

# **Shadow Report on Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women**

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## **Preface**

In 2007 the Taiwan government signed off on its intention to join the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In June 2013 it presented the draft of the second national report, explaining the nation's situation in regards to compliance with the rights and duties specified by CEDAW. However, the national report was largely limited to official statistics; it lacked the voice of the people, and could not fully monitor the effect of CEDAW execution in Taiwan. Because of this, the Kaohsiung Women Awakening Association (a registered non-governmental organization, below referred to in brief as "the Association") has chosen to write a shadow report in response to the governmental report addressing Article 6.

In the period of preparing this report, the Association has convened a meeting entitled "CEDAW Round Table Forum on Taiwan's Red Light Districts", in addition to visiting a halfway house school in south Taiwan and interviewing several police officers who are on the front line in the work of the National Immigration Agency, Ministry of the Interior, in Kaohsiung City's First Specialized Operation Brigade. Those invited to participate in this forum included: The Garden of Hope Foundation; the Taipei Women's Rescue Foundation; the Collective of Sex Workers and Supporters; Officer You Chi-ming, Head of the Criminal Investigation Brigade No. 6, Section 18, of Kaohsiung City Police Bureau; and Associate Professor Chen Mei-hua of the Department of Sociology, National Sun Yat-sen University. These participants shared with us in discussion their knowledge of the current situation in Taiwan's sex industry and how foreign migrant workers may meet with exploitation in it. Finally,

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we held a consultative meeting with experts and scholars to assist in the writing of this report. In the writing of this report, we have been concerned not only with reviewing and critiquing the national report, but also have placed emphasis on whether or not the legal stipulations and the actual execution of them in our country are in accordance with the spirit of Article 6 of CEDAW.

The Association will here first briefly expound on issues in Article 6 of CEDAW, then respond point by point to every relevant subject in the content of the national report, and finally present concrete recommendations.

## **1. The government's Chinese translation of CEDAW Article 6 as "elimination of prostitution" is not true to the original.**

The governmental report on its first page has translated Convention on the Elimination of All Forms of Discrimination Against Women, Article 6, as:

"Ratifying nations should take all suitable measures, including legislation, to prohibit all forms of selling women and making women do acts of selling sex, with the intention to profit." [Translator's note: This is a literal translation of the Chinese text.]

But according to the original language of the CEDAW article, the translation should have the content:

"Ratifying nations should take all suitable measures, including legislation, to prohibit all forms of selling women and the acts of forcing women to sell sex in order to exploit them." [Translator's note: CEDAW Article 6, original English is: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." What the Association is pointing out is a subtle difference, i.e. that the government's translation mandates suppressing prostitution itself, even if just for the profit of the woman herself, rather than suppressing only the economic exploitation of women by others.]

The government report's translation of the article depicts all sex transactions as exploitation of women, which denies the autonomy of career choice by sex workers. Because of this, the government report leans towards how the government has made efforts to prevent the occurrence of sex transactions, as well as its investigations into the sex trade. But examining the history and currents of international discourse on

prostitution, we can understand that Article 6 of CEDAW monitors discrimination and violence against women and the focus is on trafficking in women and forced prostitution, not on prohibiting all acts of sex transaction.

The controversy over allowing or eradicating sex transactions is still with us, but whether supporters or opponents, both all the same see that the women in this trade are subject to exploitation and seek a means to resolve this. Those who advocate eliminating prostitution believe that sex transactions are in their nature a behavior that should not be permitted and so they should be prohibited. But those who advocate legalization of prostitution believe that being exploited is not a necessary element of sex transactions themselves. Moreover, because the right to work of those in the sex trade is not recognized both from moral and legal perspectives, interdiction creates a worse work environment for them and a greater possibility of their being maliciously exploited.

The Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was passed by the United Nations in 1949, for the first time formally addressing the issue of prostitution. At that time prostitution was still generally seen as behavior that violated human rights and morality and that should be prohibited. There was no distinction between whether it was forced or self-willing. But Jo Doezema (1998) has pointed out that in 1979, in the process of drafting CEDAW, the General Assembly rejected the motion of the representative of Morocco that “eliminating the exploitation of prostitution” be revised to “eliminating prostitution”. This decision indicates that the position of the United Nations had changed to an understanding that prostitution is not necessarily equivalent to exploitation. The 1993 Declaration on the Elimination of Violence Against Women was the first time that “trafficking of women and forced prostitution” was explicitly included, showing the position that not all prostitution was seen as forced.

In summary of the above, the Association is of the opinion that all levels and agencies of our government should revise their translation and their understanding of CEDAW Article 6.

## **2. Judicial Yuan Interpretation No. 666 forced a change in the policy of enforcement of sex trade districts, with unintended effects.**

The Taiwan government currently takes an attitude of “prohibition in principle, but liberalization in exceptions” for policy towards sex transactions. It has in legal

regulations adopted a policy of permitting and managing the existence of “sex trade districts”, which should be a more secure environment for sex workers, but because in actuality there is no way to effectively and fully implement this policy, on the contrary the situation for low-level sex workers has become more difficult.

On November 4, 2012, the Legislative Yuan passed a revised draft of the Social Order Maintenance Act in response to Judicial Yuan Interpretation No. 666. To supplement Article 80 that penalizes sex workers, they added Article 91-1, which stipulates: “Governments on the levels of special municipalities and counties or cities shall set provisions for self-governing areas where suitable, and shall plan districts for operation of sex industry and its management.” But for sex trade that is not within the permitted district, as well as that in public places or in places of mass entrance and exit, those intending to ply the sex trade and soliciting customers would still be fined, not more than NT\$30,000.

According to Judicial Yuan Interpretation No. 666 issued in 2009 concerning the Social Order Maintenance Act, Article 1, Item 1, “The regulation that intending to profit from sexual acts or hostelry shall be punished with detention of three days or less or a fine of NT\$30,000 or less, is in contravention of the Constitution of the Republic of China, Article 7, concerning the principle of equality, and therefore ineffective from the date of promulgation of this interpretation, at the latest within a period of two years.”

From the judgment of the chief justice, it can be understood that the “equality” in question means not just the inequality in the double standard of fining prostitutes and not customers, but it also shows observation of the situation of those in economically disadvantaged sex work. As for advocating application of Article 80 of the Social Order Maintenance Act, undoubtedly it would cause “those who are already in a difficult situation because of their occupation to be further disadvantaged”.

As it is, the revised version of the Social Order Maintenance Act (which includes the stipulation that customers of sex workers must be equally punished) has already been in effect for over one year, and this condition of inequality, as before, has not changed. The main reason for this is that the central government set the policy but handed over the matter of setting detailed provisions for establishing exclusive zones for the industry, registration of enterprises, etc., to the governments of the counties and cities. But the various governments of counties and cities, under the moral pressure of maintaining proper social customs and in consideration of the electorate, have totally refused to establish sex industry districts. At present in Taiwan the sex

industry is totally illegal, except for a few holdovers from long ago when some houses of prostitution were publicly licensed; however, the past penalty of fining the prostitutes but not the johns has changed to fining both prostitutes and johns. But under the stricter penalty of fining both prostitutes and johns, those who are in this disadvantaged work are actually forced to be exposed to greater risks.

Ms. Zhong Junzhu, executive director of the Collective of Sex Workers and Supporters, pointed out in the forum that it has long been the case that sex workers, already disadvantaged, must evade apprehension by the police because their work is illegal; and if they are threatened by their clients in the process of the transaction or are treated violently, they have no authority to appeal to. And after the passage of the revised Act, not only are the disadvantaged workers subject to threat in their daily life while the stigma of illegality is still unresolved, but also now with penalties for both the sex worker and the customer, the previous clients who were familiar and reliable decrease their visits out of fear of illegality and penalties, or take their business overseas. As a result of this, the sex workers' income has plummeted. Under the pressure of maintaining personal income, the disadvantaged sex workers have started taking high-risk customers that they would not have accepted before, such as those who do not want to wear condoms or those who are drunk, direct threats to the personal safety of those in this occupation. Some sex workers, in order to decrease the possibility of police interdiction and the risk of violence from customers, have no choice but to rely on the organized sex industry where they are subject to labor conditions of high exploitation.

On issues of migrant sex workers, the discussion centered on sexual exploitation. Ms. Wang Hongying, vice director of the Taipei Women's Rescue Foundation, explained that the situation has changed in the last few years, and that the number of those who are victims of trafficking and transport for the purpose of sexual exploitation has decreased. In the early period, the victims came to Taiwan unwittingly through fake marriages, and were tricked into working in the sex industry. Later the more common cases seen were that the women knew beforehand that they were coming to Taiwan for the sex industry, but after understanding the actual situation and discovering that it was far different from what they expected, their freedom of movement was limited and they were not allowed to leave. At the same time, their illegal status meant that they did not dare to seek aid from police. Recently most of those apprehended were holding work visas, i.e. migrant workers who had abandoned their approved jobs, especially foreign caretakers. Supervisor Zeng Qiaohui of the Garden of Hope Foundation pointed out that the sex industry recruited migrant workers with the promise of high income and low work hours, etc. Among

these the care workers who abandoned their approved jobs caring for elderly and infirm Taiwanese were the bulk of the numbers, because their jobs entailed large salary deductions to pay the brokers and heavy labor exploitation. But in these kinds of cases the victims usually would not bring charges against the sex industry traffickers, because from the start they had been told that they would be in sex work, and secondly they had not been subjected to coercive control, they could communicate with the outside, and could seek aid if they were exploited. In our country's current execution of the law, whether the sex worker has acted voluntarily or has been coerced is the crux of whether the perpetrator will be charged. However, it is very easy for the perpetrator to make the victim testify that she acted voluntary; and so the case will not stand.

From the discussion among the three NGOs, it can be seen that the issue in the sex industry that is of the greatest concern, whether for our nationals or for foreigners, is the fragile prospects for sex workers. Looking into the cases of sexual exploitation, it can be seen that there is no way to really punish the organizations or the call girl stations that are behind the sex trade. Since the revised version of the Social Order Maintenance Act has been implemented, this situation has become more serious. Police officers who were interviewed said that at present the environment for sex transactions and the life difficulties for sex workers have not undergone any change because of the revision of the Social Order Maintenance Act.

Under the same pressure for performance as before, the police must intensify their efforts to interdict the sex trade; but after the revisions to the Social Order Maintenance Act, both parties to a sex transaction are more cautious, and more difficult to apprehend. Moreover, the call girl organizations have adjusted their modus operandi in order to counter detection, and because of this the sex worker, no matter native or foreign, may only meet with junior figures in the organization in the period of work. In the process of investigation of sexual exploitation, the police are unable to effectively break the cases, and even less able to catch the brains behind the organization, and so in the end only the sex worker and the john are penalized.

Concerning this, in the caption for Figure 6-16 in the national report, the statistics for suspected cases of "violation of morals" under all police agencies for 2009-2012, it is explained that the police agencies have shifted their emphasis to interdiction of organizations and networks in the sex industry, and away from the weaker side, the service providers, in the sex industry.

However, this material is too vague and cannot help us see the whole picture.

Notably, in the Criminal Code, Chapter on Offences against Morals, there are numerous articles, such as Article 231 which deals with middlemen in the ordinary sex transactions of adults. But Article 231 of the Criminal Code deals with middlemen in coerced sex transactions, while Article 233 deals with middlemen for underage sex transactions, and Articles 234-235 deal with ordinary sex-related businesses that do not involve sexual transactions per se. We would suggest that the National Police Agency present the statistics in greater detail according to the Articles of the Criminal Code, so that it can be seen more accurately what kinds of cases the police are persecuting and the relationship of this to human trafficking.

Further, in the national report statistics, Figures 6-19 and 6-20, it can be seen that after the revision of the Social Order Maintenance Act, the police agency fines for violation of Article 80 are mostly in the range of NT\$1,500 to NT\$6,000, indicating small fines for johns, and the police can thus claim they are in compliance with the Judicial Yuan Interpretation No. 666 and the intentions of the revision of the Social Order Maintenance Act, that johns must be penalized as well as prostitutes. But since the statistics are just the total number, it is still difficult to make conclusions from them, and we would suggest that the statistics be broken down further by sex and age so that it can be more clearly seen who has been subject to penalties by the police.

At present Taiwan's policy towards the sex industry is that all sex workers are criminalized, but what we can see from various kinds of related fronts, such as little eateries all along the streets, massage shops, virtual websites, and dating for money, is that these will not disappear because of legal prohibition. Moreover, those in the trade are not necessarily in forced prostitution.

Of course at the same time we cannot rationalize sex work as reasonable, and conclude that there is no exploitation in it. Therefore, instead of proposing a policy that cannot be realized, i.e. the "sex industry districts" policy, would it not be better to deal with the sex trade like any specialized commercial service, and give it legalized management? This is more likely to protect the rights of those in the trade; the government then can oversee the labor conditions, and the sex workers can be free of the onus of illegality and not need to be controlled by exploiting groups or afraid to seek assistance from the police.

### **3. The unseen harm: Underage girls who are abuse victims**

## **are judged to be sex workers**

In the previous section what we talked about was the situation of adults in the sex trade; the main law in Taiwan concerning underage prostitution is the Prevention and Punishment of Child and Youth Sex-Trade Act. At present in Taiwan almost all of those apprehended in sex work are women. Therefore, aside from punishing those involved in sex transactions, the crucial point in this Act and more important is the part concerning the protection and placement of young girls. The Association visited a halfway school in south Taiwan and interviewed the teachers and staff of this school in order to understand their situation of placement and the difficulties they face.

The problem that is worthy of attention here is that in the law the definition of “sex transaction” is vague, and this creates the situation that a portion of young girls who have been the victims of molestation are mistakenly taken for unfortunate girls intentionally engaging in a sex transaction, and they are unable to receive proper assistance.

The Prevention and Punishment of Child and Youth Sex-Trade Act defines a sex transaction as “an act of sexual intercourse or lewdness with value exchanged”. But in quite a few cases of sexual abuse, because the perpetrator after abusing the girl presents the victim with some small amounts of cash or presents, as if for compensation or to demand silence, and the victim accepts it under conditions of helplessness, this is seen as if compensation for the psychological wounds and bodily damage; and then the courts interpret this as value exchanged for a voluntary act of sexual intercourse or lewdness, i.e. prostitution, whereas the girl is actually the victim of molestation. After the judgment the victim is sent to the halfway school for protective placement together with other young girls who have violated the provisions of the Act.

In the process of visiting, the Association found that the students have little privacy and personal space. The school explained that because of the need for supervision outside of class time, even aside from the usual school days in class when the girls need to be controlled by the teachers, the windows in the hallway in the student dormitory could not be covered with curtains. Therefore even after classes the students did not have a space for complete privacy. The main function of the halfway school is to assist completion of compulsory education; the curriculum includes a choice of food management, beautician, and information processing as three kinds of vocational training that would help in later ability to compete in the job market. We might discover that aside from the lack of general educational subjects, there are only

three choices for vocational training. But aside from this, we also discovered that there were some girls who were victims of sexual abuse and what they needed even more was healing on the spiritual level, as well as treatment for the shadow hanging over them and fear of sex. Moreover, the psychological anxiety of the victims was more serious than the counseling teachers or social workers could easily deal with. In all, it may be felt that the curriculum of the school is not necessarily consistent with the needs of the victims.

In addition, because the students were judged to have violated the Prevention and Punishment of Child and Youth Sex-Trade Act, the content of the classes for education in gender equality was still focussed mainly on recognizing what is a sex transaction and preaching corrective “health” in sexual relations. The education provided could be considered short on what is important in modern gender education, e.g. issues of variation in gender and gender relations. Therefore, the Association suggests that the course provisions and the methods of management in the halfway school could be improved in some parts.

#### **4. The immigration control system creates ineffective barricades for migrant sex workers that become real obstacles for international marriages.**

In order to keep human trafficking outside of the borders of the country and to prevent the use of fake marriages as a means to enter Taiwan, our government has developed a mechanism for requiring personal interviews before allowing immigration for marriage partners from designated countries, in particular the Southeast Asian countries and China. But under this restrictive interview system, there is still no effective way to prevent “fake marriage, real prostitution”; while on the other hand it means citizens who sincerely want to marry must pass through a gamut of screening mechanisms before they can complete the marriage, and it also stigmatizes the women of these countries who enter into transnational marriages.

The national report mentions that in 2009-2012 the number of Southeast Asian marriage partners obtaining visas for the first time due to marriage dropped by 39.29%, in contrast to the rapid annual growth seen since the 1990’s. Moreover, the number of cases of mainland China marriage partners applying for interviews in order to enter Taiwan and unite with family also experienced a large drop, by 64.16% (Figure 6-10). From this it is determined that the interview (or visit) mechanism, now fully implemented, is effective in deterring the use of fake marriages for immigration

under snakehead (human trafficking) groups. However, according to comments at the forum by the head of a section of the Criminal Investigation Brigade of the Kaohsiung City Police Bureau, foreign nationals intending to come to Taiwan for sex work have developed multiple routes to enter Taiwan along with the increasing frequency of international communications and travel. “Marriage” has long since not been the only choice; for the sex workers presently apprehended, even if they cannot utilize fake marriage to enter the country, they can still use sightseeing, plastic surgery, or real estate sales, etc., as channels for entry. Vice Director Wang of the Taipei Women’s Rescue Foundation also confirmed that in recent years the victims of sexual exploitation have not been entering Taiwan through fake marriage, but through sightseeing and work visas. There is a very high degree of difficulty in investigating and penetrating this kind of human trafficking, the main reason being that the women involved have come to Taiwan on their own volition, and it is very difficult to gain their trust and cooperation.

With the scale of organized crime so huge and the difficulty of obtaining evidence so great, the police officers on the first line admit that they are totally unable to deal with this kind of case; they are under pressure to show their effectiveness but can only achieve arrests of low-level prostitutes and couriers. So they are unable to uproot this kind of snakehead criminal group that engages in exploitation of women.

The marriage interviewing (visiting) mechanism is unable to effectively prevent foreign nationals from coming to Taiwan for illegal work. But it does actually hinder the unification of transnational couples who sincerely want to marry. While writing the plan for the preparation of this shadow report, the Association met a volunteer who shared the experience of her older brother in marrying the sister-in-law from Vietnam, and all the quandaries they experienced. In the first interview, the interviewing officer asked the sister-in-law her opinions about Taiwan’s building Nuclear Power Plant Number 4; she was stunned and didn’t reply, and they were failed in the first interview. But even if you posed this question to Taiwan citizens, they might not be able to answer it easily. Currently, in order to prepare for passing the next interview, the brother must put his own work on hold temporarily and go to live in Vietnam. The sister-in-law must also go to a school to learn Chinese, to hope to pass the interview and prove to the Taiwan government that their marriage is “real”.

And we might also ask, what is a “real marriage”? Should the government really hold such great authority as to determine whether marriages among the people are real or a ruse? If the boundary between real and false marriage were actually so important, why aren’t the marriages of Taiwan nationals subject to interviews, or why not the

transnational marriages with those from the economically advanced countries? The implementation of the interviewing (visiting) mechanism should be for the purpose of deterring international trafficking and transport and preventing sale of humans, sexual exploitation, and labor exploitation. But actually we cannot see a successful effect of this mechanism in impact on the sex trade; we can only see that it deprives people of their right to freedom of marriage.

## 5. Conclusion

Examining the government's English-to-Chinese translation of Article 6 of CEDAW, we have discovered that the translation of the original text should be closer to:

“Ratifying nations should take all suitable measures, including legislation, to prohibit all forms of selling women and the acts of forcing women to sell sex in order to exploit them.”

This represents that what CEDAW focuses on is exploitation in sex transactions, while it does not condemn all sex transactions. From this, observing the situation of adult sex trade in our country we discover that the revisions to the Social Order Maintenance Act have not improved the difficult conditions encountered by sex workers, but have rather increased the threats to their livelihood and safety – in effect failing the original intent of Judicial Yuan Interpretation No. 666, to seek social equality. We are of the opinion that under the current conditions, i.e. that sex trade districts have not yet been established, the various local governments should not require that police precincts achieve quotas of cases of sex trade prosecutions in order to demonstrate performance; this deprives sex workers of their right to work, and the disadvantaged sex workers should not become the victims of a mistaken government policy. Moreover, if the concept of establishing sex trade districts cannot be realized in practice, then the policy should be reexamined and consideration should be given to the possibility of full legalization of sex work.

This should respect the freedom of choice of occupation, provide regulation of the working conditions of those in the sex industry, avoid exploitation by call girl stations, and at the same time secure the personal safety of sex workers and minimize the situations in which they are subject to threat and intimidation because of their illegal status.

On the issue of those underage girls found in the sex trade, the government's

definition of “sex transaction” is not clear, and this has resulted in some young girls who are actually victims of sexual abuse being judged and placed in schools centralized for education of underage prostitutes, but where they do not receive appropriate assistance for their sexual abuse trauma. Aside from this, there are aspects of the halfway school that await continuing efforts for improvement, in particular in privacy and gender education.

Finally, in regards to the management system of the National Immigration Agency, we believe that with the current frequency of international travel and communications, those foreign nationals who intend to come to Taiwan to work do not need to resort to a marriage ruse in order to enter Taiwan. The marriage interview (visit) measures that are directed towards marriage partners from the less developed countries are designed to deter false marriages for the actual purpose of employment in Taiwan, but at the same time they also reproduce the stigma directed towards the less developed countries. However, not only are these measures unable to effectively counter false marriage for the sake of employment, but they also put up obstacles to a smooth passage to Taiwan for real transnational marriage partners, and deprive people of the right of freedom of marriage.