause to the right to life and personal security of sex workers in Hong Kong.

We ask the Committee to urge the Hong Kong Government to examine the situation of sex workers and review the legal definition of “vice establishment”. The Hong Kong Government may consider taking the judgments of Supreme Court of Canada¹ into reference. It should introduce relevant legislative reform and allow at least two sex workers to co-work in one single premises for mutual protection.

Sex Workers’ Right to Health

Action for REACH OUT, Teen's Key, JJJ Association and Midnight Blue launched a survey on barriers to condom use among sex workers in Hong Kong in November 2013.² 157 sex workers were interviewed and it was found that 70.06% of them think that sex workers can be arrested due to possession of condoms. 29.94% of all interviewed sex workers choose to possess less or no condoms to decrease the chance of being arrested, while 3.82% of the interviewed sex workers choose to use less or no condoms so as to decrease the chance of being arrested.

The survey findings are alarming and they indicate that the Government’s using possession of condoms as evidence of sex work jeopardises HIV and STI prevention

¹ In Canada, three current or former sex workers brought an application seeking declarations that three provisions of the Canadian Criminal Code which make it an offence to keep or be in a bawdy house, prohibit living on the avails of prostitution; and prohibit communicating in public for the purposes of prostitution, infringe their rights. They argued that these restrictions on sex work put the safety and lives of sex workers at risk, by preventing them from implementing certain safety.

The Supreme Court of Canada declared in Dec 2013 that these laws which prohibit street soliciting, brothels and people living off the earnings of prostitution create severe dangers for vulnerable women and therefore violate Canadians’ basic values. The declaration of invalidity suspended for one year, during which time the federal government can consider whether to design new laws that comply with the Charter of Rights of Freedoms.

Sources: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>

² <http://www.afro.org.hk/enews/201401/afro201401e.htm>

http://www.afro.org.hk/pdf/survey/201403_survey_result_final.pdf (Survey report in Chinese)

efforts in Hong Kong and sex workers' health is therefore put at risk.

We call on the Hong Kong Government to pay close attention to the survey findings and study the measures introduced to San Francisco and New York State in June 2013 which ended the use of possession of condoms as evidence of sex work³. **We ask the Committee to urge the Hong Kong Government to stop putting sex workers' health at risk and immediately cease using possession of condoms as evidence of sex work and related offences.**

Sex Workers' Right to Equal Protection and Treatment

Police officers, during undercover operations, are allowed to solicit sex workers to perform certain sexual services (which is, in the end, unpaid) to "gather evidence" for prosecution. Some sex workers reported physical/verbal assault by the police and immigration officers. Also their fundamental legal rights are often abused, such as: the right to remain silent; the right to make telephone calls; the right to legal advice and representation; the right to an interpreter (with correct dialect); and the right to have the correct criminal procedures implemented.

We ask the Committee to urge the Hong Kong Government to ensure that the rights of sex workers are effectively protected under law without discrimination, including more transparency with the procedures used for victim recognition, prosecutions and convictions. This would further require more intensive and widely rolled out training of victim identification across the government and law enforcement agencies.

Transgender Sex Workers' Right to Gender Identity

Upon arrest, transgender women sex workers are conducted search and/or body search by male police officers as long as their "sex" as shown on identify cards or passports is male, regardless of their physical conditions and self gender identification. Some transgender women sex workers are sent to male detention facilities where they are

³ "San Francisco No Longer Criminalizes Condoms", Human Rights Watch, 28 June 2013.

<http://www.hrw.org/news/2013/06/28/san-francisco-no-longer-criminalizes-condoms>

"New York: Assembly Passes Condom Law", Human Rights Watch, 25 June 2013.

<http://www.hrw.org/news/2013/06/25/new-york-assembly-passes-condom-law>

forced to cut their hair which usually symbolizes their gender identity.

We ask the Committee to urge the Hong Kong Government to review the current policies and practices, and take immediate measures to protect the human rights of transgender persons, including sex workers, in Hong Kong.

About the Organisations

Action for REACH OUT (Rights of Entertainers in Asia to Combat Human Oppression and Unjust Treatment) was established as a non-governmental organisation in 1993. We offer services and support to women working in the sex industry in Hong Kong, including those who are from Hong Kong, Mainland China, Thailand, and the Philippines etc.

AFRO believes that for the advancement of society, 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.

Embracing these beliefs, AFRO works for the social inclusion of female sex workers, as one of the most marginalised and discriminated groups in Hong Kong, so that they can enjoy equal treatment and access to all legal and health rights. We hold that decriminalisation and recognition of women in prostitution as workers in the sex industry is an essential condition for their ability to stand up and speak out on their own behalf as well as to participate in social and political affairs.

AFRO is a member of the Hong Kong Women's Coalition on Equal Opportunities and the Hong Kong Coalition of AIDS Service Organizations.

JJJ Association is a mutual support group formed by "one-woman-brothel" sex workers with the help and subsidiary of Zi Teng from 2007 to 2010, and became an

independent organization since 2011. We believe that a diversified society should have a capacity to accommodate the experience and need of different people. Sex workers are citizens with equal rights and responsibilities, can also make contribution to the society. We encourage female sex workers to take up leadership role to advocate better social rights and legal status for themselves, and strive to eliminate social discrimination against sex work.

Midnight Blue was founded by a group of male sex workers, labor rights supporters, scholars in gender studies and people who are concerned with sex worker rights in August 2005. Midnight Blue is a non-government organization endeavoring to build a male sex worker support network in Hong Kong and Shenzhen, China. Prior to registering as an independent organization, Midnight Blue was formerly created as a male sex worker task force within Zi Teng in 2005, concerned with the increasing population of male and transgender sex workers and the HIV infection rate in the gay community.

Teen's Key was established on 2010. Teen's Key mission is to empower girls and young women by young women and girls ourselves, we believe that girls and young women have power to create changes for gender equality. We empowered different groups of young women and girls by workshops and group works, build up their gender awareness and ability to protect themselves. We care young women and girls who were marginalize in the society – Young women and girls in sex industry, including compensated dating through the internet and working in night clubs.