



HARMFULLY ISOLATED

CRIMINALIZING SEX WORK IN HONG KONG EXECUTIVE SUMMARY

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Cover photo: Tourists stroll through the red light district in Hong Kong, 10 January 2012.
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EXECUTIVE SUMMARY



CASE STUDY: MEI-LING INTERVIEWED 27 JANUARY 2015

Mei-Ling moved to Hong Kong from mainland China in 2010 to join her husband. To pay for medication for her two elderly parents, she initially found work in a restaurant and then as a masseuse. These jobs were physically demanding. At the suggestion of some friends, she decided to try sex work. In her first week engaging in sex work, an undercover officer approached her on the street and asked to buy sex from her. They went to her flat, where he arrested her. Several officers searched the flat after her arrest and seized condoms and tissues to use as evidence.

The police took Mei-Ling to the Tai Po station. “I was not informed of my rights,” she told Amnesty International. “My mobile was taken away from me. I was kept there for 15 hours – there were two officers non-stop asking me questions. One officer was nice; the other was very mean.

“They showed me a statement. Some parts of it were true, but others were untrue. The statement said that I approached the police – but it was the police who approached me. They said I was soliciting the police, but I was soliciting another person [before the undercover officer approached her]. The officers asked me to sign [the statement] but I didn’t want to sign it.”

The officers threatened to call her husband, a civil servant, and her daughter if she did not sign the statement. “I didn’t want them to find out,” she said. “The nice officer told me I could change the statement later – he said he would help me do an appeal. He said that if I deny the charge, I can just defend myself later in court. He told me that because I’m a Hong Kong resident, it would not be a problem for me, because one-to-one service is not illegal.” Mei-Ling was told she could not call her teenage daughter to tell her where she was until the statement had been signed and was not given a copy of her statement.

She was charged with solicitation, and she denied the charge when she appeared in court. “I thought the court would be fair – I had confidence in the court – but not anymore. I was very disappointed because the police swore [an oath to tell] the truth – but [what they said] wasn’t the truth.”

Beginning to cry, she continued: “I was very angry because at that time, my husband was not giving me enough money for living – my mother and father were very ill and I needed money for medicine. But the judge said ‘you’re not acting responsibly towards your family – you’re supposed to know the result of doing this kind of work’.”

She told Amnesty International that she felt powerless to challenge the police account of the events that led to her arrest. “I couldn’t make any complaint because there were no witnesses – and the statement was so perfect. In the court, my lawyer asked the police to describe what I was wearing, and they couldn’t. But even after such a big mistake, the court believed the police, so making a complaint would be useless.”

Mei-Ling was found guilty of solicitation and sentenced to four months in prison. “I’m still very angry with the police,” she said. “The court also made me very angry – the court judged me not responsible towards my family, and I was given the most serious punishment.”

POLICE MISUSE OF LAWS AND POWERS TO SET UP, PUNISH AND ABUSE SEX WORKERS

The policing of sex work in Hong Kong is particularly problematic. Some sex workers complained that police demand free sexual services from them. In some instances, the officers involved appeared to be engaging in acts of extortion; sex workers report that these officers had demanded sex as the price of not arresting them.

In addition, the police force's acknowledged practice of allowing undercover officers to engage in "body contact with sex workers", including "the receipt of masturbation service", in the course of carrying out investigations is a likely source of many of these complaints. Such practices serve little if any investigatory purpose and unquestionably bring the Hong Kong police into disrepute.

Groups working with sex workers also report that police use entrapment to entice sex workers to engage in acts that authorities then interpret as violating one or more laws.

Solicitation is one example. Because solicitation is understood to mean acts that take place in public places, many sex workers initially offer sex and discuss payment by text messages, through the WhatsApp mobile telephone service, or similar means of communication. In such cases, police may convince sex workers to verbally repeat the terms of the transaction in public, arresting those who do so. In other cases, police officers themselves initiate the transaction by offering to purchase sex.

Another tactic is to ask a sex worker to call a second sex worker to join them to perform sexual services. Sex work is not illegal when carried out by one sex worker in an individual apartment, but when two or more sex workers work together, police consider the apartment to be a "vice establishment", or brothel, in violation of the law.

In addition, sex workers and their advocates frequently reported that police obtain confessions through coercion or deception. For example, Amnesty International heard accounts that police officers had threatened to report sex workers to their spouses, parents or children if they did not confess. Sex workers and their advocates also told us that police mislead sex workers about the consequences of their confessions, coercing them to sign statements while withholding the fact that an admission of guilt would likely lead to imprisonment.

Police routinely seize condoms as evidence even though condoms and related HIV prevention services are essential to the realization of the right to health. Law enforcement practices should not interfere with sex workers' right to protect their health; in particular, condoms should not be treated as evidence of a crime.

SPECIFIC ABUSES AGAINST TRANSGENDER SEX WORKERS

Transgender sex workers are routinely subjected to a host of abusive practices. Upon arrest, they are regularly forced to undergo intrusive and humiliating full-body searches. For transgender women whose identity documents do not match their gender identity, these searches are undertaken by male officers. Most transgender women detainees are initially sent to male detention centres and then transferred to a special unit for detainees with mental illnesses. Prisons do not usually allow transgender detainees to continue hormone treatment, with potentially serious consequences for their health.

HOW SEX WORK IS CRIMINALIZED IN HONG KONG

The act of selling sex is not itself illegal in Hong Kong, and many sex workers are careful to operate in ways that comply with the law.

“[T]he regulatory framework adopted in Hong Kong is a prohibition in all but the narrowest sense.”

Nga Yan Cheung, *Accounting for and Managing Risk in Sex Work: A Study of Female Sex Workers in Hong Kong*, Ph. D. thesis, University of London, 2011, [hereinafter *Accounting for and Managing Risk in Sex Work*] p. 54

Nevertheless, many of the activities associated with sex work are illegal. Sex workers can be prosecuted for soliciting customers, for sharing premises with other sex workers, and for living off the proceeds of prostitution. In practice, as one scholar has observed, “the regulatory framework adopted in Hong Kong is a prohibition in all but the narrowest sense”.¹ Those who work on the street are at particular risk of arrest because they are easy to identify and have difficulty operating without violating the prohibition on solicitation.

Many sex workers in Hong Kong are migrants or from mainland China and must obtain permits to work in Hong Kong. Migrants and people from mainland China cannot lawfully engage in sex work in Hong Kong; all migrant sex workers are in “breach of condition of stay”, a criminal offence under the Immigration Ordinance. In fact, such charges for breach of conditions of stay may well be the primary means by which sex workers are criminalized in Hong Kong.

ABUSES BY CLIENTS

The available data suggests that sex workers are much more likely to be victims of crime than other marginalized groups in Hong Kong. Theft of mobile phones and money, non-payment for services, and armed robbery are the most commonly experienced abuses by sex workers. Sex workers also report that some customers refuse to use condoms or force them to engage in acts they did not agree to – non-consensual sexual conduct that in many instances constitutes rape. In some cases, sex workers have been physically assaulted by clients and even killed.

Sex workers attribute their vulnerability to the “vice establishment” and solicitation provisions in Hong Kong law. The “vice establishment” provision means that sex workers must work on their own, increasing their insecurity. And the prohibition on solicitation means that sex workers, particularly those who work on the street, must often make quick decisions about whether to accept a client.

When sex workers are the victims of crime, they are unlikely to seek help from the police. Sex-worker organizations told Amnesty International that police are unlikely to follow up on reports from sex workers; instead, when sex workers do try to report crimes, police typically blame them or insult them.

As the Hong Kong Crime Prevention Bureau confirmed to Amnesty International, a police officer has no discretion not to arrest an irregular migrant. This applies to all irregular migrants, but disproportionately affects migrant sex workers, all of whom would be automatically considered irregular migrants and in breach of conditions of stay.

HOW WE CONDUCTED OUR RESEARCH

This report forms part of the research conducted to develop Amnesty International’s policy on protecting the human rights of sex workers. In addition to desk-based research on studies from around the world, further in-country research was conducted in Argentina, Hong Kong, Norway and Papua New Guinea. While this report focuses on the legal and policy frameworks that affect the human rights of sex workers, a number of human rights abuses featured prominently in the testimonies of sex workers, including police ill-treatment and abuse of authority, the discriminatory treatment of migrant sex workers and those from mainland China, and the high levels of stigma and discrimination faced by transgender sex workers.

Amnesty International spoke with more than 40 key stakeholders, including sex workers, advocates, anti-trafficking and other non-governmental organizations (NGOs), senior police officials and other government officers. Amnesty International calls on Hong Kong to repeal all laws that are used to prosecute and punish sex workers or criminalize related aspects of sex work, including the offences of solicitation, operating a “vice establishment”, and living off the proceeds of sex work. The Hong Kong authorities should also expressly prohibit coercive police conduct, whether in the course of ordinary policing or as part of undercover operations, and should not use immigration enforcement as a de facto means of criminalizing sex work.

¹ Nga Yan Cheung, *Accounting for and Managing Risk in Sex Work: A Study of Female Sex Workers in Hong Kong*, Ph. D. thesis, University of London, 2011, [hereinafter *Accounting for and Managing Risk in Sex Work*] p. 54.

CONCLUSION AND RECOMMENDATIONS

The sex workers we interviewed for this report had numerous suggestions for changes in law and enforcement practices that would make them feel safer and afford them a measure of dignity. Repeal of the laws against solicitation and managing a “vice establishment” was high on their lists.

At a minimum, they called for police to stop using these laws to target individual sex workers, particularly through methods that amount to entrapment and coercive means of obtaining confessions. Sex workers are also particularly aggrieved by the Hong Kong police force’s policy of allowing undercover officers to receive “masturbation service” in some cases as part of their investigation. Sex workers see this policy as permission for police to obtain free sexual services either in lieu of, or in the course of, arresting them.

Additional recommendations can be found in the full version of the report.

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TO ONE PERSON, IT
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Police in Hong Kong engage in questionable tactics to arrest sex workers, including the receipt of sexual services as an investigatory technique; entrapment; and obtaining confessions through coercion or deception. Sex workers in Hong Kong say that police, or persons claiming to be police, extort them by demanding free sexual services. These policing tactics create antagonistic relationships between law enforcement officials and sex workers, making it more difficult for sex workers to report crimes committed against them.

Transgender sex workers report degrading and humiliating treatment in custody. Some report being segregated from the general prison population or sent to a psychiatric detention facility.

Laws in Hong Kong force sex workers to work in isolation, prohibiting them from working with others for their own safety. In addition, immigration laws prohibit migrants and people from mainland China engaging in sex work, making them vulnerable to arrest and deportation.

In this report, Amnesty International brings together testimony from sex workers and public officials, and provides recommendations to end violence and discrimination against sex workers and transgender people.

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