

THE CONDOM QUANDARY:

A Study of the Impact of Law Enforcement Practices on Effective HIV Prevention among Male, Female, and Transgender Sex Workers in China

Cover art: A woman carries a condom with a Chinese inscription that reads, "Prevent HIV. Have a healthy life."
Photography for this report by James Baum.

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Executive Summary

The State allows condoms to be brought into hotels, guest houses and venues where high-risk sex occurs, and I feel that, in this respect, the State has made progress. So then why do the police still use them [condoms] as evidence of prostitution? I feel this runs counter to national policies and really needs to change.

– Li Huixian, female sex worker

Sex work is illegal in China, and law enforcement practices that focus on condoms as evidence of prostitution are having a negative impact on HIV prevention among sex workers. When Lanlan, who runs a community based organization (CBO) and support group for sex workers in northern China, introduced female condoms to the female sex workers she works with as part of her CBO's HIV and sexual and reproductive health (SRH) program, their first reaction was: "The female condom is too big. We can't swallow it if the police come!" This story highlights the conundrum sex workers in China face when attempting to avoid penalties by law enforcement and protect themselves from sexually transmitted diseases and infections (STIs) and HIV.

Context

HIV and other STIs are one of the major public health concerns in China. Although the HIV epidemic remains low prevalence in the general population, it is highly concentrated among key populations, with increasing infections among men who have sex with men (MSM) and sex workers. The primary mode for transmission of HIV is through sexual intercourse—both heterosexual and male to male sex. Of the 104,000 new cases diagnosed in 2014, 92.2% were through sexual contact. In addition, the expanding epidemics of STIs are increasing at an alarming rate—in 2015, syphilis and gonorrhea were among the top five reported kinds of transmitted infections in China.

In many ways, the Chinese government has adopted a pragmatic and often progressive approach to HIV. China has strategically concentrated its efforts on key populations, such as sex workers, people who inject drugs, and MSM.

Condoms play a crucial role in preventing the spread of HIV and other STIs. In 2004, led by the Ministry of Health (MOH), six government departments in China jointly issued the *Views on the Promotion of Condom Use for HIV/AIDS Prevention*, which makes explicit the responsibilities of health, family planning, commercial and broadcasting departments for the promotion of condom use. The government has devoted great efforts to promote the use of condoms: in many provinces, entertainment venues are required to display condoms publicly; and the central government allocates a specific amount of funds each year to purchase condoms, which are then widely distributed to key populations, including

sex workers, by various levels of the Center for Disease Control and Prevention (CDC) and CBOs across the country.

It is therefore perplexing and problematic that, alongside these efforts, the Chinese government has taken a punitive approach to sex work, and the system of public security bureaus (PSB), China's law enforcement departments, have been authorized to crack down on sex work.

The conflicting policies and messages are undermining the government's own efforts at an effective HIV response, and the crackdowns on the sex industry have been positively reaffirmed in several major HIV prevention policy documents. Chinese CBOs working on HIV prevention report that it is a longstanding practice for police to specifically focus on condoms and use possession of condoms as the main evidence of prostitution.

About this study

There is little public debate on the impact of law enforcement on the HIV response, in part because of a lack of substantiated data on the issue in China. Little is known about law enforcement operations in general; the extent to which the police are using condoms as "evidence" of sex work in practice; what impact, if any, this is having on the safety and health of sex workers; and how it is affecting China's national HIV prevention strategy. Between late 2014 and August 2015, Asia Catalyst and four community partners undertook this study in three major Chinese cities with the support of UNFPA.

The purpose of this study is twofold: (1) to better understand how relevant laws and law enforcement practices in China affect the ability of sex workers to access and carry condoms and access HIV and SRH services and, (2) to provide recommendations to revise laws and policies and to change law enforcement practices to improve the health and rights of sex workers in China.

The study combined quantitative and qualitative methods, including 517 survey questionnaires and 74 in-depth interviews with male, female, and transgender sex workers, and 18 interviews with key informants. The report uses the terms "survey respondents" and "interview respondents," respectively.

Key Findings

1. Most sex workers experience interrogation by law enforcement officers.

More than half of the survey respondents reported that they had been interrogated by the police since engaging in sex work, and 42.9% responded that they had been interrogated during the past year.

Many of the survey respondents who had experienced police interrogation since engaging

in sex work also reported being subjected to various forms of penalties: 70.9% had been taken to the police station for investigation, 47.2 % had been subjected to administrative detention, and 26.8% had been fined. Female respondents (56.1%) were more likely to be subject to administrative detention than male (9.1%) and transgender respondents (37.2%). Male and transgender survey respondents were more likely to be fined.

2. Fear of police and client preference are the two main reasons reported by female sex workers for not using and carrying condoms.

The overall percentage of sex workers using condoms with the most recent clients was 82.8 % (female 75.6%, male 93.2% and 92.3% transgender). For the 89 respondents who did not use condoms with the most recent clients, 37% reported the reason was concern over possible police searches and confiscation of condoms as evidence of prostitution. All of these are female. Slightly more than 22% reported that their clients did not want to use condoms and 17% reported that they trusted the clients and did not need to use condoms.

With respect to the frequency of carrying condoms in the past month, 63.8% survey respondents reported always carrying condoms, with 46.5% for female, 89.5% for male and 84.6% for transgender sex workers. Two main reasons were cited for not always carrying condoms: fear of police searches and confiscation of condoms as evidence of prostitution (41.7%), and unwillingness of clients to use condoms (37.4 %).

Compared with male and transgender survey respondents, female respondents have lower condom use rate and condom possession rate, and they are more likely to cite policing and clients as the reason for not using or carrying condoms.

3. Police interrogation negatively impacts condom use and possession among sex workers.

Among the respondents who had been interrogated by the police in the past year, 21.1% said that they would now use condoms less often, and 36.5% said that they reduced the number of condoms they carried after having contact with the police.

The research found that the consistent condom use rate (i.e., use of a condom 100% of the time during every sex act) during the previous month was lower among respondents who had been interrogated by the police (in the past year) than those who had no such experience: the rate of consistent condom use is 47.7% and 67.8% respectively.

There were similar results for possession of condoms: 47.7% of survey respondents who had been interrogated by the police (in the past year) always carried condoms, a much lower rate than for those who carried condoms but had not been interrogated by the police (75.9%, 224/295).

For both consistent condom use and possession of condoms, the discrepancy was most evident among female respondents.

4. Police use two main methods for handling sex work cases: 1) attempting to catch sex workers “in the act,” and (2) conducting inspections of sex work venues. Condoms are the main focus of police action in both operations. Evidence of condoms was also the deciding factor in whether or not the police would take the sex worker to the police station for further action.

Over 35% of survey respondents reported that they had experienced searches for condoms by the police. Among the 74 interview respondents, 47 reported that they had experienced one or more police raids while in the process of engaging in or attempting to engage in a commercial sexual transaction, or while soliciting clients. Twenty-nine experienced “stop and search” operations by the police on the street, in parks, in rented rooms, or in entertainment venues.

There is a common belief among police officers that merely possessing condoms is “evidence” of selling sex. The police treat finding condoms as the determinative factor in whether to take the sex worker back to the police station for further inquiries or penalty. Among the 29 interview respondents who experienced police inspection in sex work venues, when they were not involved in a sexual transaction and condoms were found, 69% were taken to the police station where an administrative penalty was imposed, 13.8% were taken to the police station for further inquiries without a penalty being imposed, and 17% had no further action taken against them.

5. Police violence, abuse, and coercion was reported by sex workers of all gender categories.

For survey respondents who experienced interrogation since engaging in sex work, 78% had experienced verbal humiliation, 64.5% had experienced entrapment, and 50.9% had experienced physical violence.

The forms of violence and abuse include:

- Verbal humiliation: male and transgender female sex workers reported being subjected to verbal abuse by police relating to their sexual orientation and gender expression.
- Physical violence: violence was reported during police questioning of sex workers and clients at the scene, and in police stations. Interview respondents reported that police used physical violence to coerce a confession and to sign the interview record.
- Extortion and corruption: Interview respondents reported that police extorted bribes in exchange for release, receipts were not issued when a fine was imposed, and sex workers paid police directly in cash as fines, though according to the law, fines should be paid at the bank. Interview respondents also reported that the police confiscated their valuables once condoms were found with them.

6. Police searches and confiscation of condoms have a negative impact on sex workers' decision to use and carry condoms, and decreased the overall availability of condoms in sex work venues because entertainment venue staff did not want to display condoms publicly.

Interview respondents reported that, in order to avoid being penalized, they would promptly dispose of their condoms when encountering the police. Street-based sex workers threw away their condoms as soon as they saw a police officer in the vicinity.

Interviews revealed that a fear of arrest drove sex workers to shorten their service time with clients to the best of their ability, and made them more likely to agree to a client's demand to not use a condom. Law enforcement actions also decreased sex workers' willingness to carry a sufficient number of condoms, exposing sex workers to the risk of HIV and STI infection.

The research found that venue owners were less willing to publicly display condoms (despite MOH policy requiring them to do so) because police consider the existence of condoms to be evidence that the location is likely a sex work venue.

7. Law enforcement actions did not result in sex workers leaving the industry, but instead have had a negative impact on the credibility of government authorities among sex workers.

Law enforcement actions did not result in sex workers leaving the sex industry. Instead, sex workers continue to work: 21.2% of the survey respondents temporarily stopped engaging in sex work, while 24.8% changed to more concealed venues, and another 24.8% changed work venues frequently.

Law enforcement actions, and accompanying violence and abuse of power, have a substantial effect on the image and credibility of public security authorities among sex workers. When asked about their impression of the police, only 11.2% of the survey respondents had a good impression of the police, while 49.5% had a poor impression. Nearly half said that if they encountered a dangerous situation during work, they would not report it to the police.

8. Law enforcement practices substantially reduce the ability of health departments and CBOs to conduct HIV prevention work and distribute condoms to sex workers. The problem is compounded by the limited communication and coordination between health and public security departments.

Health officers and CBO staff reported that law enforcement activity is a factor that always has to be considered in intervention work targeting sex workers as a group. Police crackdowns, particularly during major holidays and other events, always bring a temporary halt to HIV intervention work, and health workers reported they were unable to meet their

intervention targets: sex workers disappear, entertainment venues close temporarily, and no one wants to accept condoms distributed by CBOs.

The problem is compounded by limited communication channels between health departments and public security bureaus. Currently the health department does not have a coordination mechanism with public security on intervention work for sex workers, though such a mechanism exists for intervention work for people who uses drugs.

Recommendations

The research for this report, conducted in three major Chinese cities, found that coming into contact with law enforcement actions is common for male, female and transgender sex workers, and they are struggling to maintain their safety and health in such an environment. Condoms, a tool that can protect sex workers from STIs/HIV, are categorized and targeted as a “tool of offense” in police actions against sex workers. Law enforcement officers search for and confiscate condoms, and use possession of condoms to pressure individuals into a confession. Sex workers who are affected by these policies and actions are not passive, they demonstrate agency in response to these actions and in efforts to resist and circumvent the police actions. However, sex workers are still more likely to agree to clients’ demands to not use condoms, reduce the numbers of condoms they carry, not carry condoms at all, or try various methods to hide condoms in concealed places. Entertainment venues are also deterred from publicly displaying condoms in their establishments, despite central government policies advising them to do so.

China is not the only country to use possession of condoms as evidence of prostitution. However, the study finds a slow-growing movement to rethink and reform these practices. In Cambodia and Myanmar, both governments have issued high-level directives to declare that condoms should no longer be used as evidence to arrest sex workers. In both New York City and San Francisco, authorities agreed that allowing the use of condoms as evidence could increase the risk of the spread of HIV and that the value of condoms for HIV and disease prevention far outweighed any utility in enforcement of anti-prostitution laws. In 2013 and 2014, San Francisco and New York City, respectively, decided condoms would no longer be treated as evidence in prostitution cases.

Furthermore, experience has shown that police reform and community-police cooperation is crucial to HIV prevention among criminalized groups such as sex workers, and should be supported as a central part of HIV programming. China should therefore review and reform current policies to ensure a coherent and coordinated approach that will lead to a more effective response to the HIV epidemic that also protects the rights of sex workers.

To the Ministry of Public Security

Eliminate the police practice of searching for and confiscating condoms and using possession of condoms as evidence of prostitution.

- Amend national and local guidelines on the handling of sex work cases and exclude condoms as physical evidence of prostitution cases.
- Issue a directive to instruct all law enforcement officers to immediately cease using the possession of condoms as evidence to detain, question, or arrest persons suspected of sex work.
- Work together with the National Health and Family Planning Commission (NHFPC) to organize trainings for law enforcement officers on the directive, and on the public health importance of condoms for HIV prevention and sexual and reproductive health.

Put an end to police extortion, and abuse and violence against sex workers; investigate and punish officers who abuse or extort sex workers.

- Establish a feedback and accountability mechanism in which sex workers and other vulnerable groups can file complaints of misconduct by police. Respond to all incidents, and conduct due diligence to investigate and punish law enforcement officers who abuse or extort sex workers.
- Train law enforcement officials to recognize and uphold the human rights of sex workers, invite sex worker representatives to these trainings to share their experiences.

To the National Health and Family Planning Commission

Address the legal and policy barriers that hamper the promotion of condom use among sex workers; improve coordination and cooperation with other departments, especially the public security bureaus.

- At national and local levels, establish a Working Group on Sexual and Reproductive Health (SRH) and HIV for Sex Workers, which would consist of representatives from relevant government departments including, but not limited to, public security, health authorities, the All-China Women's Federation, and CBOs working directly with sex workers. The working group should meet regularly to coordinate and solve concrete issues that impeded sex workers' access to SRH and HIV health services, such as condom display in entertainment venues, and police confiscation of condoms.
- Work together with to the State Administration of Press, Publication, Radio, Film and Television to end depictions of condoms as evidence of prostitution in news reports disseminated through television, film, radio broadcasts, newspapers, magazines, books, the internet and other media. Train media and reporters on respecting sex workers' dignity and human rights in reporting.

- Work together with the State Administration for Industry & Commerce to formulate supportive policies and provisions that encourage commercial and public service advertisements promoting condom use.

Improve sex workers' access to sexual and reproductive health and HIV services.

- HIV programs for sex workers should be designed and implemented in consultation with sex workers. The negative impacts on health of current law enforcement practices should be addressed in the design and evaluation of the programs. Programs should address the issues most relevant to securing sex workers' right to health.
- Support STI and HIV intervention programs led by sex workers and CBOs; provide voluntary and rights-based outreach, peer education, counseling, testing and other services.

To the National People's Congress

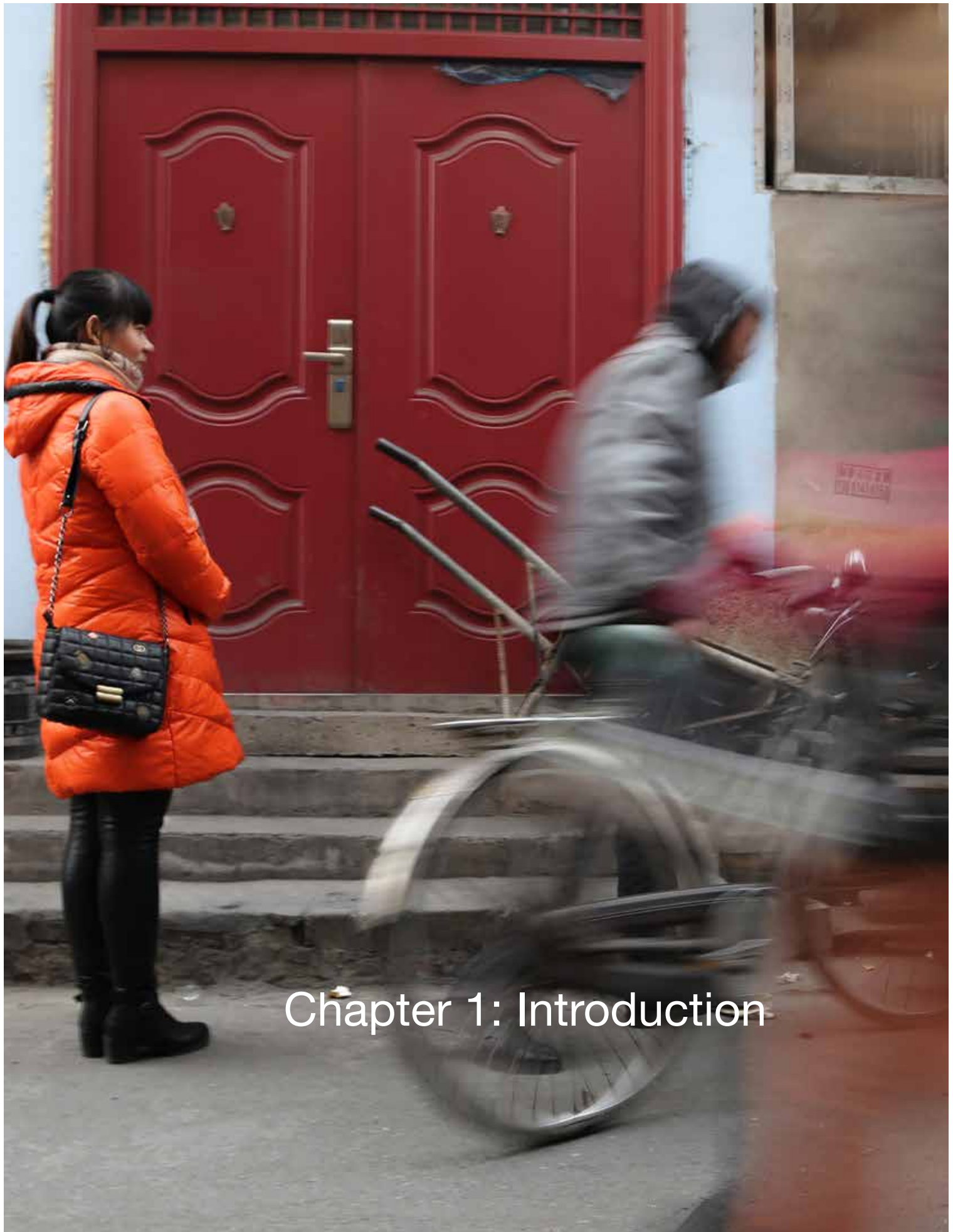
Reform punitive laws, policies and law enforcement practices to protect sex workers' rights.

- Reform the punitive legal framework on sex work; move towards decriminalization of sex work; withdraw laws and regulations that prohibit consenting and voluntary adults from buying or selling sexual services; ensure safe working conditions for sex workers.
- Abolish articles in the Criminal Law relating to "intentionally spreading sexually transmitted diseases," and abolish phrases relating to "cracking down on prostitution" in HIV prevention documents.

To the Chinese government

Strengthen sex workers' access to justice and empower them with knowledge of their rights.

- Implement community-led empowerment initiatives for sex workers, and create mechanisms to enable local governments, sex worker organizations and other interested civil society groups to create environments conducive to sex workers rights, including network building among sex workers for peer support to prevent and mitigate the effects of violence.
- Ensure sex workers' access to legal literacy programs and legal aid services, including through the training of legal aid providers on sex workers' rights and establishing networks of paralegal peers to provide legal support.
- Support sex worker-led organizations to conduct systematic documentation of human rights violations and discrimination against sex workers, forging partnership with other key population networks, local leaders, and the media for a stronger national advocacy to protect the rights of sex workers.



Chapter 1: Introduction

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1.1 The public health crisis

Sexually transmitted infection diseases (STIs, or STDs) including HIV are a major public health challenge in China today. According to government figures at the end of 2014, there were 501,000 reported cases of people living with HIV in China, comprising 0.037% of the country's population.¹ While the national prevalence remains low, HIV prevalence is concentrated, and significantly higher, among key populations*², including sex workers*. Sex workers are more vulnerable to HIV and other STIs due to multiple factors, including large numbers of sexual partners, unsafe work environments and barriers to the negotiation of consistent condom use.

In China, sexual transmission is currently the primary mode for HIV transmission. Among new cases diagnosed every year, the percentage of sexually transmitted cases increased from 33.1% in 2006 to 92.2% in 2014.³ Sexual transmission of HIV in China is occurring mainly through heterosexual contact, which accounted for 66.4% of newly detected infections in 2014.⁴ In the latter half of 2014, the National Center for AIDS/STD Control and Prevention (NCAIDS) of the CDC conducted a retrospective survey of 18,110 HIV cases diagnosed between January and June 2014, in which the infection was transmitted through heterosexual contact. The survey found that 59.3% of the surveyed males had become infected through commercial sexual activity.⁵

According to Chinese government statistics, the rate of HIV infection among female sex workers has remained relatively low in recent years, with a rate of 0.22% in 2014,⁶ although some experts believe this rate to be an underestimation.⁷ One study estimates the infection rate at 3.0%.⁸ National prevalence also masks high rates in specific geographical locations. In five provinces (or autonomous regions)-- Yunnan, Xinjiang, Guangxi, Sichuan and Guizhou, HIV prevalence among female sex workers is reported as greater than 1%.⁹ Overall, Chinese female sex workers face a risk of HIV infection that is 50 times higher than women in the general population. Among women living with HIV in China, 48.6% of them are sex workers.¹⁰

1. National Health and Family Planning Commission of the People's Republic of China, *2015 Progress Report on AIDS Prevention in China*, May 2015. Independent estimates place the number closer to 800,000.

2. Definitions of key terms used in this report can be found in the Glossary, page 68. These terms are indicated with asterisks.

3. Ibid.

4. Ibid.

5. "National preliminary rapid appraisal work for heterosexual transmission risk factors for HIV-AIDS," (全国初步完成艾滋病异性传播危险因素快速评估工作). http://www.chinaaids.cn/yqjc/hdjz2/201412/t20141229_108527.htm, accessed August 17, 2015.

6. National Health and Family Planning Commission of the People's Republic of China, *2015 Progress Report on AIDS Prevention in China*, June 2014.

7. Baral SD, Wirtz A, Poteat T, et al. "Was the HIV infection burden in female sex worker in China overestimated? Authors' Reply." *The Lancet*. Vol 13 (January 2013); 13-14.

8. Stefan Baral et al., "Burden of HIV among female sex workers in low-income and middle-income countries: a systematic review and meta-analysis," *The Lancet*, Vol. 12, July 2012.

9. Ministry of Health of the People's Republic of China, *2012 China AIDS Response Progress Report*, March 31, 2012.

10. Stefan Baral, et al., "Was the HIV infection burden in female sex workers in China overestimated? – authors' reply," *The Lancet*, Vol. 13, January 2013.

Furthermore, the sexual and reproductive health of female sex workers is a cause for concern. A survey of 361 street-based female sex workers in Nanchang city, Jiangxi province, revealed that the rate of syphilis infection was 43%.¹¹ Another survey of female sex workers aged 20 or under in Kunming city, Yunnan province, found that the survey respondents lacked knowledge of reproductive health, and that STIs and abortions were pervasive: 66% of the women surveyed had experienced symptoms of STIs in the past year, and 44% had undergone an abortion.¹² Evidence has shown that STIs significantly increase the risk of HIV transmission.¹³

China does not report specific figures for HIV infection rates among male sex workers, but does report on HIV among men who have sex with men (MSM). Of all new infections, male to male transmission is showing a rapid increase: the percentage of male to male sexual transmission increased from 2.5% in 2006 to 25.8% in 2014. In 2014, the National HIV sentinel surveillance data demonstrated a 7.7% HIV infection rate among MSM.¹⁴ A study conducted with 2,618 MSM in 2009 showed that the HIV infection rate among male sex workers was slightly lower than non-sex worker MSM, with an HIV infection rate of 6.13% and 7.59% respectively.¹⁵ The study also found a high rate of syphilis; the prevalence was 14.32% of the whole study population, with 10.73% for male sex workers (MSWs) and 14.72% for non-MSW MSM.¹⁶

China's national surveillance system does not gather data on transgender* people separately, but includes transgender women under the MSM category. As a result, HIV prevalence specifically among transgender women is not known. Some research has found that HIV infection among transgender sex workers is alarmingly high. A survey among 220 transgender female sex workers in Shenyang, Liaoning province in 2014 found that 25.9% either self-reported or were tested/confirmed as HIV positive.¹⁷ Globally, transgender women are disproportionately affected by HIV. A 2013 study showed that the pooled HIV prevalence rate for transgender women is 19.1%, and they are 49 times more likely to acquire HIV than the general adult population.¹⁸ In Asia, the disease burden was particularly high in India and Indonesia, with a prevalence of 43.7% and 26% respectively.¹⁹

11. Xiao Hua Tao, Tao Jiang, "High prevalence of syphilis among street-based female sex workers in Nanchang, China," *Indian Dermatol Online Journal*, 2014 Oct-Dec; 5(4): 449–455. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4228639/>.

12. Bao Xiaodong, "Investigation by Chinese prize-winners at International AIDS Conference discovers threat to 'underage females' in Kunming," (世界艾滋病大会中国获奖者调查发现昆明“低龄女”的威胁) *Southern Weekend*, July 25, 2014, <http://www.infzm.com/content/102550>.

13. Helen Ward and Minttu Rönn, "The contribution of STIs to the sexual transmission of HIV," *Curr Opin HIV AIDS*. 2010 Jul; 5(4): 305–310.

14. 2015 Progress Report on AIDS Prevention in China, June 2014.

15. Weiming Tang, "Burden of HIV and Syphilis: A Comparative Evaluation between Male Sex Workers and Non-Sex- Worker Men Who Have Sex with Men in Urban China," *PLOS/One*, May 11, 2015, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4427281/>, accessed October 5, 2015.

16. *Ibid.*

17. Cai Y et al. "Prevalence and associated factors of condomless receptive anal intercourse with male clients among transgender women sex workers in Shenyang, China," *Journal of the International AIDS Society*. 2016, 19(Suppl 2): 20800.

18. Asia Pacific Transgender Network, *Blueprint for Provision of Comprehensive Care for Trans People and Trans Communities in Asia and The Pacific*, 2015, <http://www.weareaptn.org/asia-pacific-trans-health-blueprint-in-action/>.

19. Asia Pacific Transgender Network, *Blueprint for Provision of Comprehensive Care for Trans People and Trans Communities in Asia and The Pacific*, 2015, <http://www.weareaptn.org/asia-pacific-trans-health-blueprint-in-action/>.

The value of addressing HIV in key populations is widely acknowledged and, strategically, it is considered good practice to address both HIV and the sexual and reproductive health needs of sex workers to increase the impact and cost-effectiveness of HIV prevention and response efforts within this population.

1.2 Enabling Environment for an Effective HIV Response

The legal and policy environment has a profound impact on sex workers' vulnerabilities to HIV and their access to HIV and SRH-related services. In countries where sex work is criminalized, the threat of violence, from both clients and police, is a daily reality. In 2011, a research partnership among United Nations agencies, governments, sex worker community groups and academics was formed to address gaps in knowledge regarding the links between sex work, violence, and HIV in Asia. A multi-country qualitative study: *The Rights(s) Evidence: Sex Work, Violence and HIV in Asia* was developed, with research carried out in Indonesia, Myanmar, Nepal and Sri Lanka. The objective of the study was to better understand female, male, and transgender sex workers' experiences of violence, the factors that increase or decrease their vulnerability to violence, and how violence relates to risk of HIV transmission. Key findings of the research include:

- Sex workers experienced specific types of violence because of their work, such as sexual extortion and harassment by the police for carrying condoms.
- Police and clients were the most commonly cited people who used violence against sex workers, across study sites and gender categories.
- Violence against sex workers greatly increased their risk of HIV infection.

Factors that increase sex workers' exposure to violence include:

- The criminalization of various aspects of sex work and same-sex sex practices, and existing law enforcement practices that exacerbate violence by police and clients by giving the police broad powers to arrest and detain sex workers, promoting impunity, pushing sex work underground, reducing sex workers' ability to negotiate safe work practices, and increasing stigma and discrimination.
- A culture of impunity in which perpetrators of violence are not held accountable, undermining sex workers' access to justice and creating an environment in which violence against sex workers is normalized and justified.
- The stigma and discrimination associated with sex work, which allows for violence against sex workers.
- Gender inequality, whereby violence is used to uphold and reinforce harmful gender norms and maintain existing power relations.

Therefore, providing HIV services alone is not enough; it is also crucial to have an enabling legal, policy and law enforcement environment for an effective HIV response. World Health Organization (WHO) recommends comprehensive condom and lubricant programming for sex workers, as it has been found that consistent and correct use of male condoms reduces sexual transmission of HIV and other STIs by up to 94%.²⁰ At the same time, in recognizing that sex workers often face power imbalances that limit their ability to use condoms with clients, WHO also recommends the creation of an enabling environment. Specific recommendations to address the legal barriers for sex workers include decriminalization of sex work; the elimination of the unjust application of non-criminal laws and regulations against sex workers; and an end to the police practice of using possession of condoms as evidence of prostitution and grounds for arrest.²¹

Sex Work and the Law in Asia and Pacific is a review of the laws of 48 countries in the region to assess the legal and policy framework and law enforcement practices that affect the human rights of sex workers and impact on the effectiveness of HIV responses. The review concludes that confiscation of condoms by police as evidence of illegal conduct or to justify harassment and extortion is a widespread problem in the region. Countries where sex workers report condom confiscation or police harassment for possessing condoms include China, Fiji, India, Indonesia, Malaysia, Myanmar, Nepal, Papua New Guinea, the Philippines, Sri Lanka and Viet Nam.²²

1.3 The purpose of this study

Since the discovery of the first HIV cases in China in 1985, the Chinese government's HIV response has made impressive progress. Condoms are an effective tool in preventing HIV, and the government has actively promoted their widespread use among key populations, including sex workers. However, because sex work is illegal in China, sex workers also regularly face law enforcement actions. Research has found that police use the presence of condoms as supportive evidence of prostitution, directly undermining other government policies and programs that are designed to distribute condoms to sex workers for HIV and other STI prevention.²³

However, public debate on the impact of law enforcement on the HIV response is rare, and limited by a lack of substantiated data on the issue. Little is known about law enforcement operations in general; the extent to which the police are confiscating condoms as

20.WHO, Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations, July 2014.

21.Ibid.

22.UNDP, UNFPA and UNAIDS, Sex Work and the Law In Asia and the Pacific, October, 2012. <http://www.undp.org/content/dam/undp/library/hivaids/English/HIV-2012-SexWorkAndLaw.pdf>

23.Yingying Huang and Suiming Pan, "Government crackdown of sex in China: Responses from female sex workers and implications for their health," Global Public Health, 2014. Vol. 9, No. 9, pp. 1067-1079; China Sex Worker Organization Network Forum, "Research on the Impact of 2010 Crackdown on Sex Work and HIV Interventions in China," December 2011.

“evidence” in practice what impact, if any, this conduct is having on the safety and health of sex workers; and how it is affecting China’s national HIV prevention strategy.

In November 2014, United Nations agencies, Chinese government representatives, sex workers, CBOs, scholars, and lawyers came together at a conference on “Women and HIV in the Context of Commercial Sex,” which focused its discussion on the HIV risk faced by female sex workers in China, and the effect the legal environment has had on their ability to access HIV services. Sex worker representatives attending the conference articulated some of the challenges they face in using condoms, notably that possession of condoms is regularly used as grounds to detain and punish sex workers during law enforcement operations. The conference recommended further research and analysis to better understand how laws and law enforcement practices are affecting sex workers’ ability to access and carry condoms and access HIV and SRH services. In addition to other research, the primary data gathered for this study makes an important contribution to understanding the impact of law enforcement practices on HIV/STI efforts and on the health, lives and rights of sex workers.

This study was undertaken by four community partners who have been engaged for many years in HIV prevention work with female, male, and transgender female sex workers. They provide a broad range of services, including outreach, education, counseling, and testing for STIs and HIV. To protect the identities of their members, the four community partners decided not to name their organizations or the cities where they work.

The study was supported by UNFPA, which also engaged three experts with extensive (“technical advisors”) experience in conducting quantitative and qualitative research on the social and economic impact of HIV in China to provide technical assistance to this study.



Chapter 2: Methodology

Chapter 2: Methodology

The research was conducted from December 2014 to August 2015 in three major Chinese cities; one each in the southwest region of China, the eastern region, and northern region. The research combined quantitative and qualitative methods.

The quantitative component consisted of a survey questionnaire, completed by 518 sex workers, and yielding 517 valid responses.

The qualitative component was 74 in-depth interviews with male, female and transgender sex workers and 18 interviews with key informants including staff of CBOs and local health authorities, managers of sex work venues, and PSB officers. This data was supplemented by a significant desk review of published and grey literature, with input and advice from our technical advisors in China. All names appearing in this report, with the exception of one key informant, are pseudonyms.

All of the field research, including questionnaires and interviews were conducted by staff and volunteers from the four community partners, who also led the process of defining the research topic, developing the research plan, and drafting the survey questionnaire and interview outline. Asia Catalyst provided training on study methodology for the four community partners over a 6-month period. UNFPA and the technical advisors provided technical assistance and input throughout the process.

All of the survey questionnaires and interviews were carried out one-on-one, and largely in the offices of the community partners or at the locations where sex workers worked, such as in massage parlors, in parks, in public squares or on the street. Survey respondents²⁴ and interview respondents²⁵ received a small gift as appreciation of their time. Informed consents were obtained and all people who participated in the research signed informed consent forms.

For the survey questionnaire, the four community partners carried out convenience sampling with sex workers during regular outreach services*. The main content of the survey included questions regarding the demographic information of the sex worker, their use of condoms, their experience with sex work, and their contact with law enforcement officers. Trained community interviewers asked respondents the questions, and then filled in the questionnaire according to the answers given by the sex worker.

24. In this report, we use the term "survey respondents" to refer to the 517 sex workers who provided valid responses to the survey questionnaires.

25. In this report, we use the term "interview respondents" to refer to 74 sex workers and 18 key informants who participated in the in-depth interviews.

For those survey respondents who reported experience with police searching for or seizing condoms, the survey questionnaire interviewers then invited them to conduct a further in-depth interview to gain a more detailed understanding of the specific nature of the police search and seizure process, and how this law enforcement behavior had affected their possession and use of condoms. A total of 74 sex workers agreed and participated in the follow-up in-depth interview.

Each community partner numbered and entered the survey questionnaire findings into a database according to a unified standard, after which the UNFPA experts examined and verified the data. The experts used SPSS 13.0 and Microsoft Excel software to conduct statistical analysis of the data and identify trends. All of the in-depth interviews were recorded using digital voice recorders. The recordings were then transcribed by the community partners, and Asia Catalyst documented and analyzed the information from them.

This report was drafted by Asia Catalyst in consultation with the four community partners. The UNFPA experts and a group of external reviewers also provided valuable contributions to the report. Names of the reviewers can be found in the Acknowledgments section at the end of the report.

The Demographics of the Study Population

Table 1: Survey Questionnaire Sample

Sample Total		Average Age	Marital Status		
			Unmarried	Married	Divorced / Widowed
Female	303 (59%)	36.9	57	169	77
Male	162 (31%)	25	133	19	10
Transgender Female	52 (10%)	31.4	34	5	13
Total	517 (100%)	32.6	224	193	100

Sex workers who responded to the survey questionnaire worked in a variety of venues. Male sex workers mainly worked in clubs, hotels and saunas (93) and in rented apartments (62). Female sex workers worked mainly in small establishments such as foot reflexology shops and massage parlors (107), as well as on the streets, in parks and other outdoor venues (194). Transgender female sex workers mostly worked on the street (39).

Female interview respondents were on average the oldest, with an average age of 36.9 years; whereas males were relatively younger, with an average age of 25 years; transgender interviewees had an average age of 31.4 years.

Most of the survey respondents had a primary, middle or high school education. Among them, female respondents had lower education levels. Female respondents had on average a primary (105) or middle school (90) education, and 58 were illiterate. Male and transgender respondents had on average a middle (69) or high school (85) education.

Most of the female respondents were married; some, however, were divorced or widowed. Most of the male and transgender respondents were unmarried, with a small number who were married, divorced, or widowed.

For the 74 sex workers who participated in the in-depth interviews, 35 are female (47%, 35/74), 17 are male (23%, 17/74), and 22 are transgender female (30%, 22/74).

Another 18 interviews were conducted with key informants, including two public security officers, four staff from CBOs, seven health department staff, four venue owners and one lawyer.



Chapter 3: The Legal
Environment for Sex Work

Chapter 3: The Legal Environment for Sex Work

3.1 Sex work under Chinese law

In China, providing or purchasing sexual services is illegal under the Public Security Administrative Punishment Law of the People's Republic of China (PRC), and subject to administrative penalties of up to 15 days in detention and/or a fine of up to 5,000 yuan (US\$761).²⁶ Inducing, sheltering or introducing people to engage in sex work is also an administrative offense and subject to the same penalties.²⁷ For these administrative penalties, including detention and fines, police are authorized to mete out these punishments directly and without oversight; no court proceedings or involvement of a judge is required.

Under the PRC Criminal Law, organizing or coercing people into engaging in sex work is considered a criminal offense and subject to five to ten years imprisonment, fines and confiscation of assets.²⁸ Furthermore, knowingly transmitting HIV/STIs is criminalized, but only for sex workers and clients. They can be sentenced to up to five years for "intentionally spreading a venereal disease,"²⁹ but all reported cases have only been for female sex workers.³⁰

For female sex workers, in addition to the penalties mentioned above, the "Custody and Education" (C&E) system also authorizes police to detain, without judicial oversight, female sex workers and male clients for a term of six months to two years in C&E centers. The primary stated purpose of C&E is education and behavioral correction; detainees in C&E centers are subjected to compulsory education in law and morality, forced labor, and compulsory testing and treatment of STIs.³¹

The C&E system authorizes extra-judicial detention and incarceration of female sex workers and violates the right of citizens to liberty of the person as safeguarded in Chinese law. It

26. In 2014, the average yearly wage in China was 56,339 CNY (approximately US\$8,584 in 2016), or 4,695 CNY per month. The 5,000 CNY fine therefore exceeds the average monthly wage. Data from Trading Economics: <http://www.tradingeconomics.com/china/wages>.

27. Public Security Administrative Punishment Law of the People's Republic of China (《中华人民共和国治安管理处罚法》), adopted on August 28, 2005, at the 17th session of the Standing Committee of the Tenth National People's Congress and implemented as of March 1, 2006, Articles 66 and 67.

28. Criminal Law of the People's Republic of China (hereafter "Criminal Law"), adopted during the second session of the Fifth National People's Congress on July 1, 1979, amended in 2015, art. 358.

29. Criminal Law, art. 360.

30. An Pei, "The use of 'intentionally spreading a venereal disease' and the HIV response," (中国"故意传播性病罪"的使用与艾滋病防治) Radio Free Asia, August 22, 2012, <http://www.rfa.org/mandarin/yataibaodao/aw-08222012090849.html>, accessed January 4, 2016; Wu Haijie, "Women with HIV sold sex without an condom, charged under 'intentionally spreading a venereal disease'," (艾滋女卖淫不用保险措施被判传播性病罪) December 28, 2012, <http://news.qq.com/a/20121228/000567.htm>, accessed January 4, 2016; "A woman living with HIV and sold sex in Dongguan, on trial under the charge of intentionally spreading a venereal disease' in Dongguan," (女子身患艾滋病在东莞卖淫涉传播性病罪受审). January 15, 2016, accessed January 4, 2016, http://www.guancha.cn/society/2014_01_15_199901.shtml.

31. State Council of the People's Republic of China, Measure on the Custody and Education of Prostitutes and their Clients [卖淫嫖娼人员收容教育办法], September 4, 1993, arts. 2 and 7.

also constitutes arbitrary detention and violates the right to a fair trial, in contravention of international human rights law.³²

The C&E system was first implemented in the 1980s³³ and, as of 2014, according to the Ministry of Public Security, China had 116 C&E centers nationwide.³⁴ From 1987 to 2000, a total of more than 300,000 people were held in such centers.³⁵ At present, the C&E system is gradually shrinking, and many localities have stopped implementing it,³⁶ within the parameters of a larger debate on whether to maintain, abolish, or revise the entire system.³⁷

Male sex workers are also regularly detained and penalized. In addition to the penalties mentioned above, the crime of “assembling a crowd for licentious activity”³⁸ can also be used against male sex workers—it targets group sex involving three or more people.³⁹ In practice this has meant that for male sex workers providing sexual services involving two or more participants at the same time, they are more likely to be penalized for this crime than for sex work. The law has also been used to target gay men in general. For example, in February 2014, the Guangzhou city PSB raided a gay club and detained the organizers for the criminal offense of “assembling a crowd for licentious activity.”⁴⁰

Transgender sex workers are also targets of law enforcements actions.⁴¹ Asia Catalyst research has found that China’s transgender female sex workers are a complex group that includes MSM who engage in sex work while cross-dressing as women, as well as transgender individuals. Asia Catalyst’s 2014 research with 70 transgender female sex workers in China found that 64% of the interviewees had been detained by the police. Due to lack of protocols and training on gender identity, the police regularly detained transgender women with male detainees and subjected them to discrimination and abuse relating to their gender expression.⁴²

32. For more information, see Asia Catalyst, “Custody and Education: Arbitrary Detention for Female Sex Workers in China,” December 2013.

33. Xing Jing, “Research on Custody & Education procedures -- from the perspective of proper procedures,” (收容教育程序研究——以正当程序的视角). Juris Master dissertation, Zhengzhou University, 2010.

34. Dui Hua Foundation, “MPS: China Has 116 Custody and Education Centers Nationwide.” September 4, 2014. <http://www.duihuahrjournal.org/2014/09/mps-china-has-116-custody-and-education.html>, accessed June 15, 2016.

35. Ibid.

36. Wang Dianxue, Wu Sunlin, Mai Yicong, Wang Jing, “The state is studying whether to scrap or revise ‘Custody & Education,’” (国家正在调研“收容教育”存废或修订) June 9, 2014, <http://roll.sohu.com/20140609/n400577559.shtml>, accessed September 12, 2015.

37. Ibid.

38. Criminal Law, art. 301, para. 1.

39. Ibid.

40. “Guangzhou investigates homosexual hot spot, 2800 members involved in watching pornographic CDs and licentious activities,” (广州查同性恋涉黄点看碟调情淫乱共有会员 2800). <http://gz.bendibao.com/news/2014326/content155639.shtml>, accessed September 12, 2015.

41. “Man procuring sexual services from a cross-dressing man is also prostitution,” <http://zjnews.zjol.com.cn/system/2013/09/05/019577419.shtml>

42. For more information, see Asia Catalyst, “My life is too dark to see the light—A Survey of the Living Conditions of Transgender Female Sex Workers in Beijing and Shanghai,” January 2015.

3.2 Anti-prostitution Campaigns

The Chinese government has historically taken a punitive approach towards sex work and sex workers. In the 1980s, the government began regularly carrying out “strike-hard” campaigns⁴³ and “anti-pornography crackdowns” against the sex industry.⁴⁴ Although the strength and reach of these campaigns varied, they all targeted female sex workers and their related work venues with the aim of completely eliminating the sex industry. The crackdown on sex work was very severe in the 1980s and 1990s. According to statistics published by the Ministry of Public Security, the police investigated and prosecuted a total of 620,000 people for prostitution-related offenses between 1984 and 1991; 250,000 between 1992 and 1993; and more than 2 million between 1993 and 2004.⁴⁵ In April 2010 and February 2014, strike-hard campaigns against sex work in Beijing and Dong’guan respectively, spawned the harshest national anti-prostitution campaign in more than a decade. The police manpower deployed, the geographic area covered, the number of sex work venues shut down, and the number of people arrested were unprecedented.⁴⁶

Local governments are motivated by political and economic factors to actively engage in anti-vice campaigns. After the “reform and opening”⁴⁷ from the 1970s to the 1990s, the shortfalls in the budgets of the local PSBs led to an increase in activities to “earn income from fines and penalties,” which became a major internal motivation for anti-vice sweeps targeting sex workers and their clients. However, in the early 2000s, public security funding increased, and a policy of “separation of revenue and expenditure” was implemented.⁴⁸ The decrease in economic incentive to collect fines and penalties was matched by a de-prioritization of vice raids. However, in order to maintain a certain anti-prostitution

43. Since the 1980s, the Ministry of Public Security has launched “strike hard” campaigns to curb rising crime and ease escalating social conflict. The campaigns typically target extremely violent crime, gun and gang related crime, telecoms fraud, human trafficking, armed robbery, prostitution, gambling, and drugs related offenses.

44. Huang Yingying and Pan Suiming, Government crackdown of sex work in China: Response from female sex workers and implication for their health, *Global Public Health*, 2014. Vol. 9. No. 9, pp. 1067-1079.

45. Scott Burris, Guo Meixia, “The ‘Risk Environment’ for commercial sex workers in China: Considering the role of law and law enforcement practice,” in *Gender Policy and HIV in China*, Dudley Poston and Joseph Tucker, Peking University Press, 2007.

46. Huang Yingying and Pan Suiming, “Government crackdown of sex work in China: Response from female sex workers and implication for their health,” *Global Public Health*, 2014. Vol. 9. No. 9, pp. 1067-1079; China Sex Worker Organizations Networking Platform, “Report on the effect of the 2010 anti-pornography campaign on AIDS prevention interventions among sex workers,” (2010 年严厉打击黄对性工作者艾滋病预防干预的影响报告). December 2011. [http://www.nswp.org/sites/nswp.org/files/2010%E4%B8%A5%E6%89%93%E6%8A%A5%E5%91%8A%E7%94%B5%E5%AD%90%E7%89%88_\(%E5%B7%B2%E6%8E%92%E7%89%88\)%5B1%5D.pdf](http://www.nswp.org/sites/nswp.org/files/2010%E4%B8%A5%E6%89%93%E6%8A%A5%E5%91%8A%E7%94%B5%E5%AD%90%E7%89%88_(%E5%B7%B2%E6%8E%92%E7%89%88)%5B1%5D.pdf); Yiren, “Guangdong police: Nearly 1,000 arrested in three-day vice sweep,” (广东警方：扫黄三日抓捕近千人) BBC Chinese Service, February 13, 2014, http://www.bbc.com/zhongwen/trad/china/2014/02/140213_guangdong_vice_crackdown, accessed September 27, 2015.

47. After the People’s Republic of China was founded in 1949, the Chinese government instituted a planned economy, and targets and quotas for various spheres of economic development were set by the special “planning committees” of the State. The system limited the development of the economy and, at the end of the 1970s, China’s leaders made a decision to reform China’s economic system, introducing capitalist market principles. The first stage of the reform in the late 1970s and early 1980s involved the decollectivization of agriculture, the opening up of the country to foreign investment, and permission for entrepreneurs to start up their own businesses. The second stage of the reform, in the late 1980s and 1990s, involved the privatization and contracting out of much state-owned industry and the lifting of price controls, protectionist policies, and regulations.

48. “Separation of revenue and expenditure” refers to the way that the government manages administrative fees, fines and other non-tax revenue. Under this policy, non-tax income is separated out and handed over to the exchequer. Expenditures are distributed by the central government based on the budget.

momentum, many local governments task special anti-pornography assignments to the PSB.⁴⁹ In 2015, for example, Hunan's Xinhua County office and the county government office jointly issued a document to various departments, including the PSB, mandating 66 criminal detentions and 804 public order detentions or arrests related to prostitution, drugs and gambling offenses for the county.⁵⁰ Under this kind of pressure, police officers regularly raided places frequented by sex workers and reportedly detained people on site with no evidentiary grounds.⁵¹ The police also regularly used the possession of condoms as the sole evidentiary basis for detaining people.⁵²

3.3 The handling of “prostitution” cases

In China, offenses related to sex work are frequently handled by the local police. Under Chinese law, three factors constitute prostitution: (1) an agreement to provide or mutual agreement to carry out sexual services; (2) “improper” sexual relations, widely interpreted as sexual relations occurring outside of marriage or an intimate relationship; and (3) sexual services in exchange for money or property. If two parties have reached an agreement on price and are prepared to engage in sexual relations, but on objective grounds have not yet had sexual relations, this also constitutes prostitution and solicitation and is subject to a lesser penalty.⁵³

Because sex work is often a hidden act, third-party or eyewitness testimony is rarely available, and the lack of direct evidence makes such cases difficult to prove. Generally speaking, it is necessary to prove that one party has engaged in a sexual act in exchange for money or property, while also proving the other party wishes to make a payment in money or property to engage in sexual relations with the provider of such sexual services.⁵⁴

According to the Ministry of Public Security's guidelines, in prostitution cases, condoms are “tools of offense,” and law enforcement officers should, “following seizure, take photographs of the condoms, and then destroy them following the conclusion of the case.”⁵⁵ In provincial and city level guidelines on how to handle prostitution cases, condoms are also

49. Li Guang, “The vice crackdown dilemma,” (扫黄困局) <http://www.sex-study.org/news.php?isweb=2&sort=74&id=471&classid>, accessed September 27, 2015.

50. Guo Ruanpeng, “If quotas weren't handed down in the vice crackdown, how can figures be so accurate?” (扫黄打非下指标数字怎会精确到个位) *Metro Express*, April 30, 2015, http://newspaper.jfdaily.com/isdb/html/2015-04/30/content_1196502.htm, accessed September 27, 2015.

51. “Government crackdown of sex work in China: Response from female sex workers and implication for their health,” *op. cit.*

52. *Ibid.*

53. Ministry of Public Security Legal Department, “Reply to request for instructions on how to handle cases where a prostitute has been given money but sexual relations have not yet occurred,” (对“嫖客已付给暗娼财物但尚未发生性关系应如何处理的请示”的答复) Ministry of Public Security Legal Department, Document No. 176 (1991), December 12, 1991.

54. Luo Siyin, “On constituting and defining the acts of prostitution and solicitation,” (论卖淫嫖娼行为的构成与认定) April 16, 2011, <http://www.flzx.com/lawyer/lawyer/blog/274287.html>, accessed August 15, 2015.

55. Legislative Affairs Office, “Ministry of Public Security Legislative Affairs Office online answers to questions relating to the Public Security Administrative Punishments law, No. 2”, (公安部法制局对治安处罚法相关问题的网上解答二) November 9, 2011, http://www.hnsft.gov.cn/zwgk/zcfg/zcjd/201401/t20140101_1018330.html. “Question No. 143. In cases of prostitution and solicitation, we feel that condoms used by a prostitute while engaging in sexual relations with her client should be treated as evidence. The condoms should be confiscated and destroyed. Are we correct in this understanding? Answer: Your understanding is correct. 145. In handling cases of prostitution, how should we keep used condoms as evidence? Answer: Photograph them and attach to the file, and after the case is finished, destroy them.”

listed among examples of physical evidence. For example, according to Jiangsu Province's "Guiding Opinions Regarding the Handling of Prostitution and Solicitation Cases" and the Quanzhou City PSB's Provisions Regarding Investigating and Prosecuting Prostitution and Solicitation Cases: "When public security bureaus handle prostitution cases, they should pay attention to collect and secure the following physical evidence: a) reports from the public, the police station report register, notes taken at the scene, investigation notes; b) condoms and aphrodisiacs used by the prostitute or client that were collected at the scene; c) seized proceeds of prostitution, other property obtained through prostitution, records of payments to prostitutes and so on."⁵⁶

There is an understanding among some police that condoms shouldn't be equated with prostitution. For example, one leader of a public order squad in Wuhan was quoted in the media as saying: "Condoms are only one form of evidence, and other conditions should be satisfied, such as a specific group of people, a specific establishment and specific behavior."⁵⁷ Some PSB officers have reported that condoms can usually only serve as collateral evidence, and the main method to collect evidence is to detain sex workers during a transaction, and obtain confessions from the individuals involved.⁵⁸

56. Jiangsu Province, "Guiding Opinions Regarding the Handling of Prostitution and Solicitation Cases," (关于办理卖淫嫖娼案件的指导意见) http://www.nanjing.gov.cn/njszf/qzf/pkq/njsgajpkfj/201012/t20101222_2018487.html; Quanzhou City Police's, "Provisions Regarding Investigating and Prosecuting Prostitution and Solicitation Cases," (泉州市公安局关于查处卖淫嫖娼案件的规定) <http://www.xzsf.fjqz.gov.cn/unitfiledocandswf/8F50B9C0BA49973347D51FDC401BD2C1.swf>.

57. Zhang Li, "Condom campaign at entertainment venues," (娱乐场所的安全套运动) Southern Weekend, No. 980, November 21, 2002, <http://www.southcn.com/weekend/tempdir/200211280023.htm>.

58. "Condoms can no longer serve as the 'root of misfortune,'" (安全套不能再成为“祸根”) June 1, 2004, <http://beijing.qianlong.com/3825/2004/05/31/134@2082841.htm>, accessed September 1, 2015.

Chapter 4: HIV, Condoms, and Public Policy



Chapter 4: HIV, Condoms, and Public Policy

4.1 HIV programs for sex workers

In 2004, China identified people who inject drugs, sex workers, and men who have sex with men as “high risk” groups for HIV transmission.⁵⁹ The government adopted specific measures to reduce the HIV vulnerability of these key populations, which included outreach and peer education* to provide information on STIs/HIV and to increase access to condoms and promote correct condom usage.⁶⁰ Since then, CDC working groups have been conducting outreach and providing services in entertainment venues. But these interventions have limited reach with street-based, low-income sex workers, who are characterized by high mobility, low education, and low HIV/STI awareness and infrequent health seeking behavior.⁶¹ There are an estimated 1-3 million female sex workers in China, with a 4-8% prevalence of lifetime active syphilis; about 30% are street-based sex workers, with a 25-40% prevalence of active syphilis in this group.⁶²

Because of the illegal status of sex work and the frequent crackdowns by police, sex workers are usually hidden, scattered, and mobile, and are thus described as a “hard to reach” population. Since 2011, UNFPA China has supported HIV prevention among street-based female sex workers in four project sites across China. In recent years, when the Chinese government initiated mass crackdowns on sex, the number of sex workers who accessed HIV prevention services in those four project sites decreased dramatically. In 2012, at one project site, 1,528 sex workers received HIV testing; in 2013, the number dropped to 1,247; in 2014, only 749 sex workers received HIV testing; and in 2015, the number decreased even further to 457. The number of sex workers who received free condoms and HIV counseling also declined.⁶³

59. General Office of the Ministry of Health, “Announcement on establishing special working teams for interventions among high-risk groups in CDCs at all levels,” (卫生部办公厅关于在各级疾病预防控制中心(卫生防疫站)建立高危人群干预工作队的通知) Ministry of Health Center for Disease Control Document No. 129 (2004), August 20, 2004, <http://www.moh.gov.cn/mohbgt/pw10409/200804/27106.shtml>.

60. Ministry of Health of the People's Republic of China, “Notice regarding the printing and distribution of the ‘Guiding plan for intervention work for high-risk groups,’” (卫生部办公厅关于印发《高危行为干预工作指导方案(试行)》的通知) Ministry of Health Center for Disease Control Document No. 012 (2005), May 20, 2005.

61. China HIV/AIDS Information Network, Rapid Assessment of HIV Risk and Public Health Response among Low-Income Female Sex Workers in China (中国低收入女性性工作者艾滋病风险与公共卫生应对的快速评估), June 15, 2014.

62. Ibid.

63. China-UNFPA, 7th Round HIV Prevention and Control and Sexual Reproductive Health Service Cooperation Project (2011-2015), Final Survey Report of Intervention Project to Low-tier Female Sex workers (中国-联合国人口基金艾滋病预防项目(2011-2015)“针对低收入性工作者艾滋病预防干预项目终线调查报告”), December 2015. Unpublished internal draft.

Table 2: Coverage of HIV services for low-tier female sex workers (FSW) in one UNFPA project site⁶⁴

Category of Service	2012	2013	2014	2015
Number of FSW received HIV testing	1528	1247	749	457
Number of FSW received free condoms	731	552	520	499
Number of FSW received HIV education materials and HIV counseling	731	552	520	499

Once a sex worker tests positive for HIV it is also very difficult to provide treatment and follow-up services, because most disappear once they receive a positive result and the health departments lose contact.⁶⁵ Considering the crime of “intentionally spreading a venereal disease” in the PRC Criminal Law, it is unsurprising that HIV-positive sex workers no longer want to be in contact with or on the radar of local health authorities.

4.2 Condoms in China’s HIV strategy

Consistent and correct use of male condoms reduces sexual transmission of HIV and other STIs by up to 94%.⁶⁶ Hence, condom promotion has always been a major part of the HIV response in China. This is well reflected in policies and programs that promote condom use, particularly among key populations such as sex workers and MSM.

Numerous official documents including national and provincial regulations, strategies, and guidance are in place aimed at ensuring an effective HIV response and other STI prevention. A list of national-level policies can be found at the end of this section.

For example, the Chinese government adopted HIV/AIDS-related legislation in 2006 titled, “Regulation on the Prevention and Treatment of HIV/AIDS,” which requires public venues to provide condoms. Furthermore, the regulation stipulates that “health, family planning, commercial, drug monitoring, quality monitoring, testing and quarantining, broadcast and film and other departments of the people’s government at the county level and above shall organize and promote the use of condoms and establish and optimize networks to provide condoms.”⁶⁷

64.Ibid.

65.Interview with Guo Wei, Program Officer, UNFPA China, July 7, 2015.

66.WHO, Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations. July 2014. <http://www.who.int/hiv/pub/guidelines/keypopulations/en/>

67.State Council of the People’s Republic of China, Regulation on the Prevention and Treatment of HIV/AIDS (艾滋病防治条例), adopted at the 122nd executive meeting of the State Council on January 18, 2006, effective March 1, 2006, arts. 28, 29.

More recently, China's "Twelfth Five-year Action Plan for Containing, Preventing and Treating HIV/AIDS" aims to achieve "the placing of condoms or installation of vending machines in 95% of guesthouses and other public venues, and a condom usage rate of at least 90% among high-risk groups."⁶⁸

Pursuant to the central government's policy orientation to actively promote the use of condoms, various provinces have issued similar local provisions requiring entertainment venues to publicly display condoms.⁶⁹ In some provinces, for example in Yunnan province, the public display of condoms has become an important part of HIV prevention health inspections of public venues,⁷⁰ and some venues have received administrative penalties for "not displaying condoms or condom-vending equipment in their places of business in accordance with regulations."⁷¹

The central government not only provides free condoms to people living with HIV, but also distributes a large number of condoms to key populations, including sex workers, through the efforts of the CDC and CBOs. The government allocates in its budget a specific amount of funds each year to purchase condoms for HIV programming, but has not reported specific figures related to spending on condoms nationally. Xiao Hui, a staff at a district level CDC, reported that in 2015, their target is to reach 20,000 people from key populations, and distribute 140,000 condoms.⁷²

68.State Council General Office, "China's Twelfth Five-year Plan Action Plan for Containing, Preventing and Treating HIV/AIDS," (中国遏制与防治艾滋病“十二五”行动计划) January 13, 2012, http://www.gov.cn/zwgk/2012-02/29/content_2079097.htm.

69.Liu Jin, "Great difficulty in carrying out 100% condom display plan in Zhengzhou entertainment venues," (郑州娱乐场所百分之百安全套摆放计划艰难进行) Dahebao, December 20, 2006, <http://society.people.com.cn/GB/1062/5192800.html>, accessed on September 12, 2015; Chen Xuemei, "In order to prevent AIDS, Sichuan requires entertainment venues to publicly display condoms," (四川为防治艾滋病规定娱乐场所要摆放安全套) Chengdu shangbao, July 7, 2004, <http://news.qq.com/a/20040707/000138.htm>, accessed September 12, 2015; "Gansu entertainment venues must display condoms out in the open to control AIDS," (甘肃娱乐场所将公开摆放安全套遏制艾滋) November 13, 2008, Zhongguo xinwenwang, <http://news.qq.com/a/20081113/002619.htm>, accessed September 12, 2015; Li Yan, "Yunnan adopts a pragmatic attitude to AIDS prevention – Guesthouses and entertainment venues display condoms publicly," (云南采取务实态度防治艾滋病 宾馆、娱乐场所摆放安全套) Zhongguo xinwenwang, March 1, 2004, <http://www.chinanews.com/n/2004-03-01/26/408109.html>.

70. "Yunnan Regulations on AIDS Prevention," (云南省艾滋病防治条例) passed by 26th meeting of the Tenth Yunnan Provincial People's Congress on November 30, 2006, effective January 1, 2007. Article 18 provides: "managers of commercial public places providing accommodation and entertainment services shall display condoms or install condom-vending equipment in their places of business, and shall publicize and promote the use of condoms."

71. "Kunming Municipal Health Bureau hygiene enforcement and supervision office administrative penalty announcement issued in May 2015," (昆明市卫生局卫生监督局发布 2015 年 5 月行政处罚公告) Zhongguo zhiliang xinwenwang, June 3, 2015, <http://www.cqn.com.cn/news/minsheng/jiankang/1043860.html>.

72. Interview with Xiao Hui, Key Informant, June 24, 2015.

National Condom-related Policies

Publicity Principles for AIDS and STD Prevention (1998): Required “spreading publicity on the use of condoms to prevent HIV/AIDS and STDs,” and “avoiding reports that treat condoms as evidence of prostitution.”⁷³

Views on the Promotion of Condom (Contraceptive Shield) Use for HIV/AIDS Prevention (2004): Makes explicit the responsibilities of health, family planning, commercial and broadcasting departments for the promotion of condom use. Called for making full use of television, movies, radio broadcasts, newspapers, magazines, books, the internet and other media to vigorously publicize and promote condom use, and to ensure clients of guesthouses, hotels, hostels and other service venues to use condoms to prevent and control the sexual transmission of HIV and STDs. Government to implement policy to provide free condoms to people who were HIV positive or who had been diagnosed with AIDS.⁷⁴

Announcement on establishing special working teams for interventions among high-risk groups in CDCs at all levels (2004): Required the CDC to establish work teams to engage in intervention work among key populations.⁷⁵

Guidelines for Interventions Targeting High-risk Behaviors (2005): Instructed the CDC to promote the use of condoms and to increase access to STD diagnosis and treatment and reproductive health services for key populations.⁷⁶

Intervention Guide for Service Workers in Entertainment Venues (2004): CDC-issued Guide specifically targeting female sex workers to promote the widespread and correct use of condoms as one of its three intervention strategies.⁷⁷

73. Ministry of Health, Central Propaganda Department, State Education Commission, Ministry of Public Security, Ministry of Justice, Ministry of Culture, State Administration of Radio, Film, and Television, State Family Planning Commission, General Administration of Press and Publication, “Notice regarding the principles of printing and distributing AIDS- and STD-prevention propaganda and education,” (关于印发预防艾滋病性病宣传教育原则的通知) Ministry of Health Center for Disease Control Document No. 1 (1998), January 8, 1998.

74. Ministry of Health, State Family Planning Commission, State Food and Drug Administration, State Administration for Industry and Commerce, State Administration of Press, Publication, Radio, Film and Television, General Administration of Quality Supervision, Inspection and Quarantine, “Views on the promotion of condom (contraceptive shield) use for HIV/AIDS prevention,” (关于预防艾滋病推广使用安全套(避孕套)的实施意见) Ministry of Health Center for Disease Control Document No. 248 (2004), July 7, 2004.

75. General Office of the Ministry of Health, “Announcement on establishing special working teams for interventions among high-risk groups in CDCs at all levels,” (卫生部办公厅关于在各级疾病预防控制中心(卫生防疫站)建立高危人群干预工作队的通知) Ministry of Health Center for Disease Control Document No. 129 (2004), August 20, 2004, <http://www.moh.gov.cn/mohbgt/pw10409/200804/27106.shtml>

76. Ministry of Health of the People’s Republic of China, “Notice regarding the printing and distribution of the ‘Guiding plan for intervention work for high-risk groups,’” (卫生部办公厅关于印发《高危行为干预工作指导方案(试行)》) Ministry of Health Center for Disease Control Document No. 012 (2005), May 20, 2005.

77. Chinese Center for Disease Control and Prevention, Intervention Guide for Service Workers in Entertainment Venues (娱乐场所服务小姐干预指南), June 2004.

Sanitation Standards for Bathhouses (2007): Required bathhouses to “display condoms or install condom vending machines and provide HIV prevention promotion materials.”⁷⁸

China Action Plan to Contain and Prevent HIV/AIDS (2006-2010): Promotes condom use in relevant public venues and among key populations.⁷⁹

4.3 The Condom Conundrum

The Chinese government has demonstrated a rational pragmatism in its HIV response and has reached a high level of consensus regarding the role of condoms in preventing HIV and other STIs. However, as the findings and analysis in this study demonstrate, the effectiveness of HIV prevention efforts including condom promotion, distribution and use are being hampered by other laws and policies, and law enforcement practices that are in conflict with the Chinese government’s public health efforts.

Condoms in the Media

Although the Chinese government has issued various policies requiring State media to promote condom use, in reality, condoms have rarely been mentioned in mainstream media. Commercial advertisements for condoms were banned for 25 years by a document issued by the State Administration for Industry and Commerce in 1989, which was quietly scrapped in 2014.⁸⁰ This legal obstacle prevented condom manufacturers such as Jissbon and Durex’s attempts to advertise condoms on the subway or television.⁸¹

When condoms appear in news reports it is only in relation to anti-sex work and anti-pornography crackdowns on television, on the Internet, and in print media. These reports often show public security officers raiding vice dens and sex workers being arrested, along with descriptions of the discovery of large numbers of condoms. For example, “Xi’an Vice Raid Scene Shots Exposing Condoms Scattered on Beds,”⁸² and “Hubei Police Investigate

78. Ministry of Health, Ministry of Commerce, Sanitation Standards for Bathhouses (沐浴场所卫生规范), July 6, 2007.

79. General Office of the State Council, China Action Plan to Contain and Prevent HIV/AIDS (2006-2010), [中国遏制与防治艾滋病行动计划 (2006-2010年)] February 27, 2006, http://www.gov.cn/jwqk/2006-03/10/content_224306.htm

80. State Administration for Industry and Commerce of the People’s Republic of China, “State Administration for Industry and Commerce announcement regarding the results of clearing out normative documents,” (国家工商行政管理局关于严禁刊播有关性生活产品广告的规定) SAIC No. 238 (2014), July 14, 2014.

81. “Lifting the advertising ban -- Is promoting condoms the same as issuing a sexual license?”, (广告解禁——推广安全套等于发执照 ?) New Express (Xinkuaibao), November 12, 2002, accessed at <http://www.china.com.cn/chinese/health/231633.htm> on August 14, 2015; Wu Jiejin, Jiang Lijun, “Shanghai subway broadcast of condom advertisement deemed illegal,” (上海地铁播出安全套广告被认定违法) March 25, 2008, Dongfang zaobao, accessed at http://news.xinhuanet.com/legal/2008-03/25/content_7854105.htm on August 14, 2015.

82. “Xi’an vice raid scene shots exposing condoms scattered on beds,” (上海地铁播出安全套广告被认定违法) Xibuwang, July 14, 2014, <http://china.newssc.org/system/20140714/000462404.html>, accessed August 22, 2015.

Illegal Rental Unit, 1,000 Condoms Scattered On the Floor.”⁸³ These reports associate condoms with sex work and portray them as evidence of prostitution. In an environment in which sex work is illegal and considered dirty and harmful to public morals, condoms are likewise given these labels.⁸⁴ Even now, such reports are far from rare, and they continue to reinforce stigmatizing attitudes towards condoms that undermine public health services of government health organizations and CBOs.

In fact, as early as 1998, health departments were aware that the appearance of condoms in media reports on vice raids had a highly adverse effect on HIV prevention work. That year the Ministry of Health joined with eight other ministries and commissions to issue the “Publicity Principles for AIDS and STD Prevention,” which required “spreading publicity on the use of condoms to prevent HIV/AIDS and STDs” while at the same time “avoiding reports that treat condoms as evidence of prostitution.”⁸⁵ The “China Mid- and Long-term Plan for Controlling AIDS (1998-2010)” also emphasized that national and local newspapers, radio stations and television stations should carry out publicity and education on AIDS to construct a social environment empowered to prevent the spread of HIV.⁸⁶

Conflicting policy, Confusing messages

The government has been actively implementing its HIV strategy among sex workers, however, the crackdowns on the sex industry have continued and have been actively reaffirmed in some major HIV prevention documents. For example, the 2004 and 2010 State Council notices to strengthen the HIV response, and the 2011-2015 National AIDS Action Plan,⁸⁷ all have the stated objective of preventing HIV, but nevertheless require “public security departments to continue, as before, to crack down on prostitution and solicitation, the assembling of crowds for licentious activity and other unlawful and criminal behavior.”⁸⁸ This policy conflict has led to substantial difficulties in implementing policies and programs promoting condom use. Resolving these policy conflicts is essential to an effective HIV response in China.

83. “Hubei police investigate illegal rental unit, 1,000 condoms scattered on the floor,” (湖北警方清查非法租屋 千只避孕套散落一地) Zhonguo wangluo tai, <http://news.ynet.com/3.1/1108/05/6068073.html>, accessed August 22, 2015; see also, Baojian City searches out ten thousand condoms, Guan County eliminates a vice den,” (保健城搜出万枚避孕套 关县端掉一淫窝) <http://opinion.people.com.cn/BIG5/35560/3519052.html>, accessed August 22, 2015.

84. Beijing Aizhixing Institute, regarding ten media organizations violating the “Propaganda and Education Principles for Preventing AIDS and STDs,” (关于10家媒体违反《预防艾滋病性病宣传教育原则》) July 5, 2010, <http://www.aizhi.co/view.php?id=562>, accessed August 14, 2015.

85. Ministry of Health, Central Propaganda Department, State Education Commission, Ministry of Public Security, Ministry of Justice, Ministry of Culture, State Administration of Radio, Film, and Television, State Family Planning Commission, General Administration of Press and Publication, “Notice regarding the principles of printing and distributing AIDS- and STD-prevention propaganda and education,” (关于印发预防艾滋病性病宣传教育原则的通知) Ministry of Health Center for Disease Control Document No. 1 (1998), January 8, 1998.

86. Ministry of Health, State Family Planning Commission, Ministry of Science and Technology, Ministry of Finance, “China mid- and long-term plan for controlling AIDS” (1998-2010) (中国预防与控制艾滋病中长期规划), October 26, 1998, http://news.xinhuanet.com/zhengfu/2002-09/29/content_579877.htm

87. State Council, “State Council Notice Regarding Realistically Reinforcing AIDS Prevention and Treatment,” (国务院关于切实加强艾滋病防治工作的通知) May 11, 2004; “State Council Notice Regarding Further Reinforcing AIDS Prevention and Treatment,” December 31, 2010; “China Twelfth Five-year Action Plan for Containing, Preventing and Treating AIDS (2011-2015),” (中国遏制与防治艾滋病“十二五”行动计划) January 13, 2012.

88. General Office of the State Council, “China twelfth five-year plan action plan for containing, preventing and treating AIDS (2011-2015),” (国务院防治艾滋病工作委员会) January 13, 2012.

In 2004, China established its State Council AIDS Working Committee to formulate major guiding principles, policies and programs for HIV prevention, and to coordinate and mobilize the relevant departments to take part in HIV prevention work. Its member work-units included the Ministry of Public Security and the Ministry of Justice.⁸⁹ Local governments also responded by establishing HIV prevention offices and committees to coordinate among various authorities carrying out HIV work. An internal document issued by the CDC in 2005 states: “The government must step forward to coordinate the support of the public security departments, and the public security departments must support the promotion of condoms in entertainment venues and resolve obstructions to policy.”⁹⁰ However, to date there is no definitive guiding document or plan on precisely how to support HIV work and how to resolve “obstructions to policy.”

The 100% Condom Use Program (CUP) that began in 2001 initiated communication and cooperation among health authorities, public security departments and entertainment venues. In a pilot project in Wuhan city’s Huangpi District, the public security deputy director and others sat down for discussions with entertainment venue managers.⁹¹ Promotion of the project led some to wonder whether it implied giving the green light to the sex industry or at least tacitly approving an effort to legalize the sex industry.⁹² The attitude of the PSB was very explicit: they were still targeting prostitution and solicitation. Following the launch of the 100% Condom Program in Wuhan and Jingjiang, Jiangsu Province, the PSB targeted the sex industry just as before and emphasized that there would be no letting up. The PSB did, however, avoid venues where the project was being carried out.⁹³

By 2006, CUP was implemented in 10 provinces in China.⁹⁴ With the effective coordination and involvement of the PSB, it was reported that police no longer used carrying condoms as evidence. In 2008, Wan Yanhai, the director of the Beijing Aizhixing Institute, an advocacy group, submitted an Open Government Information request to the Ministry of Public Security, asking the Ministry to provide “related regulations, policies that relate to ending condoms as evidence of prostitution.” The Ministry of Public Security replied, “the MSP never issued any documents prohibiting using condoms as evidence of prostitution.”⁹⁵

89.State Council AIDS Working Committee (国务院防治艾滋病工作委员会), <http://www.moh.gov.cn/mohyzs/pzzjs/200804/32003.shtml>

90.Prefectural (City) And County (District)-Level Disease Prevention and Control Organs Planned Construction Research Task Group, “Work standards for AIDS prevention and control,” (艾滋病预防控制工作规范) June 22, 2005, “Disease prevention and control standardized management study” internal report, Item No. 01.

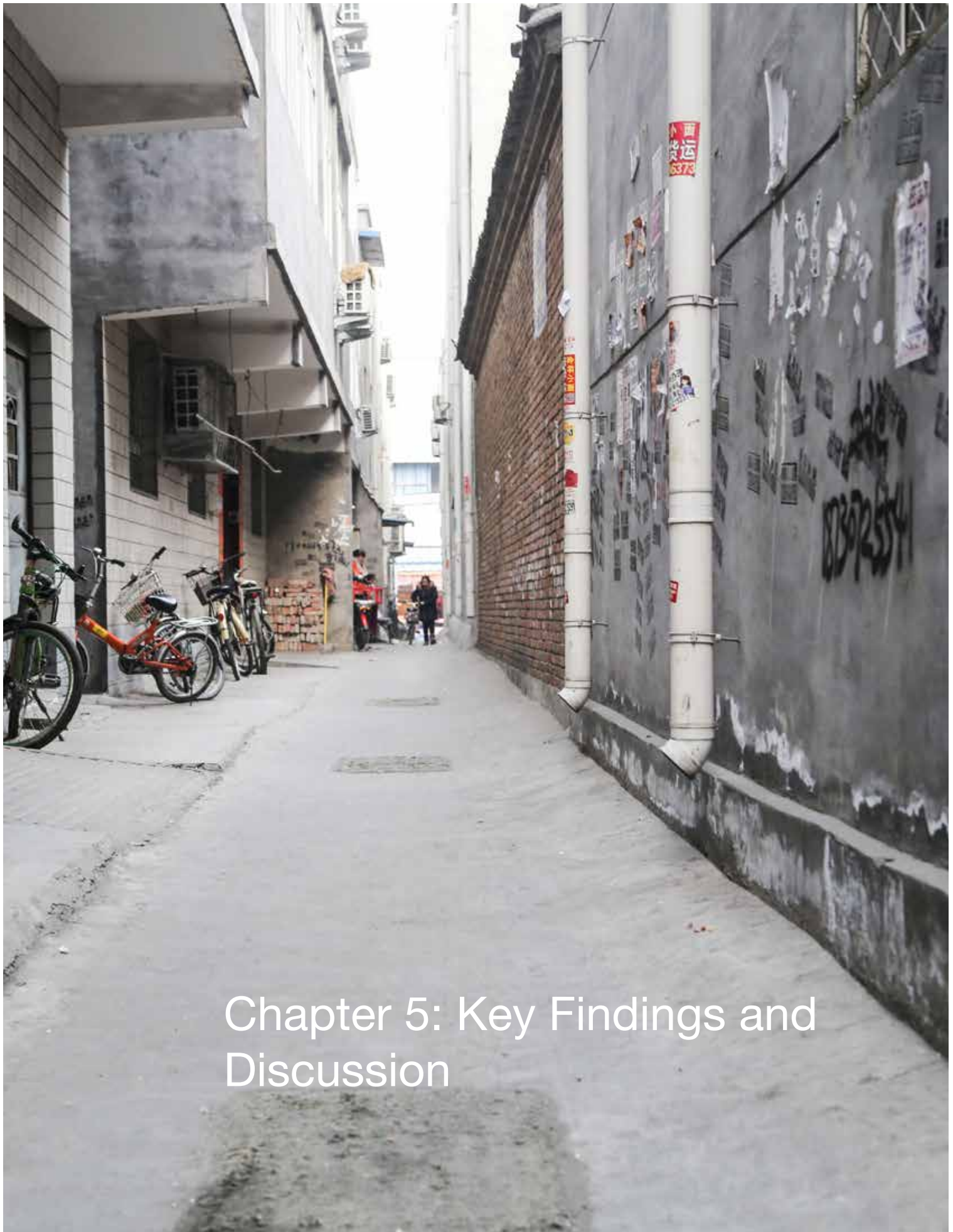
91.Zhang Li, “‘Condom campaign’ in entertainment venues,” (娱乐场所的“安全套行动”) Southern Weekend (Nanfang zhoumo), November 21, 2002. <http://www.southcn.com/weekend/tempdir/200211280023.htm>, accessed August 23, 2015.

92.Ibid

93.Zhu Wenyi, op. cit., <http://www.lifeweek.com.cn/2002/1016/1934.shtml>, accessed August 23, 2015; Zhang Li, *ibid*.

94.Rojanapithayakorn W, “The 100% Condom Use Programme in Asia,” *Reproductive Health Matters*, 2006 Nov; 14(28):41-52.

95.Beijing Aizhixing Institute, “Ministry of Public Security replied, never issued documents prohibiting using condoms as evidence of prostitution,” (公安部回电, 从未发布过安全套不得作为卖淫嫖娼证据的规范性文件) December 23, 2008, <http://www.aizhi.co/view.php?id=396>, accessed August 10, 2015.



Chapter 5: Key Findings and Discussion

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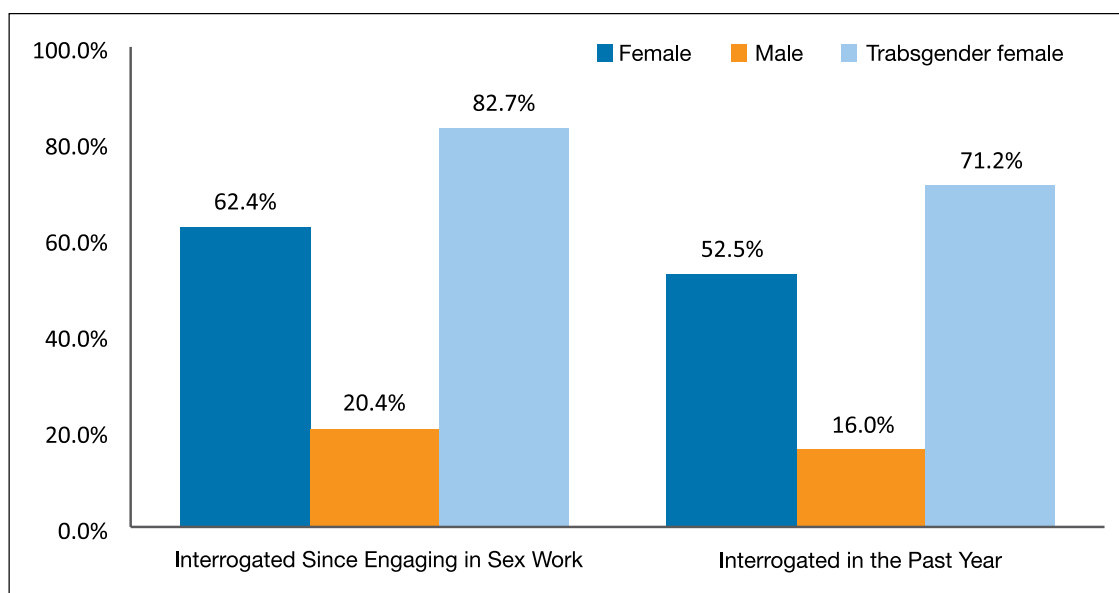
5.1 Interactions with the police and impact on condom behavior

In this study, we used questionnaires to collect information regarding sex workers' interactions with the police, use of condoms, and the impact of police action on condom behavior. The quantitative data in this chapter describes sex workers' contact with police, and how that influences their possession and use of condoms.

5.1.1 Impact of contact with police

Coming into contact with law enforcement officers is viewed by sex workers as an inevitable part of their lives. More than half (51.3%, 265 /517) of survey respondents reported that they had been interrogated⁹⁶ by the police since engaging in sex work, and 42.9% (222/ 517) responded that t interrogated in the past year. Among respondents who had been interrogated in the past year, 64.9% (144/222) had been interrogated once, and 35.1% (78/222) had been interrogated twice or more. For those who had been interrogated twice or more, most (78.2%, 61/78) were women.

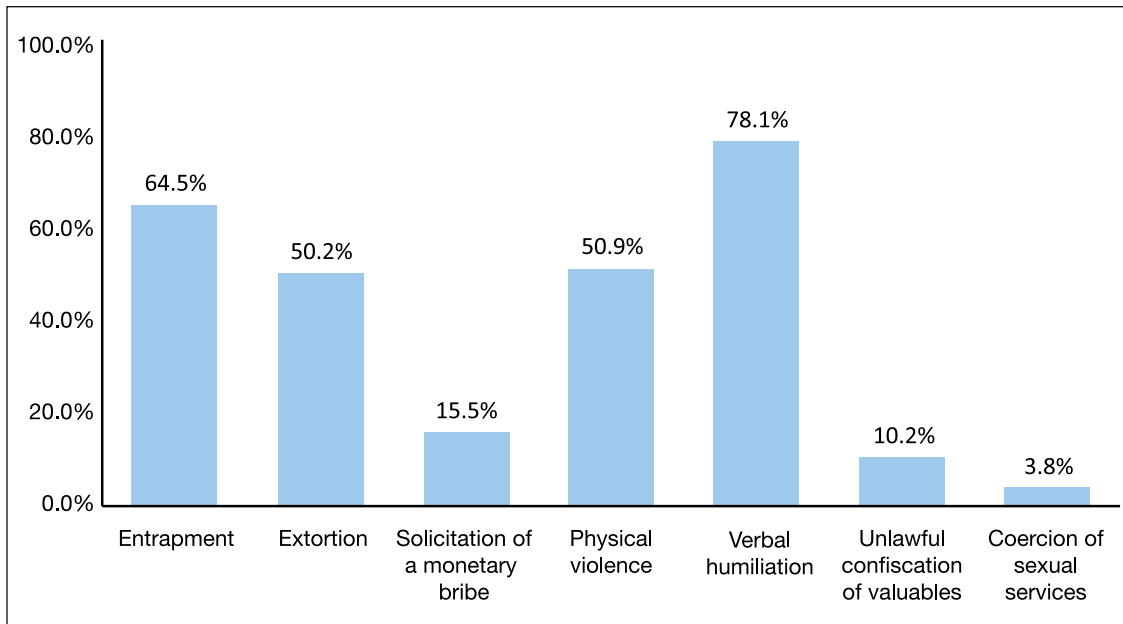
Table 3: Interrogated by the police since engaging in sex work or in the past year



⁹⁶In this report, "interrogation" refers to law enforcement officers stopping, questioning and examining sex workers. "Stopping" means requiring the person to stop what they are doing; "questioning" means asking the person about relevant matters; and "examining" includes checking identification cards and inspecting and searching the immediate vicinity.

For survey respondents who experienced interrogation since engaging in sex work, most sex workers had negative experiences. Seventy-eight percent (207/265) had experienced verbal humiliation, 64.5% (171/265) had experienced entrapment, and 50.9% (135/207) had experienced physical violence.

Table 4: In your dealings with the police, did you experience any of the following?⁹⁷

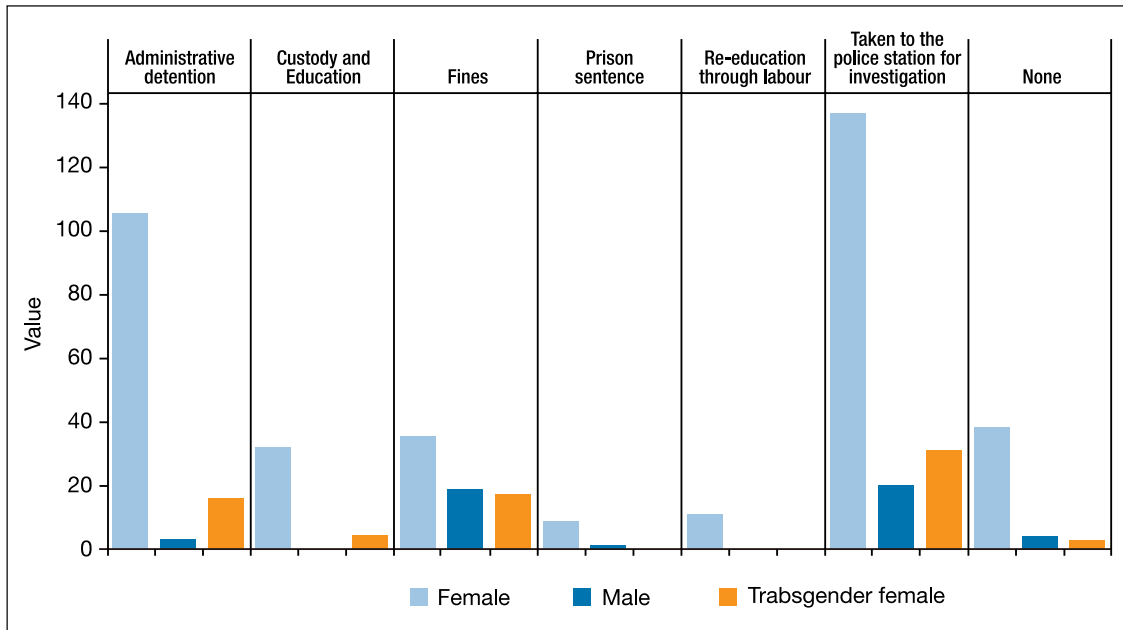


Among the survey respondents who had been interrogated by police since engaging in sex work (51.3%, 265/517), 70.9% (188/265) had been taken to the police station for inquiry⁹⁸. This was highly reported across genders, with 72.5% (137/189) for female, 60.6% (20/33) for male, and 72.1% for (31/43) transgender. Just over 47% of those interrogated by the police were subjected to administrative detention (47.2%, 125/265); and 26.8% (71/256) were required to pay fines. Female respondents (56.1%, 106/189) were more likely to be subject to administrative detention than male (9.1%, 3/33) and transgender respondents (37.2%, 16/43). Male and transgender survey respondents, 57.6% (19/33) and 39.5% (17/43) respectively, were more likely to be subjected to fines.

97. For this research, terms were defined as follows: Entrapment – an undercover police officer solicits or engages in a sexual transaction for the purpose of arresting a sex worker or a client for committing an offense; Extortion – inducing a confession in exchange for release or lighter penalty; Solicitation of a monetary bribe – demand for money in exchange for release; Coercion of sexual services – demand for sexual services in exchange for release.

98. According to Chinese law, public security officers can detain suspects for inquiry, usually for no more than 24 hours. Though the inquiry itself is not a form of administrative or criminal penalty, it triggers the formal investigation process and a penalty can be imposed as result of the investigation. In order to understand how many sex workers have been through this process, we included “taken to police station for investigation” as one of the possible responses for the question, “What kind of penalties did you receive?”

Table 5: What kind of penalties did you receive?



5.1.2 Condom access and use

With respect to channels for accessing condoms, 66% (341/517) of respondents said that they mainly purchased their own condoms, 51.5% (264/517) said they had condoms distributed to them free of charge by CBOs, 42.2% (218/517) said they received condoms distributed by government health centers or CDC, 17.8 % (92/517) said their condoms are provided by clients, and 6.1% (32/517) said they got condoms from the venues they worked; some answered that they both purchased condoms and received free ones from CBOs. Because the survey was carried out by community partners that had already established contact with the respondents through the provision of services -- including condom distribution -- this stated percentage may be higher than the general trend.

Although the vast majority of respondents (96.2%, 497/517) felt that using condoms while working was “very important” or “important,” there was a discrepancy between their knowledge of the importance of condoms and their actual use of them. In terms of condom use, the overall percentage of using condoms with the most recent clients was 82.8 % (428/517), with 75.6% (229/303) for women, 93.2% (151/162) for men and 92.3% (48/52) for transgender.⁹⁹

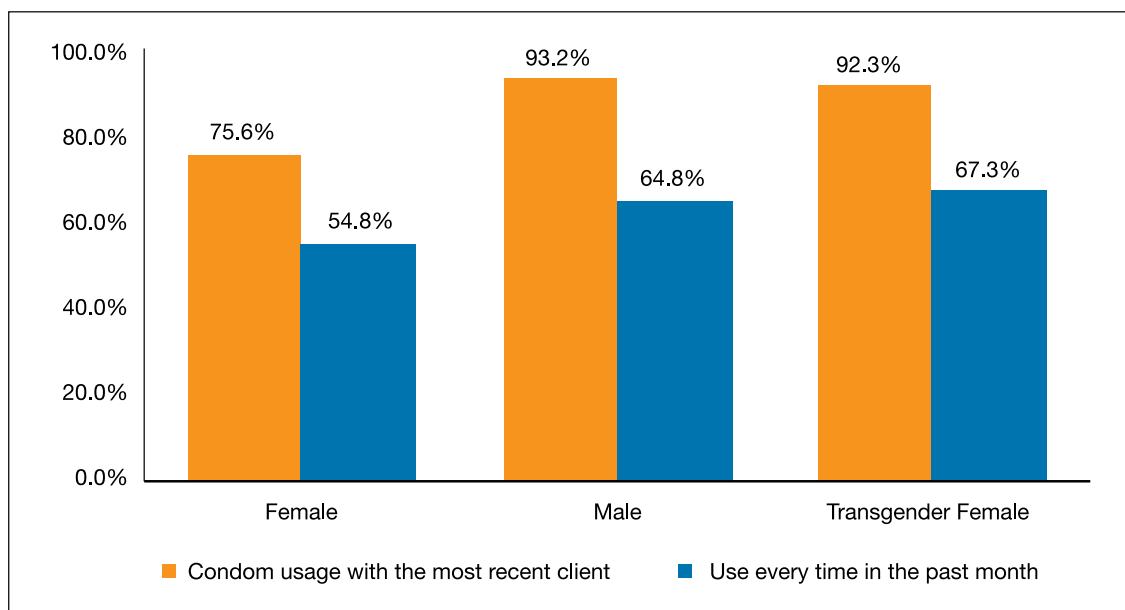
⁹⁹.According to national surveillance data, in 2014, the percentage of female sex workers reporting the use of a condom with their most recent client is 88.7%; the percentage for male sex workers is not available, while the percentage of men reporting the use of condom during the last time they had anal sex with a male partner is 77.5%.

For those who did not use condoms with the most recent clients (89 respondents), 37.5% (33/89) reported the reason was concern over possible police searches and confiscation of condoms as evidence of prostitution. Slightly more than 22% (15/89) reported the clients did not want to use condoms and 17% reported that they trusted their clients and did not need to use condoms.

Policing has a greater effect on the use of condoms for women than with male or transgender survey respondents: among 74 women who reported they didn't use condoms with the most recent client, 44.6% (33/74) reported not using condoms out of fear the police would search for condoms and use it as evidence of prostitution, while no male or transgender survey respondents cited this.

In terms of frequency of condom use with clients in the past month, 59.2% (306/517) survey respondents reported that they always used condoms, with 54.8% (166/303) for women, 64.8% (105/162) for men, and 67.3% (35/52) for transgender respondents.

Table 6: Condom usage with the most recent client; and the frequency of using condoms with clients in the last month



With respect to the frequency of carrying condoms in the past month, 63.8 % (330/517) of the survey respondents reported always carrying condoms. Among them, women were much less likely to carry condoms; only 46.5 % (141/303) of the women reported always carrying condoms, while 89.5% (145/162) of the men and 84.6% (44/52) transgender survey respondents reported doing so.

In response to why they (187 respondents) do not always carry condoms, two reasons were most prevalent: (1) fear of police searches and confiscation of condoms as evidence of prostitution [41.7% (78/187)], and (2) unwillingness of clients to use condoms [37.4% (70/187)]. As with condom use, female respondents are more likely to cite policing and clients as the reason for not carrying condoms. Among 162 women who reported not always carrying condoms, 45.7% (74/162) reported not doing so out of fear that the police will search for condoms and use them as evidence of prostitution, 40% (65/162) cited the reason as clients not wanting to use condoms. But only 17.6% (3/17) male and 12.5% (1/8) transgender respondents cited fear of police as the reason for not carrying condoms.

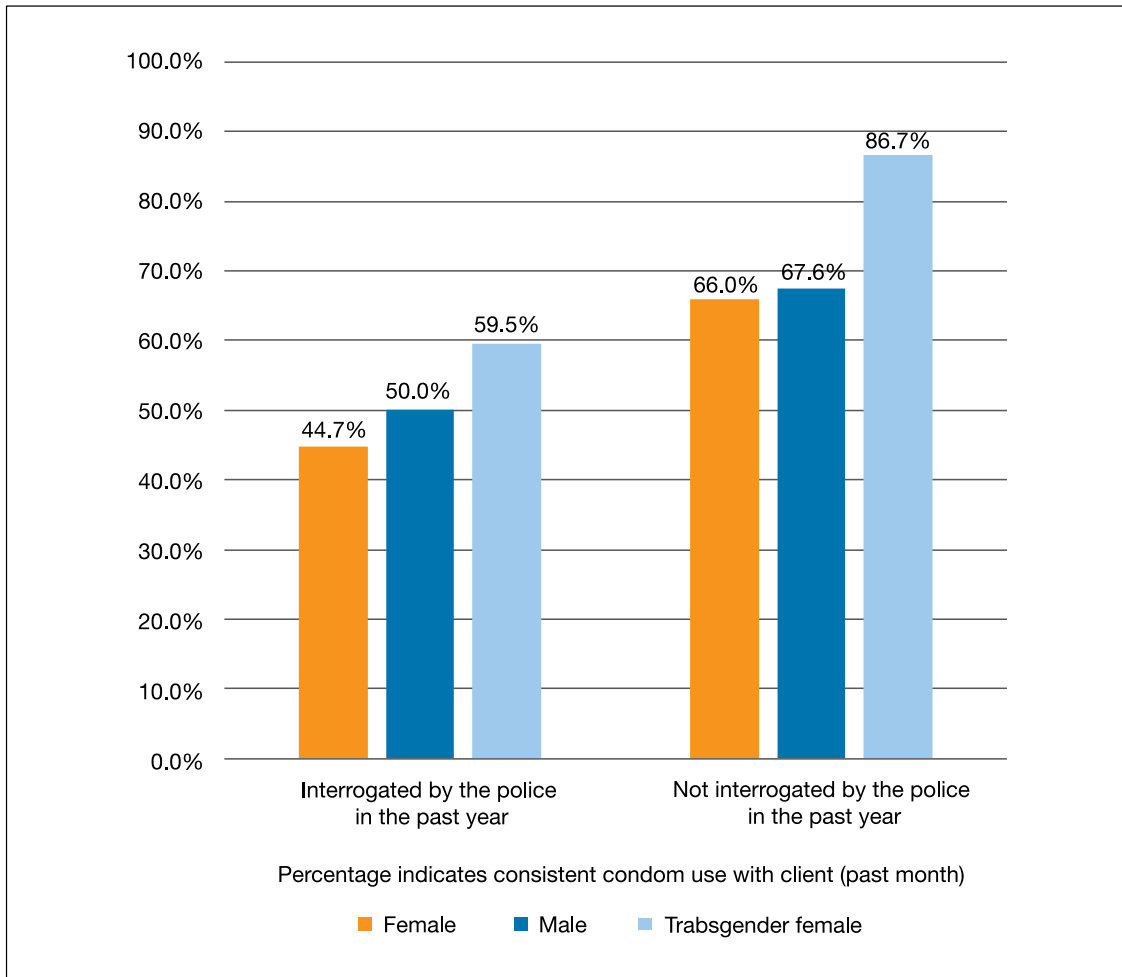
5.1.3 Law enforcement actions and condoms

Among respondents, 35.4% (183/517) sex workers -- including female (133), male (23) and transgender (37) -- said they had experienced searches for condoms by the police. The principal method of interrogation used by the police was to confiscate unused condoms (66), collect used condoms (70), and/or ask sex workers about condoms (132).

Among the respondents who had been interrogated by the police in the past year, 21.1% (47/222) reported that they would now use condoms less often, and 36.5% (81/222) said that they reduced the number of condoms they carried after having had interactions with the police.

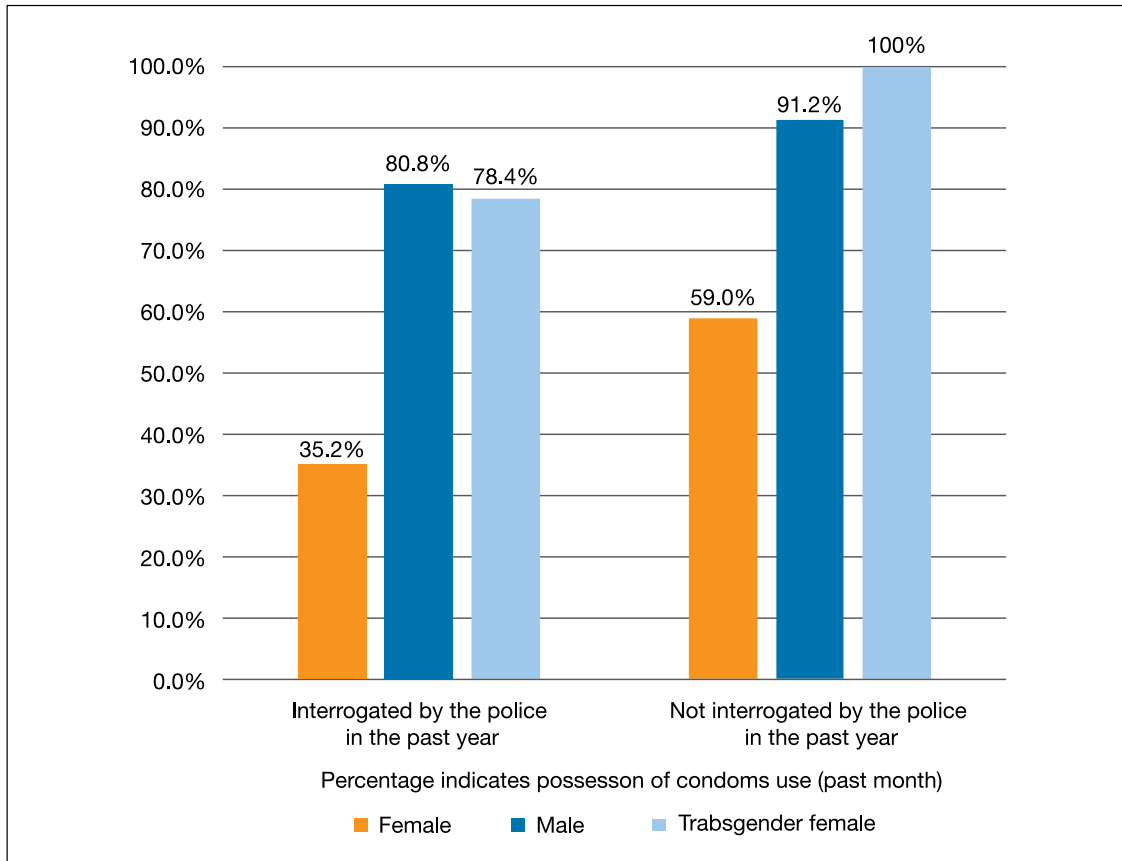
The research found that the consistent condom use rate (in the past month) is lower among respondents who had been interrogated by the police (in the past year) than those who had no such experience: the rate of consistent condom use is 47.7% (106/222) and 67.8% (200/295), respectively. Among them, the difference was clearest among female sex workers. Only 44.7% (71/259) of female sex workers who had been interrogated by the police had used condoms consistently – a substantially lower figure than for female sex workers who had not been interrogated by the police (66%, 95/144).

Table 7: Consistent use of condoms in commercial sexual activity in the past month with or without police interrogation



There were similar results for possession of condoms: 47.7% (106/222) of respondents who had been interrogated by the police (in the past year) always carried condoms in the past month, a rate clearly lower than for those who carried condoms but had not been interrogated by the police (75.9%, 224/295). Again, this discrepancy was most evident among female sex workers. Only 35.2% (56/159) of female sex workers who had been interrogated always carried condoms, while 59% (85/144) of female sex workers who had not have such experience always carried condoms.

Table 8: Possession of condoms in the past month with and without police interrogation



5.2 Law enforcement actions relating to condoms as evidence

To understand how searches were carried out, we interviewed 74 sex workers who had experienced police searches for condoms. Interview respondents said the police’s main methods for handling prostitution cases were attempts to catch sex workers “in the act,” or “stop and search” operations on the street, in residences and in entertainment venues.

5.2.1 Actions targeting sexual transactions

Catching sex workers at the scene is the main method that police used to handle sex work cases. Forty seven of the 74 interview respondents reported that they had experienced one or more police raids while in the process of engaging in or attempting to engage in a commercial sexual transaction, or while soliciting clients or being solicited by an undercover investigating officer (entrapment). Most of the locations were indoors, such as in hotel

rooms, sex work establishments, or apartments, while a few were outdoors, such as parks. The process sex workers described was very similar among interview respondents: Police entered the premises, stopped whatever was occurring and questioned those present, and collected evidence of a sexual transaction. Many reported that police considered carrying condoms to be proof of sex work.

Among them, 23 interview respondents reported that police entered the room unannounced when they were engaging with the client, or just finished the sexual transaction. Interview respondents reported that police waited outside, and raided the room when they thought it was the right time. When the police entered the room, their actions were very clear: they were searching for condoms. Interview respondents said police focused on waste baskets, beds, quilts and handbags to collect condoms. Both used and unused condoms were collected, as used condoms can prove sex had happened, and unused condoms can prove they intended to have sex.

Xiaomei, a female sex worker, said:

I had just gone into the room with a client when several police officers swarmed in and restrained both of us. They then began turning over things on the bed and looking under the bed and in the bathroom, and they picked up the quilt and shook it. I knew they were looking for condoms. A policeman in his 30s suddenly grabbed my handbag, reached in and pulled out several condoms, and said, "She's carrying quite a few!" After that they took both of us into the police station. I had a lot of condoms and moist towelettes in my handbag.¹⁰⁰

Six interview respondents reported that the police couldn't find condoms, as they either did not use condoms, or had promptly disposed of their condoms before the police entered the room. In one case in which the police entered the room after the sexual transaction was over and the sex worker and client had dressed, the police took the client's pants off to look for a condom to no avail, and after finding nothing in the trash can, left.¹⁰¹ Three of the six interview respondents denied engaging in a sexual transaction and did not receive any punishment. In two of the six cases, the clients confessed, and one sex worker was sent to custody and education for half a year, while the other paid a fine of 1800 CNY (\$281). And in one case, the client and sex worker insisted that they were just doing massage; the police then took 500 CNY (\$78) from her wallet and claimed that it was a fine. Zhou Jie, a female sex worker, said she was lucky not to have been using condoms with a client when the police entered:

100. Interview with Xiaomei, March 28, 2015.

101. Interview with Xiaojie, March 23, 2015.

The client and I just finished the business, suddenly a group of undercover cops burst into the room, and wanted to detain us. I didn't confess, I'd rather die than confess! I said I was doing massage. Lucky that the client is not stupid, he said we only did massage. The police didn't believe it, they searched my bed, and couldn't find any condoms. Luckily we did not use condoms that day, I didn't have even one condom with me, otherwise we would have been in trouble. They didn't have any evidence, and can't take us to the police station, so they just released us.¹⁰²

For four interview respondents, police entered while they were waiting in the room for clients, after making arrangements with the client over phone. The police knew about the situation through monitoring sex workers' phone call with clients, and then entered the room to search. Police collected various things, including condoms, telephone recordings and other items related to sexual service. Interview respondents reported that the police used condoms to pressure sex workers and clients to confess. Nannan, a female sex worker, reported that one night when police entered her room while she was waiting for a client, they searched through her things and found a large bag of condoms. They then forcibly took her downstairs and put her in a vehicle, where she saw two customers she had served that day. She continued:

Once we reached the police station, they took my cell phone and played a recording. The content was a recording of telephone calls I'd made that afternoon, and after that they brought the two clients over to identify me. The police confiscated my 900 kuai (\$145), claiming it was the proceeds of prostitution. There was also the large bag of condoms, and they said this was evidence, and that I'd been caught with the goods, and asked if I would confess to doing it. I saw there was no way to deny it – the two clients had identified me, and there were the condoms. There was no choice, so I signed the record of interview.¹⁰³

Xiaobei, a male sex worker, said the police came into the hotel room while he was waiting for a client, searched the room, and found 100 condoms in his bag. They insisted he was involved in prostitution. Xiaobei reported that after his client arrived, police began asking him:

“Who are you looking for?” The client was scared and said he'd come to fool around with me. A policeman asked, “Were you thinking of fooling around for a whole month? Have you seen that he's carrying more than 100 condoms? How long were you planning to fool around? If you two aren't involved in prostitution, what is this?” When the policeman said this, he made the client very uncomfortable, and the client just stammered and admitted it.¹⁰⁴

102. Interview with Zhoujie, May 28, 2015.

103. Interview with Nannan, May 7, 2015.

104. Interview with Xiaobei, April 19, 2015.

Having a large number of condoms in a bag created difficulties for other interview respondents. For example, police caught Lao Wu, a male sex worker, on the scene with his client, and found over 30 condoms and lubricants in his bag:

I said I am not selling sex, we are friends, we just go out to play. The police said don't talk rubbish, who carries so many condoms and just go out to play, do you want to play for a month? I was shocked, what, I carry many condoms, how that prove I am a sex worker? The police said you carry so many condoms, obviously you are selling sex, if you are just playing you only need one condoms. Interview with Lao Wu, May 20, 2015.

Eleven interview respondents reported that they were solicited by undercover cops. The police officers negotiated prices with the sex worker, and once they reached an agreement, the police revealed his true identity, and searched the sex worker for condoms. Zhao Hui, a female sex worker, reported:

I was standing on the street. I saw a guy who looked at me. We talked and negotiated the price. He even said he would increase the price for me. But suddenly he showed a badge and said he was a police officer. He searched my body and found condoms, and then took me to the police station. All of my condoms were confiscated; I even brought quite good condoms, all were wasted.¹⁰⁵

During the searches, police officers would also take photos of the scene, of condoms, and of the people present as evidence. Fourteen sex workers said that the police took photos of used and unused condoms, and sometimes made them hold those condoms for the photo. Xiao Xinjiang, a transgender female sex worker, said:

When we finished, we didn't even have time to put on our clothes, the police kicked the door open; they didn't let us to put on clothes, but took pictures of us. They found used condoms in the trash can, and then took pictures again.¹⁰⁶

5.2.2 “Stop and Search” Operations

Chinese law authorizes the PSB to investigate people suspected of violating the law.¹⁰⁷ As long as a police officer considers someone suspicious, they can question them, check

105. Interview with Zhao Hui, July 10, 2015.

106. Interview with Xiao Xinjiang, July 3, 2015.

107. People's Police Law of the People's Republic of China, adopted at the 12th meeting of the Standing Committee of the Eighth National People's Congress on February 28, 1995, promulgated by order No. 40 of the President of the People's Republic of China on February 28, 1995, and effective of the date of promulgation. Article 9 states: In order to maintain public order, the people's police officers of public security organs may, upon producing an appropriate certificate, interrogate and inspect the person suspected of having violated law or committed a crime. After interrogation and inspection, the person may be taken to a public security organ for further interrogation upon approval of this public security organ under any of the following circumstances: 1) being accused of a criminal offense; 2) being suspected of committing an offense on the scene; 3) being suspected of committing an offense and being of unknown identity; 4) carrying articles that may have been obtained illegally.

their identification card and carry out a search. Interview respondents indicated that police often carry out inspections where sex workers typically work, such as on the street, in parks, in rented rooms, or in entertainment venues. Twenty-nine interview respondents had experienced such police “stop and search” operations. In these cases, sex workers were not engaging with clients or soliciting; police were looking for condoms.

On the street: Twelve sex workers reported encountering police inspections when they were in parks or on the street. One sex worker said that the police often made sweeps of a certain district in the city where she works, or patrolled the area in their cars.¹⁰⁸ Some sex workers said that, even if they were just standing along the road, not necessarily soliciting for business, the police would take them back to the police station for questioning, and if condoms were found when they were searched, they would be penalized.¹⁰⁹ Other sex workers said that while they stood along the streets, the police would come over and open their handbags and see if they were carrying condoms.¹¹⁰ Shasha, a transgender sex worker, said that after she went to stand on the street one night, but before she had conducted any business, police picked her up and took her to the police station. At the station, Shasha explained:

They [the police] began asking me, “Are you engaging in prostitution?” I kept denying it, and the truth is that I hadn’t done anything that day. Finally, the police ran out of patience and began to hit me and berate me to make me admit it. The police rummaged through my bag and found a lot of condoms and some lubricant, and they claimed that I was providing prostitution services and sent me to a detention center for 15 days. I was very angry at the time. They had no evidence, and hadn’t caught me in the act or chatting anyone up, so on what basis could they say I was engaging in prostitution?¹¹¹

Residences: Some male and transgender sex workers use rented rooms as their living and working quarters, while some rent rooms in hotels. Ten interview respondents reported that the police raided their residences. Xiaoman, a male sex worker who presents as female for sex work, said:

Because everything here is rental units, a lot of people who hook up or who sell it like me live around here. So when there are anti-vice sweeps, large numbers of police officers come here to search the rooms, sometimes once in the morning and again in the afternoon. It’s a real pain!¹¹²

108. Interview with Oufen, July 25, 2015.

109. Interview with Shasha, June 9, 2015; interview with Lin Wei, April 1, 2015.

110. Interview with Yang Xifang, July 9, 2015.

111. Interview with Shasha, June 9, 2015.

112. Interview with Xiaoman, May 21, 2015.

Other sex workers had similar experiences, stating that the police come into their rooms and rummage through their things until they find condoms.¹¹³ For example, Su Wei, a transgender female sex worker, said:

When I was at home, someone knocked at my door and said the police had come to carry out a search, and then they came in. They looked all around and began rummaging through my things, and finally in the loft they found condoms, around 200 of them. The police said, “You carry so many condoms, are you a prostitute?” Their tone of voice was very nasty and I didn’t dare say much. Then they took photos of the condoms.¹¹⁴

In these “stop and search” operations, police also treat the possession of a large number of condoms, independent of a sexual transaction, to be dispositive of sex work. Carol, a transgender female sex worker, stated:

The police said if you were just an ordinary citizen, you wouldn’t keep so many condoms at home, so you must be a prostitute, and when they see it’s the CDC that issued them, obviously to encourage use, that’s even further proof that we’re in the sex trade.¹¹⁵

Entertainment venues: The police also go to bars, massage parlors and similar venues to conduct inspections. Seven interview respondents reported that they had experienced police inspections in these venues. Police officers enter and tell the venue to stop all activity, and then they carry out bodily searches and bag searches on the sex workers, and also look for condoms on display by the venue. Liu Chang, a male sex worker, said:

I was having a drink with a client in a bar when suddenly a group of policemen burst in and began checking everyone’s ID cards. When a policeman saw me, he said, “You’re the bar’s playboy [a term for male sex worker] aren’t you?” I said I wasn’t, but the policeman didn’t believe me, and he snatched the bag I was carrying and rifled through it, and he found a lot of condoms inside, and he stared at me and said, “You’re still not admitting you’re selling sex? Then why are you carrying all these condoms?” And with that, I and many others were taken to the local public security bureau that night.

Xiaoyue, a female sex worker who works in a massage parlor, said:

At the time there wasn’t much business, and we were sitting inside the shop chatting and fixing our makeup, and then policemen in uniforms came in and said

113. Interview with Su Wei, March 30, 2015; interview with Xiaoshan, May 24, 2015; interview with Cai’er, June 2, 2015; interview with Xue Lang, May 30, 2015; interview with Xiaoman, May 21, 2015; interview with Carol, June 7, 2015.

114. Interview with Su Wei, March 30, 2015.

115. Interview with Carol, June 7, 2015.

they were carrying out a search. Our shop had a little basin holding condoms, and they found that little basin and asked why we had them in our shop, and said this must be a prostitution venue. What was really annoying was that they weren't from the nearby police station. The police made us carry the basin full of condoms to the police station and said they were evidence or whatever.¹¹⁶

Sex workers also reported that the police take photos of condoms they find during these searches.¹¹⁷ The police also confiscated the condoms and treat finding condoms as the determinative factor in whether to take the sex worker back to the police station for further inquiries or penalty. Among the 29 interview respondents who experienced police searches for condoms while streetwalking or in their homes or entertainment venues, 69% (20/29) were taken to the police station where an administrative penalty was imposed, 13.8% (4/29) were taken to the police station for further inquiries without a penalty being imposed, and 17% (5/29) had no further action taken against them. Junfang, a female sex worker who works on the street, said:

As soon as I stand in an alleyway, I'll get caught. If you're not carrying condoms, he [the policeman] will make you stand there and interrogate you, but as long as you refuse to admit it and say you're just passing through, he can't take you away. But if there are condoms, the police will take you in.¹¹⁸

5.2.3 Reliance on condoms as “evidence” and police violence, abuse, and coercion

Sex work-related offenses are mainly handled pursuant to several administrative measures, and consequently, there is no judicial review or involvement of the court system.¹¹⁹ Accordingly, it was not possible to obtain documentation of the penalties reported by interview respondents. As a result, there is no way of determining which cases involved law enforcement officers using condoms as “evidence” to determine an act of “prostitution,” or in which cases penalties were imposed because of condom possession.

The possession of condoms, in itself, is not in fact evidence of a sexual transaction. Given the private nature of most commercial sexual transactions, eyewitness evidence is hard to come by, so condoms are the easiest material evidence to uncover. Although condoms can only serve as supporting evidence in a chain of evidence, the majority of law enforcement effort is applied to searching for condoms.

Police violence, abuse, and coercion was reported by interview respondents of all gender categories.¹²⁰ Forms of abuse included:

116. Interview with Xiaoyue, May 9, 2015.

117. Interview with Su Wei, March 30, 2015.

118. Interview with Jun Fang, April 1, 2015.

119. See Chapter 3, page 21.

120. Note that interview respondents were not specifically asked about violence and abuse, these reports were offered, unsolicited, during the interviews. Asia Catalyst believes that there are likely many more cases of violence and abuse that were not reported.

Verbal humiliation: Seven interview respondents across all gender categories reported that police verbally abused them, including making disparaging remarks about their profession, and with respect to male and transgender female sex workers, verbally abusing them for their sexual orientation and gender expression.

Physical violence: Twelve interview respondents reported that police physically abused them. Police violence occurred during police questioning at the scene and in the police station. Interview respondents reported that police used physical violence to make them confess, and to sign the record of interview. Interview respondents reported various forms of physical violence, including slapping, kicking, punching, beating, and having their head banged against the wall.

Extortion and corruption: Because public security officers have considerable discretion over what penalties to impose, they are in a position to take advantage of sex workers and extort bribes from them. Eight interview respondents reported that the police extorted bribes from them in exchange for a release. The amounts that the police extorted ranged from 3000 RMB (US\$469) to 30000 RMB (US\$4688). 12 interview respondents were fined, six reported that they weren't given a receipt; one said he was given a hand written receipt without any official stamp on it. They suspected the money went into the police officers' pockets. Interview respondents reported that they paid cash for the fine, though according to Chinese law, fines should be paid at the bank.¹²¹ One interview respondent even reported that the police took him to an ATM to get money to pay the fine, because he didn't have enough cash on him.¹²² Four interview respondents reported that after police found condoms, they confiscated their valuables, including cash and a watch. These interview respondents reported that they didn't receive any certificate documenting the items confiscated.

5.3 Impact on HIV response

5.3.1 On condom behavior

Police searching for and confiscating condoms for use as evidence of prostitution is widely reported by sex workers of all gender categories. These practices have a negative impact on sex workers' decision to use and carry condoms, and on entertainment venue owners' willingness to provide them. Ten interview respondents reported that in order to avoid being penalized, they would promptly dispose of their condoms when encountering the police, for example, by throwing their condoms out the window or flushing them down the toilet.¹²³

121. Ministry of Public Security, Public Security Regulation On Procedures For Handling Of Administrative Cases (公安机关办理行政案件程序规定). December 19, 2012, art. 188.

122. Interview with Yaoyuan, June 25, 2015.

123. Interview with Niuniu, April 25, 2015; interview with Jun Fang, April 1, 2015.

Li Huixian, a female sex worker, explained:

The police always threaten and scare people by saying condoms prove that you're a prostitute, so before the police arrive, I throw the condoms out or hide them, but I've seen a lot of sisters simply not using them.¹²⁴

In order to prevent police from discovering condoms, one sex worker reported stuffing her condoms into her vagina.¹²⁵ Street-based sex workers threw away their condoms as soon as they saw a police officer in the vicinity. Xiaoyan, a female sex worker who solicits customers along the streets in a city in southwest China, said:

Streetwalking keeps you on pins and needles; as soon as I see them (police) I run away, and if it's too late, I just throw away my money and condoms to spare myself trouble. I don't know how many condoms I've thrown away.¹²⁶

Interview respondents reported that fear of arrest drove them to shorten their service time with clients as much as possible, and made them more likely to agree to a client's demand to not use a condom. Xiaoxue, a female sex worker previously detained by police during a commercial sexual transaction with a client, reported that when the police discovered used condoms at the scene she was put in detention for 15 days. She said:

After I came out [of detention], I lost my nerve for a long time, and when I started working again I asked clients if it could be quick, and they usually demanded not to use a condom. I also hoped to finish quickly, and this way even if the police came, if they didn't see a condom they would have no evidence.¹²⁷

Both quantitative and qualitative data from this study found that law enforcement actions decreased sex workers' willingness to carry a sufficient amount of condoms, and that they tried to hide condoms in secret places. Twenty-one interview respondents said that at the time of police interrogation, they were usually carrying dozens or even more than 100 condoms, but after these incidents they carried only a few. Because the police usually rifled through sex workers' bags looking for condoms, seven interview respondents reported they stopped carrying condoms in their bags, and instead hid them in their underwear or in their hair.¹²⁸ Some street-based sex workers hid condoms in thick grass in parks.¹²⁹ Some sex workers said they no longer carried condoms, but hid them in the rooms where they worked.¹³⁰ Meimei, a female sex worker, described in detail how she hides condoms:

124. Interview with Li Huixian, May 2, 2015.

125. Interview with Yueyue, May 9, 2015.

126. Interview with Xiaoyan, July 6, 2015.

127. Interview with Xiaoxue, May 5, 2015.

128. Interview with Yang Xifang, July 9, 2015.

129. Interview with Hong Hemei, July 8, 2015.

130. Interview with Xiaoli, April 30, 2015; interview with Taohong, July 15, 2015.

We put condoms in several different places. For example, most are hidden outside, in a plastic bag in a planter outside of the window, along with garbage where no one will notice. If there's only a few, we'll keep them at home, for example in an empty medicine bottle, or in a plastic bag from the market that we put in the refrigerator or in the rice sack – in short, in places where they [the police] normally won't look.¹³¹

Sex work is unpredictable; it is difficult to estimate the number of clients and where the service will be performed. Reducing the number of condoms carried, or not carrying them at all, creates a direct health risk for sex workers. Meidi, a transgender sex worker, said:

With quickies, I may take two or three. So I really can't be caught short [of condoms], but I don't know how many I'll be using at a time.¹³²

Because the storage of condoms has to meet certain conditions, unsuitable storage can lead to damage, increasing the risk of STI transmission or unwanted pregnancy if they are used. Hiding condoms, or making them less easily available also makes it less convenient for sex workers to access them. If sex workers and clients cannot promptly access condoms when they need them, unsafe sexual behavior may occur. Law enforcement actions have prevented sex workers from being able to protect themselves.

In some cases, the condoms that police found during searches had been distributed at no cost by the local CDC or a CBO.¹³³ Three interviewees said that, after experiencing law enforcement actions, they haven't dared to accept condoms brought to them by outreach staff.

5.3.2 On the public display of condoms

Both sex worker interview respondents and venue owners reported that law enforcement practices had decreased the overall availability of condoms in sex work venues, because entertainment venue staff did not want to display condoms publicly.

Sex workers and venue managers reported that, after experiencing law enforcement actions, they no longer displayed condoms as openly as before, but put them in a concealed location, for example, outside rather than inside a room.¹³⁴ Three sex workers said that some venues were no longer putting condoms out at all and, when they needed them, they would get a small number from the manager. A-Hong, a male sex worker, said:

131. Interview with Meimei, April 24, 2015.

132. Interview with Meidi, June 28, 2015.

133. Interview with Carol, June 7, 2015; interview with Nannan, May 7, 2015; interview with A-Hong, May 18, 2015.

134. Interview with Jingjing, April 29, 2015.

The boss doesn't dare to put condoms out in the open and hides them all away. It's a real hassle for us to find them. Every three to five days he distributes them to us a few at a time.¹³⁵

Zhao Ke, a health department worker interviewed for this research, stated:

I work in a CDC, and I tell venue operators that, according to the provincial AIDS regulation, they have to make condoms available, and they put them out. But the police come and say, 'Why do you have this kind of thing?' One time I saw the police make the proprietor quickly gather up all the condoms, saying, 'Do you have illegal activity going on here?' Under these conditions, managers don't dare put condoms out. They're afraid of the police but not of the CDC.¹³⁶

For this reason, one venue manager told us, many venues respond by "putting condoms out when the health authorities come, and putting them away when the PSB comes."¹³⁷

Brother Song is the manager of a gay bar where condoms are not on public display. He said,

We don't put condoms out on the tables here, but put them under the tables. We're afraid the police will suddenly turn up for an inspection and make it hard to explain. And we don't dare put condoms in the bar's private rooms. If there are people and condoms in the room, the police will take you away immediately.¹³⁸

5.3.3 Impact of law enforcement on sex work

Law enforcement actions force sex workers to move around and make their work even more secretive. After experiencing law enforcement actions, 21.2% (47/222) of the survey respondents temporarily stopped engaging in sex work, while 24.8% (55/222) changed to more concealed venues, and another 24.8% (55/222) changed work venues frequently. Some sex workers left their original cities or venues, and some said that police vice raids changed how sex workers operate. In these instances, clients no longer dared to come to the venues, so the clients contacted the sex workers through the Internet or over the telephone.¹³⁹ This kind of displacement disrupts the contacts that CBOs have built with sex workers, and causes sex workers to face even more threats to their health and safety.¹⁴⁰

135. Interview with A-Hong, May 18, 2015.

136. Interview with Moyu, June 15, 2015.

137. Interview with Zhao Ke, June 12, 2015.

138. Interview with Brother Song, July 11, 2015.

139. Interview with Xue Lang, May 30, 2015.

140. Huang Yingying and Pan Suiming, "Government crackdown of sex work in China: Responses from female sex workers and implications for their health," *Global Public Health*, 2014. Vol. 9, No. 9, pp. 1067-1079.

Street-based sex workers said they chose highly-concealed places to engage in sexual transactions, such as public toilets.¹⁴¹ When engaging in sexual activity in public toilets, sex workers do not have access to sanitation facilities, such as showers. Furthermore, there are increased security concerns the more isolated the locations become.

Although sex work has become more covert, our research found, similar to other studies, that police crackdowns did not result in sex workers leaving the sex industry.¹⁴² After encountering law enforcement officials, sex workers may stop working, but only for a short time. Once they resume their work, sex workers merely change their city, venue or method of operation. Zhao Hui, a female sex worker, said:

I changed a place to work. That place was inspected too strictly, the police already knew me, I was afraid they would come directly for me, so I changed to another place quickly.¹⁴³

And Jun Zhe, a male sex worker, moved to another city:

Immediately after I was released, I went to another city, I have had enough here.¹⁴⁴

Furthermore, the economic losses sex workers suffer through penalties or detention require them to work even harder to make up their losses. Zhao, a female sex worker, said:

I have to continue to work. I already paid the fine, I have to earn the money back!

The economic pressure and fear of arrest also often forces sex workers to agree to clients' demands to not use condoms. And, because of police crackdowns, sex workers are less likely to report to the police if they experience violence from clients. Frequent law enforcement actions also make sex workers more dependent on regular customers as their main source of income, which also increases potential risks of having unsafe sex. Research finds that the prevalence of condom use is usually lower with more stable sex partners.¹⁴⁵

Law enforcement actions, and accompanying violence and abuse of power, have an immense effect on the image and credibility of public security authorities among sex workers. When asked about their impression of the police, only 11.2% (58/517) of the survey respondents had a good impression of the police, while half (49.5%, 256/517) had a poor impression. Nearly half (48.7%, 252/517) said that if they encountered a dangerous situation during work, they would not report it to the police. Zhang Mo, a male sex worker who was caught by police with condoms, said:

141. Interview with Miaomiao, June 20, 2015.

142. Huang Yingying and Pan Suiming, "Government crackdown of sex work in China: Responses from female sex workers and implications for their health," *Global Public Health*, 2014. Vol. 9, No. 9, pp. 1067-1079.

143. Interview with Zhao Hui, July 10, 2015.

144. Interview with Junzhe, May 30, 2015.

145. Huang Yingying and Pan Suiming, "Government crackdown of sex work in China: Responses from female sex workers and implications for their health," *Global Public Health*, 2014. Vol. 9, No. 9, pp. 1067-1079.

I have no good impression and trust of those so called government people. They do such shameful things with the money from the government! I guess they had quotas to fulfill during that time, so they tortured me to confess.¹⁴⁶

The fear of government authorities among sex workers as a group may affect their willingness to accept and obtain government services, and the ability of public health institutions to provide services may also be weakened. Zhao Ke, a health worker, said that prior to the vice raids, managers tacitly approved of health department staff going to venues for outreach and intervention; but after the vice raids, managers would say that their venues had no target groups requiring intervention.¹⁴⁷

5.3.4 Limited coordination between departments

Interviews with key informants--local health authorities, managers of sex work venues, CBOs and PSB officers --indicate that crackdowns on sex work greatly decrease the ability of health departments and CBOs to conduct HIV prevention work and distribute condoms to sex workers. The problem is compounded by the limited communication and coordination between health and public security departments.

Health officers and CBO staff who were interviewed for this report said that PSB law enforcement activity is a factor that always has to be considered in intervention work targeting sex workers as a group. Interview respondents said that the police carry out inspections at entertainment venues on major holidays or around major conferences, or they target specific premises for searches based on reports from members of the public.¹⁴⁸ Xiao Zhang, a health worker, said raids were carried out all over his city in a crackdown targeting sex workers in saunas and hair salons in 2014. In addition to arrests made at the scene, police also designated condoms they found as key evidence of prostitution.¹⁴⁹ Moyu, a health worker in southeastern China, said that during large-scale vice raids in his city in 2014, entertainment venues were not allowed to display condoms.¹⁵⁰ These crackdowns have a chilling effect on the sex industry. Mother Binbin, manager of an establishment for female sex workers, explained:

Starting last year, business hasn't been good. Now there's just seven or eight [customers] all day, from morning to night. In the past we'd have a dozen or so at night alone. Since those higher ups called for vice raids, a lot of people have stayed home, and business has been terrible.¹⁵¹

146. Interview with Zhang Mo, July 12, 2015.

147. Interview with Zhao Ke, June 12, 2015.

148. Interview with Sister Yang, June 23, 2015; interview with Section Chief, July 12, 2015.

149. Interview with Xiao Zhang, July 12, 2015.

150. Interview with Moyu, June 15, 2015.

151. Interview with Mother Binbin, June 20, 2015.

These crackdowns always bring a temporary halt to HIV intervention work. Health workers interviewed for this report said that, when they encountered a period of police vice raids, their intervention work stagnated and they were unable to meet their intervention targets.¹⁵² Xiaohui, a staff worker at a local Center for Disease Control, said:

The district under our jurisdiction currently has more than 30 entertainment venues with more than 400 sex workers, including secret prostitutes and MBs [“money boys,” referring to MSM sex workers]. Every time there’s a vice raid, we’re unable to contact even half of our original number. Before the vice raids, these sex workers cooperated with our work by communicating with us, but since the vice raids, they’ve been generally unwilling to communicate, thinking that we’re the ones who called in the police.¹⁵³

The impact is felt not only on health departments, but also on CBOs, which the health departments relies on substantially to conduct intervention with sex workers. Sister Yang, leader of a community organization, said:

The interrogation had a big effect on work. No one wants to come out and fool around, so we can’t find people [sex workers]. The managers have become cautious and don’t want to deal with us, and they don’t put condoms on display. Before the strike-hard campaign, there were some places where we could distribute a large number of condoms – we’d leave a big box of them, and they’d be gone in a day or two. But, since the strike-hard campaign, it’s been hard to distribute condoms. The managers don’t dare put them out, and they [the sex workers] don’t come out.¹⁵⁴

Interview respondents said communication channels between health and public security officials were extremely limited.¹⁵⁵ Xiao Ding says her health department has coordinated with the PSB on intervention work for people who use drugs, but never for sex workers.¹⁵⁶ Lao Yang, a local CDC worker who has been engaged in HIV prevention work for five years, said that during strike-hard campaigns it is extremely difficult to reach intervention targets. The coordination between his department and the police is such that after the PSB takes someone into custody, the health department is notified only to carry out HIV testing of sex workers in administrative detention centers, which then allows them to meet their quotas.¹⁵⁷

152. Interview with Zhao Ke, June 12, 2015; interview with Xiao Ding, July 15, 2015, Interview with Lao Yang, July 15, 2015; interview with Xiaohui, July 12, 2015; interview with Section Chief, July 12, 2015.

153. Interview with Xiaohui, July 12, 2015.

154. Interview with Sister Yang, June 23, 2015.

155. Interview with Xiao Zhang, July 12, 2015; interview with Xiao Ding, July 15, 2015.

156. Interview with Xiao Ding, July 15, 2015.

157. Interview with Lao Yang, July 15, 2015.

Interview respondents said that health authorities were at a great disadvantage when working with the PSB. Moyu said that during the 2014 vice raids, when the PSB didn't allow condoms to be displayed, local health and public security officials convened a coordination council on the issue:

The public security department is also a work unit for banning drugs and preventing AIDS, but when coordinating with them we couldn't say it was for the health of call girls, or say that there were call girls. If we did, they'd be subjected to a crackdown. It's like our province has an AIDS Prevention Office and has the AIDS Prevention Office coordinate with the PSB, saying they want to put out AIDS prevention items, but not using the word "condom." To tell the truth, the "higher-ups" declare that there's no problem, but when it comes to implementation by local police, it's another story.¹⁵⁸

In some places however, HIV work has gained the enthusiastic support of the PSB, as the local police force is more open and collaborative. A CBO staff person who was interviewed told of running into a police vice raid once while engaged in outreach and being forced to stop. One of the organizations then communicated with the PSB through the local CDC to gain their understanding and support. The PSB then said it would do its best to cooperate with their outreach work. From then on, the CBO and the PSB were on very friendly terms, and when that organization was later subjected to extortion by an organized crime gang, the local police intervened and assisted the CBO. That staff member said, "The smooth performance of our daily work is largely thanks to the protective presence of the police."¹⁵⁹

Xiao Li, a PSB officer, said:

[Whether or not to put condoms out] I feel this is a question of two departments coordinating with each other. But how do we coordinate? If they [condoms] are put out, that suggests that the PSB tacitly approves of prostitution being carried out at that venue. If they're not put out, there's no way for the Center for Disease Control to reduce the spread of STDs and HIV. Every department thinks of its own problems and difficulties, so the two need to discuss them together. Here in our jurisdiction the police haven't done that; it requires those at the higher levels to develop favorable policies. This is a problem of national law and not something that any public security department or Center for Disease Control can resolve.¹⁶⁰

A health official interviewed for this report called for an end to the crackdown on sex work, as it directly impacts on HIV prevention work and distribution of condoms:

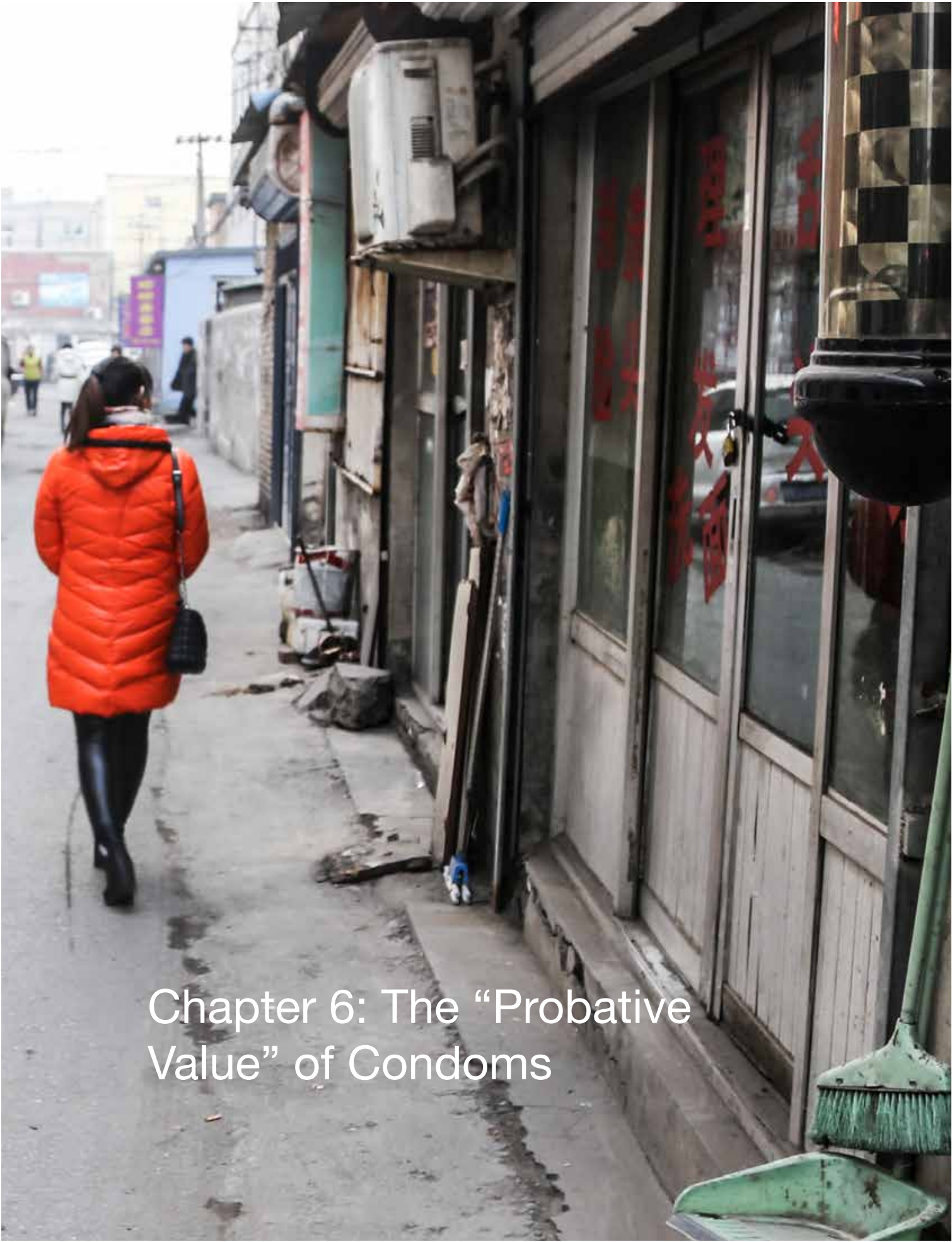
158. Interview with Moyu, June 15, 2015.

159. Interview with Wang Yue, July 8, 2015.

160. Interview with Xiao Li, August 2, 2015.

Many small hotels, hostels and entertainment venues won't place condoms where they can be clearly seen. Every time there's a vice raid or a strike-hard campaign, a lot of the sex workers here vanish, which has a very bad effect on our intervention work – we can't find people. At the Center for Disease Control, we work from the perspective of preventing AIDS for all the people, we don't want vice crackdowns and strike-hard campaigns, because this directly affects the distribution and provision of condoms.¹⁶¹

¹⁶¹Interview with Section Chief, July 12, 2015.



Chapter 6: The “Probative Value” of Condoms

Chapter 6: The “Probative Value” of Condoms

China is not the only country to use possession of condoms as evidence of prostitution. Many other countries and regions, including in Asia, have policies and practices in which condoms are treated as evidence in prostitution cases. However, there is also a slow-growing movement to rethink and reform these practices, some of which is driven by the impact these policies are having on HIV prevention efforts, and also due to greater awareness of human rights protections for those working in the sex industry. A brief overview of developments in other jurisdictions is therefore instructive.

6.1 Case Studies: New York and San Francisco

In New York and San Francisco, a person is guilty of prostitution when that person engages or agrees or offers to engage in sexual conduct with another person in return for a fee. Accordingly, to convict an individual of prostitution, a prosecutor must prove three elements: that the defendant (1) made an offer or agreement (2) to engage in sexual conduct with another person (3) in exchange for a fee.¹⁶²

In New York City, police do not need to obtain an arrest warrant to make an arrest in public as long as the arresting officer has “probable cause” to believe a suspect is committing or has committed an offense. Although it is not a crime to carry condoms, before the policy change one of the factors police used to determine whether to arrest someone for prostitution or solicitation was whether the person was carrying condoms. Furthermore, prior to recent changes, the New York City police were widely reported to have confiscated condoms from people they believed to be involved in the sex trade even when no arrest was made.¹⁶³ In San Francisco, the police also regularly treated possession of condoms as evidence of “an act of furtherance” in prostitution cases. Although the police did not confiscate condoms, they photographed them for evidentiary purposes.¹⁶⁴

There are considerations underlying the use possession of condoms as evidence. Condoms are a kind of circumstantial evidence. Carrying unused condoms may indicate that a person may intend to engage in sexual activity, and a used condom indicates that sexual activity has likely occurred. For this reason, in meeting the first two elements of prostitution (i.e., agreeing to provide or mutually agreeing to engage in sexual relations between two people), condoms can serve as relevant (but not necessarily determinative) evidence. However, condoms cannot serve as evidence of the third element (i.e., payment of cash or valuables). In New York City and San Francisco, when police arrest people at the scene and discover

162. Cyrus R. Vance Center for International Justice, “Policy Changes Regarding Use of Condom Possession as Evidence of Prostitution-Related Offenses in New York City and San Francisco,” August 14, 2015 (hereafter “Policy Changes”). On file with Asia Catalyst, available upon request.

163. *Ibid.*

164. *Ibid.*

condoms, the condoms can be accepted as evidence to prove the first two elements of prostitution, but the probative value given to this evidence is within the discretion of the fact finder, usually a judge or jury, but sometimes an independent expert or committee is appointed to determine the facts, depending on the case.¹⁶⁵

In 2012, several advocacy groups carried out investigations and research on the use of condoms as evidence of prostitution in several major U.S. cities, and found that, due to the fear of being arrested, many sex workers said they no longer carried condoms, or carry fewer than they need.¹⁶⁶ As epidemiological research has shown that consistent use of condoms is a highly effective means of HIV prevention,¹⁶⁷ some U.S. policymakers therefore felt that allowing the use of condoms as evidence could increase the risk of the spread of HIV and affect public health and welfare.¹⁶⁸ Policymakers also felt that when deciding whether to use a particular form of evidence, the possible harm should be weighed against the benefit provided. In New York City and San Francisco, policymakers decided that the value of condoms for HIV and disease prevention far outweighed any utility in enforcement of anti-prostitution laws.¹⁶⁹

The effectiveness of condoms as evidence in prostitution cases is also limited. At most, condoms can serve as collateral evidence when key other factors of prostitution have already been satisfied. Furthermore, prostitution can take place without the use of condoms and, for that reason, the fact that someone is not carrying condoms cannot determine whether or not he or she has engaged in, or intends to engage in, sexual relations. When police suspect that an individual is involved in prostitution, they are generally able to use other forms of evidence, including witnessed behavior or testimony. For this reason, condoms have limited probative value in their own right and, at best, they normally only duplicate proof provided by other forms of evidence.¹⁷⁰ One District Attorney noted that the benefits of condoms as evidence does not outweigh the public health impact, explaining: “Sex workers are more likely victims than they are criminals, and condom evidence was rarely of any value to a prosecution.”¹⁷¹

In 2013, the San Francisco Police Department announced a new policy under which condoms would no longer be treated as evidence in prostitution cases, and the department instructed police officers not to confiscate, photograph or otherwise document the

165.Cyrus R. Vance Center for International Justice, “Additional Analysis in Connection with Policy Changes Regarding Use of Condom Possession as Evidence of Prostitution-Related Offenses in New York City and San Francisco,” September 18, 2015 (hereafter “Additional Analysis”). On file with Asia Catalyst, available upon request.

166.Human Rights Watch, “Sex worker at Risk – Condoms as Evidence of Prostitution in Four U.S. States,” July 2012, <https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities>

167.Condom Fact Sheet in Brief, <http://www.cdc.gov/condomeffectiveness/brief.html>

168.Cyrus R. Vance Center for International Justice, “Additional Analysis,” op. cit.

169.Cyrus R. Vance Center for International Justice, “Policy Changes,” op. cit.

170.Cyrus R. Vance Center for International Justice, “Additional Analysis,” op. cit.

171.“New York Lawmakers: Don’t penalize prostitutes for condom possession,” *CBS News*, April 28, 2014. , accessed November 13, 2015. <http://www.cbsnews.com/news/new-york-lawmakers-dont-penalize-prostitutes-for-condom-possession/>

possession of condoms. In May 2014, the New York City Police Department followed suit and announced they too would significantly limit the practice of seizing condoms for use as evidence in prostitution-related cases, but continue to use condoms as evidence in cases involving sex trafficking.¹⁷² New York City Mayor, Bill de Blasio, said at a news conference, “A policy that actually inhibits people from safe sex is a mistake and dangerous.”¹⁷³

6.2 Policy change in Cambodia and Myanmar

In other parts of the world, including Africa, Asia and some regions of Europe, the police have also arrested sex workers on the basis of possession of condoms, which has led to sex workers being unwilling to carry and use condoms.¹⁷⁴ However, in consideration of the resulting risk to public health, particularly in regards to HIV, both Myanmar and Cambodia have also issued policies directing the police not to use condoms as evidence when arresting sex workers.¹⁷⁵

In Cambodia, sex work itself is not illegal, but sex workers can be arrested and charged with solicitation. Because of the ambiguity and over-breadth of the language regarding solicitation in the law, carrying condoms could result in sex workers being arrested and prosecuted. In 2008, the Cambodian Ministry of Justice published explanatory notes to elucidate the meanings of the provisions of 2008 Law on Suppression of Human Trafficking and Sexual Exploitation, which is the main law governing sex work in Cambodia. The explanatory notes explicitly state that “possessing or carrying condoms, lubricant or other material related to the promotion of safe sex and the reduction of HIV” shall not constitute proof of or intent to solicit. Additionally, in 2011, the Ministry of Interior of Cambodia issued a Letter of Declaration, which states that police will not use condoms as evidence for arresting sex workers except in rape-related cases.¹⁷⁶

In Myanmar, sex workers are 13.5 times more likely to contract HIV than the general population.¹⁷⁷ The odds of contracting HIV are increased by the practice of using condoms as evidence of prostitution as sex workers have noted they are now afraid to carry condoms in public. Furthermore, many massage parlors and “KTV” (karaoke) lounges that operate as brothels do not permit condoms to be kept on their premises so as not to attract unwanted police attention.¹⁷⁸

172. Cyrus R. Vance Center for International Justice, “Policy Changes,” op. cit.

173. “NYPD ends policy of confiscating condoms in some prostitution cases,” CNN, May 12, 2014.

174. Open Society Foundations. “Criminalizing Condoms. How policing practices put sex workers and HIV services at Risk in Kenya, Namibia, Russia, South Africa, The United States, and Zimbabwe”, July 12, 2012, <https://www.opensocietyfoundations.org/sites/default/files/criminalizing-condoms-20120717.pdf>; Trustlaw, Survey of Condom Possession as Evidence of Prostitution in Cambodia, Myanmar, Nepal and Papua New Guinea, November 10, 2015.

175. Trustlaw, Survey of Condom Possession as Evidence of Prostitution in Cambodia, Myanmar, Nepal and Papua New Guinea, November 10, 2015.

176. Ibid.

177. IMPOWR.org, “Summary: Prostitution in Myanmar (Burma),” February 7, 2015. <http://www.impowr.org/content/summary-prostitution-myanmar-burma>.

178. Trustlaw, Survey of Condom Possession as Evidence of Prostitution in Cambodia, Myanmar, Nepal and Papua New Guinea, November 10, 2015.

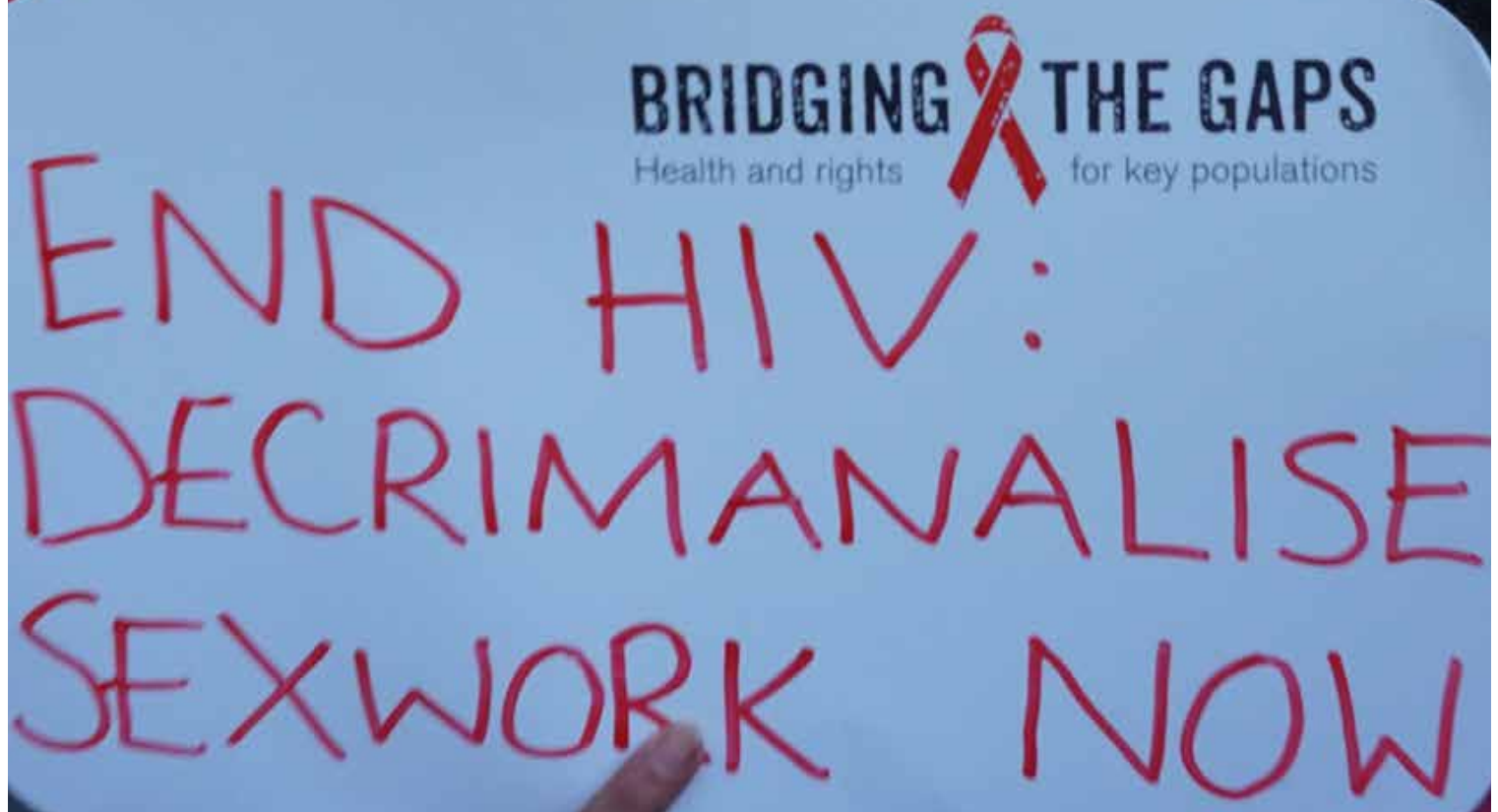
In 2000, the Myanmar Ministry of Home Affairs issued Administrative Order No. 1048 which declared that condoms may not be used as “material witness to arrest sex workers.”¹⁷⁹ Condom possession cannot be used as evidence of prostitution in Myanmar and to do so is “illegal.” Order No. 1048 (1/2000) was issued again in 2001 and 2003. The Myanmar National Strategic Plan on HIV 2011-2015 includes a specific commitment to the “enforcement of policy in which condom possession is not used as liability of sex work.”¹⁸⁰

The governments in Cambodia and Myanmar have acknowledged the issues of police using condoms as grounds to arrest and prosecute sex workers, and issued high-level directives to eradicate this practice. However, both governments have failed to enforce the new policies; the new policies were not widely disseminated, law enforcement officers were not educated on the topic, and sex workers continued to be arrested for condom possession. Law enforcement officers are in a unique position to help sex workers and to promote the use of condoms and access to health services. But with the good policies just on paper and not being enforced, now sex workers must decide whether to protect themselves by carrying and using condoms or protect themselves from the law intended to help them.

179.Ibid.

180.Ibid.

Chapter 7: Conclusions and Recommendations



Chapter 7: Conclusions and Recommendations

I feel that as long as both parties are willing and there's no coercion or effect on society or on others, why should it be illegal? They also need to know how to protect themselves, so why not let them use condoms? At the very least, condoms prevent the transmission of disease so there's no harm to society.

– Sister Ai, female sex worker

The research for this report, conducted in three major Chinese cities, found that coming into contact with law enforcement actions is a common occurrence for male, female and transgender sex workers, and they are struggling to maintain their safety and health in such an environment. Condoms, a tool that can protect sex workers from STIs/HIV, are categorized and targeted as a “tool of offense” in police actions against sex workers. Law enforcement officers search for and confiscate condoms, and use possession of condoms to pressure individuals into a confession. Sex workers who are affected by these policies and actions are not passive, they demonstrate agency in response to these actions and in efforts to resist and circumvent the police actions. However, sex workers are still more likely to agree to client demands to not use condoms, reduce the numbers of condoms they carry, not carry condoms at all, or try various methods to hide condoms in concealed places. Entertainment venues are also deterred from publicly displaying condoms in their establishments, despite central government policies advising them to do so.

China has long taken a punitive approach to sex work. However, this research, together with other research, has shown that law enforcement is ineffective in eradicating sex work; sex workers simply change their working locations or methods while continuing to work.

At present, China's HIV response and law enforcement actions are at odds. Health departments actively promote condom use at entertainment venues, and community groups are investing heavily in peer education that includes condom promotion and distribution. But an effective HIV response should be more than just an arena dominated by health departments; it is a social problem that should involve coordinated and complementary efforts by affected communities, law enforcement, media and many other stakeholders. Prevention cannot merely focus on the number of condoms distributed while neglecting public policies related to those same condoms. The participation of the PSB in HIV prevention cannot be limited to STI and HIV testing of arrested sex workers. HIV strategies at various levels must take note of the effect law enforcement actions are having on the spread of HIV, such that their response is not directly undermining parallel efforts by health departments.¹⁸¹

181. Guo Xiaofei, “The two faces of condoms – Public policy initiatives in the shadow of AIDS,” (安全套的两副面孔——艾滋病阴影下的公共政策倡导) <http://acb.bingduba.cn/z/v/n.html>.

The 100% Condom Use Program, which piloted in 2001 and launched in 10 provinces in China,¹⁸² was the only program targeting sex workers that gained the political support of the Chinese government. As a result, the program successfully mobilized the support of the PSB, and formed coordination mechanisms which involved entertainment venue owners, PSB and local health departments. The program achieved concrete results: in places where the program was implemented, STI prevalence among sex workers was significantly lower than those that did not implement the program.¹⁸³

Today, however, there is no mechanism for PSB and public health departments to work together on interventions for sex workers. With the government's launch of a large-scale crackdown on sex work in recent years, the PSB has to take an even harsher approach and attitude towards sex workers, decreasing the space for PSB's participation in HIV prevention work for sex workers.

UNFPA's survey of its HIV and SRH intervention programs for low-tier female sex workers in 4 counties in China (2011-2015) found that, the involvement of other government departments (beyond the health departments) in sex worker and HIV-related health work has been decreasing; 75.8% health officers reported they "often worked with other departments" at the beginning of the program, which dropped to 51.4% at the end of the program.¹⁸⁴ The major drop in participation is from the PSB, as it has been more focused on the crackdown on sex work, rather than in supporting the health department. As a result, the number of sex workers receiving HIV-related health services has dropped significantly.¹⁸⁵

While decriminalization of sex work is the best approach to protect and promote the human rights of sex workers and has been seen to be the most effective method to reduce HIV infections in this population,¹⁸⁶ there is no indication that this is a near-term possibility in China.¹⁸⁷ However, initiatives from the government, in collaboration with the PSB, CBOs and sex workers, could start making a change on the ground now, before decriminalization is possible. Positive reform has already been made in the approach to people who use drugs, also criminalized by law in China. Injecting drug use used to be the leading factor in China's spread of HIV, but HIV prevalence among people who inject drugs has dropped in recent

182.Rojanapithayakorn W, "The 100% Condom Use Programme in Asia," *Reproductive Health Matters*, 2006 Nov; 14(28):41-52.

183.Zhang Li, "'Condom campaign' in entertainment venues," (娱乐场所的安全套运动) *Southern Weekend (Nanfang zhoumo)*, November 21, 2002, <http://www.southcn.com/weekend/tempdir/200211280023.htm>, accessed August 23, 2015.

184.China-UNFPA the 7th Round HIV Prevention and Control and Sexual Reproductive Health Service Cooperation Project (2011-2015), Final Survey Report of Intervention Project to Low-tier Female Sex workers. ("中国 - 联合国人口基金第七周期艾滋病防治与生殖健康服务合作项目 (2011-2015 年)"《低档暗娼干预项目终线调查报告》). December 2015. Unpublished internal draft.

185.Ibid.

186.Kate Shannon, Steffanie A Strathdee et al. "Global epidemiology of HIV among female sex workers: influence of structural determinants." *The Lancet*. Vol 385. January 3, 2015. The paper reviewed 204 studies and examined structural determinants of HIV among female sex workers. Most studies were from Asia, with few from areas with a heavy burden of HIV such as sub-Saharan Africa, Russia, and eastern Europe. The study used a deterministic transmission model to simulate potential HIV infections averted through structural changes in regions with concentrated and generalized epidemics, and high HIV prevalence among FSWs, to further explore the potential effect of structural determinants on the course of epidemics. The study found that decriminalization of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade.

187.Huang Yingying and Pan Suiming, "Government crackdown of sex work in China: Responses from female sex workers and implications for their health," *Global Public Health*, 2014. Vol. 9, No. 9, pp. 1067-1079.

years.¹⁸⁸ This could be potentially be explained by a range of factors, including interventions such as the 767 methadone maintenance treatment clinics that had been set up in 28 provinces.¹⁸⁹ Although drug use is illegal and the police are authorized to detain people who use drugs, the government issued policies to ensure the PSB's legitimate role in supporting the roll out of the methadone clinics, and the clinics provide a platform for coordination between various departments.

Without the support of the police force, interventions to create a safer environment for sex workers will be limited. The same will be true for China's efforts to control the HIV epidemic in this population. Authorities and communities should work together to support measures that protect public order and safety, but also help key populations access health services rather than being targeted as an object of enforcement.

Key Recommendations:

To the Ministry of Public Security

Eliminate the police practice of searching for and confiscating condoms and using possession of condoms as evidence of prostitution.

- Amend national and local guidelines on the handling of sex work cases and exclude condoms as physical evidence of prostitution cases.
- Issue a directive to instruct all law enforcement officers to immediately cease using the possession of condoms as evidence to detain, question, or arrest persons suspected of sex work.
- Work together with the National Health and Family Planning Commission (NHFPC) to organize trainings for law enforcement officers on the directive, and on the public health importance of condoms for HIV prevention and sexual and reproductive health.

Put an end to police extortion, and abuse and violence against sex workers; investigate and punish officers who abuse or extort sex workers.

- Establish a feedback and accountability mechanism in which sex workers and other vulnerable groups can file complaints of misconduct by police. Respond to all incidents, and conduct due diligence to investigate and punish law enforcement officers who abuse or extort sex workers.
- Train law enforcement officials to recognize and uphold the human rights of sex workers; invite sex worker representatives to these trainings to share their experiences.

188.National Health and Family Planning Commission of the People's Republic of China, *2015 Progress Report on AIDS Prevention in China*, May 2015.
189.Ibid.

To the National Health and Family Planning Commission

Address the legal and policy barriers that hamper the promotion of condom use among sex workers; improve coordination and cooperation with other departments, especially the public security bureaus.

- At national and local levels, establish a Working Group on Sexual and Reproductive Health (SRH) and HIV for Sex Workers, which would consist of representatives from relevant government departments including, but not limited to, public security, health authorities, the All-China Women's Federation, and CBOs working directly with sex workers. The working group should meet regularly to coordinate and solve concrete issues that impeded sex workers' access to SRH and HIV health services, such as condom display in entertainment venues, and police confiscation of condoms.
- Work together with to the State Administration of Press, Publication, Radio, Film and Television to end depictions of condoms as evidence of prostitution in news reports disseminated through television, film, radio broadcasts, newspapers, magazines, books, the Internet and other media. Train media and reporters on respecting sex workers' dignity and human rights in reporting.
- Work together with the State Administration for Industry & Commerce to formulate supportive policies and provisions that encourage commercial and public service advertisements promoting condom use.

Improve sex workers' access to sexual and reproductive health and HIV services.

- HIV programs for sex workers should be designed and implemented in consultation with sex workers. The negative impacts on health of current law enforcement practices should be addressed in the design and evaluation of the programs. Programs should address the issues most relevant to securing sex workers' right to health.
- Support STI and HIV intervention programs led by sex workers and CBOs; provide voluntary and rights-based outreach, peer education, counseling, testing and other services.

To the National People's Congress

Reform punitive laws, policies and law enforcement practices to protect sex workers' rights.

- Reform the punitive legal framework on sex work; move towards decriminalization of sex work; withdraw laws and regulations that prohibit consenting and voluntary adults from buying or selling sexual services; ensure safe working conditions for sex workers.

- Abolish articles in the Criminal Law relating to “intentionally spreading sexually transmitted diseases,” and abolish phrases relating to “cracking down on prostitution” in HIV prevention documents.

To the Chinese government

Strengthen sex workers’ access to justice and empower them with knowledge of their rights.

- Implement community-led empowerment initiatives for sex workers, and create mechanisms to enable local governments, sex worker organizations and other interested civil society groups to create environments conducive to sex workers rights, including network building among sex workers for peer support to prevent and mitigate the effects of violence.
- Ensure sex workers’ access to legal literacy programs and legal aid services, including through the training of legal aid providers on sex workers’ rights and establishing networks of paralegal peers to provide legal support.
- Support sex worker-led organizations to conduct systematic documentation of human rights violations and discrimination against sex workers, forging partnership with other key population networks, local leaders, and the media for a stronger national advocacy to protect the rights of sex workers.

Glossary

Key populations: (1) Gay men and other men who have sex with men, (2) sex workers and their clients, (3) transgender people, and (4) people who inject drugs are the four main key population groups. These populations often suffer from punitive laws or stigmatizing policies, and they are among the most likely to be exposed to HIV. Their engagement is critical to a successful HIV response everywhere—they are key both to the epidemic and to the response.

The term “key populations” also is used by some agencies to refer to populations other than the four listed above. For example, prisoners and other incarcerated people also are particularly vulnerable to HIV; they frequently lack adequate access to services, and some agencies may refer to them as a key population.

Outreach services: Refers to services provided by peer sex workers, health education publicists or health personnel who go into entertainment service venues or other public venues to carry out health counseling, distribute educational materials, condoms, and other items, engage in health promotion activities, or who provide HIV-related or sexually transmitted infections (STIs) diagnosis and treatment.

Peer education: Refers to an approach to health promotion, in which community members disseminate health knowledge and promote safe sex within their own community.¹⁹⁰

Prostitution/prostitute: A term that implies a person is in the business of selling sex. Because this term connotes a value judgment, this report only uses the term “prostitution” when quoting directly, or summarizing, specific legislative or treaty provisions. Otherwise, the term “sex work” is used.

Public Security Bureau (PSB): Refers to the Public Security Bureau, the local police force in China. PSBs are under the jurisdiction of the national level Ministry of Public Security (MPS). The MPS coordinates the work of provincial PSBs, which are also answerable to the provincial governments and provincial level branches of the Communist Party of China. Provincial PSBs in turn administer county or district level public security sub-bureaus and branch bureaus, which perform a role similar to larger police stations. The lowest level units are police posts, which perform a role similar to smaller, local police stations.

¹⁹⁰Evidence has shown that well-established peer-based outreach and education is effective for behavior change. It can facilitate demand for and an uptake of HIV testing, STI diagnosis and treatment and HIV treatment, care and support. See Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations, World Health Organization, July 2014. Page 40-41; The HIV and Sex Work Collection, Innovative responses in Asia and the Pacific. UNFPA, UNAIDS, Asia Pacific Network of Sex Workers, 2012, page 13.

Sex worker: Includes female, male and transgender adults (18 years of age and above) who receive money or goods in exchange for sexual services, either regularly or occasionally. Sex work is consensual sex between adults, can take many forms, and varies between and within countries and communities. Sex work also varies in the degree to which it is more or less “formal,” or organized.

Transgender: An umbrella term for people whose gender identity and expression do not conform to the norms and expectations traditionally associated with the sex assigned to them at birth; it includes people who are transsexual, transgender or otherwise gender non-conforming. Transgender people may self-identify as transgender, female, male, transwomen or transmen, trans-sexual or, in specific cultures, as hijra (India). They may express their gender in a variety of masculine, feminine and/or androgynous ways.

Acronyms

CBO: Community based organization

CDC: Center for Disease Control and Prevention

FSW: Female sex worker

MSM: Men who have sex with men

MSW: Male sex worker

NCAIDS: National Center for AIDS/STD Control and Prevention (China)

MOH: Ministry of Health of the People's Republic of China. In the reforms of 2013 the ministry has been dissolved and its functions integrated into the new agency called the National Health and Family Planning Commission (NHFPC).

PSB: Public Security Bureau

STI: Sexually Transmitted Infections

UNAIDS: Joint United Nations Program on HIV/AIDS

UNDP: United Nations Development Program

UNFPA: United Nations Population Fund

WHO: World Health Organization

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Annex 1: Best Practice on Meaningful Collaboration with Police

While it is important to change law and policy on paper, experience from other countries has shown that change should not wait for acts by policymakers, but can and should be effected more immediately through engagement with the police and communities. In some countries around the world, criminalized communities such as sex workers and people who use drugs have started innovative programs to work with the police. This section presents the best practices from these programs, and shows how communities can work effectively with police.¹⁹¹ These experiences may prove instructive as China reforms its approach.

Appeal to police interests

Police harassment of sex workers and people who use drugs is often a function of perverse incentives (e.g., quotas for arrest, and low salaries that encourage extortion). Successful reform of police practice toward these groups must similarly identify incentives or ways of framing engagement to show that these efforts can help police protect themselves and do their jobs. Police trainings in Kyrgyzstan and Ghana focused first on HIV prevention efforts for police officers and, in the case of Kyrgyzstan, emphasized ways that awareness of and support for clean needle programs could avoid needle stick injuries and increase occupational safety. In Kenya, police understood that better relations with sex workers could result in information that might prevent serious crime or assist in investigations. In some countries, engagement with HIV projects has been rewarded with promotions (Kenya) or commendations (Kyrgyzstan), reinforcing good police conduct.

Secure support from police leadership

Given the hierarchical nature of law enforcement, it has been essential to secure the endorsement of police leadership for changing police practices toward sex workers and people who use drugs, and to get them to communicate this shift to less senior officers. This can happen in several ways. Some police forces issue a formal instruction that officers are not to interfere with sex worker or drug user access to services, which sends a clear message about police priorities and helps institutionalize partnership with community health groups. Such a formal communication occurred with a high-level instruction issued by key Ministries in Kyrgyzstan, and less formally with endorsement of HIV work at a pilot site by the Central Committee on Drug Abuse Control in Myanmar. In other contexts, senior

191. The best practices of this section are from a publication by Open Society Foundations, "To Protect and Serve: How police, sex workers, and people who use drugs are joining forces to improve health and human rights." July, 2014. <https://www.opensocietyfoundations.org/reports/protect-and-serve>. The case study on Thailand is from a publication by UNFPA, UNAIDS, APNSW, The HIV and Sex Work Collection: Innovative response in Asia and the Pacific. 2012. http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/document/2012/20121212_HIV_SW.pdf.

police who “get it” use their positions to positively shape police practice. For instance, the provincial police chief in Kisumu, Kenya, personally opened the first police training on sex work, sending a clear message that police priorities were not to punish sex workers, but to support efforts to protect their health and respect their human rights.

Develop regular and systematized police trainings that involve sex workers and people who use drugs

Police knowledge of criminalized groups is often shaped by the same stereotypes and moral judgments that are prevalent in society more generally. It has proven critical to train law enforcement about the realities of the lives of sex workers and people who use drugs, and about the effectiveness and availability of health services for these groups. Since police personnel are frequently transferred, these trainings are best repeated and offered at various levels, like at police academies, or in continuing education efforts for serving officers.

It is essential to involve groups of sex workers and people who use drugs in the design and implementation of these training programs. For new cadets, the Police Academy in Kyrgyzstan formulated a mandatory 46-hour course on harm reduction, sex work, and HIV that was developed and monitored in collaboration with sex worker and drug user groups. Similarly, after 500 new recruits in Ghana successfully received training on rights-based approaches to policing and the rights of marginalized populations, the curriculum was formally incorporated at all police training institutions in the country. A key component in shifting police attitudes toward sex workers in Ghana was sex workers themselves speaking in these trainings of the impact that police repression and abuse had on their lives.

Police commitment to feedback and accountability mechanisms

For groups used to being targets of enforcement, police commitment to accountability and creation of mechanisms for community feedback are critical to building trust. This has proven particularly powerful when the police are able to open direct communication with affected groups. For instance, the work of crisis-response teams and convergence forums in Andhra Pradesh, India, have enabled sex workers to work with police to identify and address abuses. In Kenya, after several sex workers reported that a police officer was stealing from them and forcing them to have sex with him without a condom, police peer educators worked to ensure the officer was dismissed from his job.

Police engagement with sex workers and people who use drugs outside the frame of law enforcement

Having platforms or mechanisms that allow police and marginalized groups to informally interact with each other, outside the frame of law enforcement, furthers trust building and mutual understanding. For example, the inclusion of sex workers and people who use drugs in police trainings, or police participation in community events, allows police and

these communities to see beyond the assumptions they have about each other. In Kenya, Keeping Alive Societies' Hope organizes sporting events, voluntary testing and counseling clinics for HIV, and community cleanups that involve both sex workers and the police. Sex workers from the Swagati Project in Andhra Pradesh, India, credit sex workers and police sharing the stage together at community events as having an impact not only on police and sex workers' attitudes toward one another, but attitudes toward sex workers in society more broadly.

Organized groups of sex workers and people who use drugs

Given the inherent power imbalance between law enforcement and criminalized populations, genuine collaboration is more likely when sex workers and people who use drugs are organized and able to articulate unified positions with respect to police behavior. In Kenya and Andhra Pradesh, India, projects have supported sex workers to develop leadership skills and form their own groups, which has led to more powerful collective advocacy on issues related to their health and rights. The absence of community organizing compromises the quality of police-community partnership and raises questions about its sustainability.

Sustained funding

Collaborations require sustained funding—whether from external donors or local governments—to catalyze reform. In Andhra Pradesh, the project benefitted from significant financial support from both government and private sources. In Ghana, the support of transnational actors with expertise and access to funding, such as the United Nations Population Fund, was crucial in convincing the police that action needed to be taken and was possible. In most of the cases, sustained funding was required for at least four years to result in meaningful change.

SWING: Innovative partnership with police¹⁹²

In Thailand, the Prostitution Prevention and Suppression Act 1996 criminalizes various aspects of sex work, including prohibiting soliciting, sex work in brothels, managing sex work businesses. Police raids on sex work premises are common. Sex workers are frequently picked up by the police for carrying condoms, which are used as evidence of prostitution.

Service Workers in Group (SWING) is a community-based organization with the core vision to protect and promote the human rights of sex workers. In 2004, was documented the recurrent abuse by the police faced by sex workers in Bangkok. The severity of the violence was documented and attempts were made to raise this with the police department. However, there was little sign of any improvement. This impasse continued until 2005, when SWING embarked upon a new partnership with the National Police Cadet Academy of Thailand when they were invited to provide training sessions on HIV prevention for newly recruited cadets. Each annual program hosted nine volunteer police cadets over a three-week training period. The program ran for three years and ended in 2008.

With regards this program SWING were convinced that if young police cadets were given the opportunity to interact with sex workers in a neutral setting, this would eventually turn out police officers with an empathetic attitude, who would be more likely to treat sex workers humanely. This could potentially transform policing practices.

The experience of interning police cadets within SWING was extremely encouraging. During the internship period, cadets worked alongside outreach staff, promoting condoms and teaching English and Thai at drop-in-centers. Interns received orientation in outreach and counseling skills. Each evening, a debriefing session was held to share learning, observations and assess their level of understanding. To put knowledge into action, every Wednesday, SWING's office was turned into a simulated police station. Cadets had to perform their duties as police officers while sex workers were invited to drop in to the 'police station' to experiment with ways of approaching the police and filing complaints.

A total of 36 cadets completed the SWING internship program during the four years that it ran. As a result, SWING gained credibility in many of the police stations across Bangkok.

192.UNFPA, UNAIDS, APNSW, The HIV and Sex Work Collection: Innovative response in Asia and the Pacific. 2012. http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/document/2012/20121212_HIV_SW.pdf.

Annex 2: Raw data from Table 3-8 in this report

Table 3: Interrogated by the police since engaging in sex work or in the past year

	Interrogated Since Engaging in Sex Work		Interrogated in the Past Year	
	Yes	No	Yes	No
Female	189 (62.4%)	114 (37.6%)	159 (52.5%)	144 (47.5%)
Male	33 (20.4%)	129 (79.6%)	26 (16.0%)	136 (84.0%)
Transgender Female	43 (82.7%)	9 (17.3%)	37 (71.2%)	15 (28.8%)
Total	265 (51.3%)	252 (48.7%)	222 (42.9%)	295 (57.1%)

Table 4: In your dealings with the police, did you experience any of the following

	Female	Male	Transgender Female	Total
Entrapment	116 (61.4%)	23 (69.7%)	32 (74.4%)	171 (64.5%)
Extortion	97 (51.3%)	18 (54.5%)	18 (41.9%)	133 (50.2%)
Solicitation of a monetary bribe	12 (6.3%)	17 (51.5%)	12 (27.9%)	41 (15.5%)
Physical violence	94 (49.7%)	14 (42.4%)	27 (62.8%)	135 (50.9%)
Verbal humiliation	150 (79.4%)	19 (57.6%)	38 (88.4%)	207 (78.1%)
Unlawful confiscation of valuables	11 (5.8%)	4 (12.1%)	12 (27.9%)	27 (10.2%)
Coercion of sexual services	7 (3.7%)	0 (0%)	3 (7.0%)	10 (3.8%)
None of the above	19 (10.1%)	4 (12.1%)	0 (0%)	23 (8.7%)

Table 5: What kind of penalties did you receive?

	Female	Male	Transgender Female	Total
Taken to the police station for investigation	137 (72.5%)	20 (60.6%)	31 (72.1%)	188 (70.9%)
Administrative detention	106 (56.1%)	3 (9.1%)	16 (37.2%)	125 (47.2%)
Custody and Education	32 (16.9%)	0 (0%)	4 (9.3%)	36 (13.6%)
Re-education through labour	11 (5.8%)	0 (0%)	0 (0%)	11 (4.2%)
Fines	35 (18.5%)	19 (57.6%)	17 (39.5%)	71 (26.8%)
Prison sentence	9 (4.8%)	1 (3.0%)	0 (0%)	10 (3.8%)
None of the above	38 (20.1%)	4 (12.1%)	3 (7.0%)	45 (17.0%)

Table 6.1: The use of a condom with the most recent client

How often did you use a condom with your clients in the last month?	Never Use	Sometimes Use	Use Every Time	Total
Female	3 (1.0%)	134 (44.2%)	166 (54.8%)	303
Male	1 (0.6%)	56 (34.6%)	105 (64.8%)	162
Transgender Female	1 (1.9%)	16 (30.8%)	35 (67.3%)	52
Total	5 (1.0%)	206 (39.8%)	306 (59.2%)	517

Table 6.2: : The frequency of using condoms with clients in the last month

Did you use a condom with the client in your last sexual transaction?	Female	Male	Transgender	Total
Yes	229 (75.6%)	151 (93.2%)	48 (92.3%)	428 (82.8%)
No	74 (24.4%)	11 (6.8%)	4 (7.7%)	89 (17.2%)

Table 7: Consistent use of condoms in commercial sexual activity in the past month with or without police interrogation

	Female	Male	Transgender Female	Total
Interrogated by the police in the past year	71 (44.7%)	13 (50.0%)	22 (59.5%)	106 (47.7%)
Not interrogated by the police in the past year	95 (66.0%)	92 (67.6%)	13 (86.7%)	200 (67.8%)

Table 8: Possession of condoms in the past month with and without police interrogation

	Female	Male	Transgender Female	Total
Interrogated by the police in the past year	56 (35.2%)	21 (80.8%)	29 (78.4%)	106 (47.7%)
Not interrogated by the police in the past year	85 (59.0%)	124 (91.2%)	15 (100.0%)	224 (75.9%)

About Asia Catalyst

Asia Catalyst builds strong civil society and advances the right to health for marginalized groups in Asia. We train leaders of community based organizations to run effective, sustainable, and democratic organizations, and to conduct rigorous human rights research and advocacy. We are an independent organization that places the needs of marginalized communities at the center of national, regional, and international policy making.

Based on a one-year community research project in China,

report focuses on how laws and law enforcement practices are affecting sex workers' ability to access and carry condoms, and the impact this is having on HIV prevention programs.

Research in three major Chinese cities found that coming into contact with the police is a daily reality for male, female and transgender sex workers. Sex work is illegal in China. However, condoms, a tool that can protect sex workers from STIs and HIV, are categorized and targeted as a "tool of offense" in police operations against sex workers. Law enforcement officers search and confiscate condoms, and use possession of condoms to pressure individuals into a confession. The police are treating the possession of condoms as a determinant factor in whether or not to arrest sex workers or hand down penalties.

This is having a profound effect on sex worker health and safety, including on condom use and behavior. Sex workers are more likely to agree to clients' demands to not use condoms, reduce the numbers of condoms they carry, not carry condoms at all, or try various methods to hide condoms in concealed places. Entertainment venues are also deterred from publicly displaying condoms in their establishments, despite Ministry of Health policies advising them to do so. The limited communication and coordination between health and public security departments has created a policy contradiction that is undermining the effective implementation of China's HIV prevention strategies; police crackdowns on sex work often bring a total halt to HIV intervention work.

Experience has shown that police reform and community-police cooperation is crucial to HIV prevention among criminalized groups such as sex workers, and should be supported as a central part of HIV programming. China should therefore review and reform current policies to ensure a coherent and coordinated approach that will secure a more robust response to the HIV epidemic that also protects the rights of sex workers.

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