

HIV, Sex Work, and Law Enforcement in China

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Abstract

HIV prevalence in China is low in the general population but higher among certain key affected populations, including sex workers. Providing and purchasing sexual services are administrative offenses. Police engage in humiliating and repressive practices against sex workers. A study reported here based on the experience of over 500 sex workers highlights that the human rights abuses that sex workers face at the hands of the police directly undermine the country's HIV response toward sex workers. An important element of this phenomenon is the police's use of condoms as evidence of sex work, which impedes sex workers' possession and use of condoms. Whereas in some countries, sex worker collectives have helped empower sex workers to stand up to the police and safeguard their use of condoms, restrictions on civil society in China make such a strategy impossible. Removing sex work and related activities as offenses under the law in China, however politically difficult it might be, would ease this situation. Short of that, improving the coordination among and strategic harmony of public health and police roles and authorities would be useful.

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Introduction

China's HIV epidemic is characterized by low prevalence in the general population but higher prevalence among key affected populations, including people who inject drugs, sex workers, and men who have sex with men. According to government figures, sexual transmission accounts for most new HIV cases; in 2014, about 25% of new cases were estimated to be linked to sex between men.¹ There is no authoritative consensus on the number of female sex workers in China, but most estimates suggest there are several million.² There is limited information on the number of (cisgender) male and transgender sex workers. (Unless otherwise noted, in this paper "female sex workers" refers to cisgender women in sex work, and "male sex workers" refers to cisgender men. "Transgender women" refers to persons who have made a gender transition from male to female.) Sex work is prohibited under administrative law, and some activities associated with sex work are criminal offenses, as described in more detail below.

While Chinese authorities continue to crack down on sex work, the government has set up policies and programs to prevent the sexual transmission of HIV, including the extensive rollout of condom and HIV testing programs. Undermining the public health outcomes of condom programs, police often search for and confiscate condoms from sex workers and use condoms as evidence of sex work in order to detain or punish sex workers.³ While this practice has been reported in many articles, there has been little investigation of its impact on sex workers' lives and human rights, as recounted by sex workers themselves. Mechanisms have been established from the central to local levels to coordinate and mobilize relevant departments, including police and security officials, in support of HIV prevention, but these mechanisms have failed to work. The government has also emphasized the importance of involving public security in the HIV response, including supporting the promotion of condoms in entertainment venues.⁴ However, to date there is no definitive guiding document or plan on how exactly the police should carry out this order or who is responsible for ensuring whether

and how they do so. This article explores that gap, highlighting sex workers' first-hand accounts of police practices and their impact on sex workers' ability to protect themselves from HIV. Other evidence related to the health impact of policing on sex workers with respect to HIV is also reviewed.

Methods

Asia Catalyst is a human rights organization that works with community-based organizations from marginalized communities in China and Southeast Asia that promote the right to health. In 2015, it worked with four sex worker organizations in China to conduct a survey among 517 female, male, and transgender sex workers to understand their interaction with law enforcement and the impact of that interaction on condom use and thus on China's HIV response as it relates to sex work. (For security reasons, the names of the four sex worker organizations are not included here.) These organizations were chosen because (1) they work with sex workers of different genders and have extensive knowledge and experiences with the sex worker community; and (2) they are located in three cities in northern, eastern, and southeast China, thus reflecting geographically diverse situations.

The survey combined quantitative and qualitative methods. The quantitative data collection instrument was a questionnaire, completed by 517 sex workers selected through convenience sampling during regular outreach work of the four organizations. For those survey respondents who reported experience with the police searching for or seizing condoms, the interviewer then invited them to give a further in-depth interview on the details of their experience. A total of 74 sex workers participated in this follow-up interview.

There was no formal ethics approval process, but Asia Catalyst's commitment to rights-based community assessment was well known to the four participating organizations. Written informed consent was obtained from all participants. Survey respondents and interview respondents received a small gift as appreciation of their time. Each participating organization numbered and entered its

survey questionnaire findings into a database without individual identifying information. SPSS 13.0 and Microsoft Excel were used to analyze the data and identify trends. All of the in-depth interviews were recorded using digital voice recorders. The recordings were then transcribed by the partner organizations.

HIV and sex work in China

Sex work is estimated to play an important part in the epidemiology of HIV in China. A 2014 survey by the Chinese National Center for AIDS/STD Control and Prevention estimated that as many as 59.3% of the HIV-positive men surveyed had contracted HIV through commercial sexual activity, though it was noted that sexual behaviors may be difficult to quantify.⁵ In recent years, China has witnessed a rise in HIV prevalence among people aged 60 and over. Some 15% of the new cases in 2015 were recorded among people in this age group, a group that could include migrant workers who visited sex workers far from home and the wives they returned to after being on the road.⁶

According to government statistics, HIV prevalence among female sex workers has remained stable and low in recent years, estimated at 0.22% in 2014.⁷ A 2012 meta-analysis based on various reports estimated HIV prevalence in this population to be 3.0%, much higher than the official figure, and also estimated that about half of women living with HIV in China are sex workers.⁸ These figures were judged to be overestimates by government epidemiologists.⁹ A 2016 study in Guangxi found that women sex workers who were paid less for their work (characterized as “low-tier” workers by the authors) were at higher HIV risk than other sex workers because customers were less inclined to use condoms with these sex workers than with “higher-tier” workers.¹⁰

China does not report HIV incidence or prevalence among male sex workers, but it does report on HIV among men who have sex with men (MSM), among whom there was an estimated HIV prevalence of 7.7% in 2014.¹¹ Of new infections, male-to-male transmission showed the most rapid

increase, from 2.5% of new cases in 2006 to 25.8% in 2014.¹² A study conducted with 2,618 MSM in 2009 showed that the HIV prevalence among male sex workers (6.13%) was slightly lower than among non-sex worker MSM (7.59%).¹³ The study also estimated syphilis prevalence to be 10.73% for male sex workers and 14.72% for MSM who were not sex workers.¹⁴ A 2012 meta-analysis based on the results of 32 published articles estimated an HIV prevalence of 6.0% and a syphilis prevalence of 12.4% among MSM engaged in sex work.¹⁵ In conclusion, plainly male sex workers are a population that faces high HIV risk.

There is limited data on transgender sex workers, but some evidence suggests that transgender women sex workers experience the highest vulnerability to HIV of all people in sex work, as they face deep-seated stigma and discrimination and are often socially, economically, and legally marginalized, which increases vulnerabilities that contribute to the risk of HIV.¹⁶ A survey of 220 transgender female sex workers in Shenyang in 2014 found that 25.9% either self-reported or were tested and confirmed as HIV positive, though the authors note that these results may not be generalizable to the rest of the country.¹⁷

Sex work, law enforcement and HIV: Background

The Chinese government has taken a punitive approach toward sex work and sex workers. Under Chinese law, engaging in sex work and purchasing sexual services are subject to administrative penalties, while organizing or arranging for the selling of sex is a criminal offense. Possible administrative penalties include up to 15 days of detention and a fine of up to 5,000 yuan (about US\$743).¹⁸ Potential sentences for the criminal offense are much more severe: five to ten years’ imprisonment, fines, and the confiscation of assets.¹⁹ In addition, sex workers are subject to “custody and education” provisions, which authorize police to detain female sex workers and male clients for six months to two years without judicial oversight.²⁰ Furthermore, knowingly transmitting HIV is a criminal offense, with a penalty

of up to five years' imprisonment.²¹ All reported prosecutions under this offense have been against sex workers only, not their clients.²²

Since the 1980s, the government has regularly carried out "strike hard" campaigns and "anti-pornography crackdowns" against the sex industry. According to statistics published by China's police force, the Public Security Bureau, the police investigated and prosecuted 620,000 people for sex work-related offenses between 1984 and 1991; 250,000 between 1992 and 1993; and more than 2 million between 1993 and 2004.²³ Crackdowns in Beijing and Dong'guan in April 2010 and February 2014, respectively, spawned the harshest national anti-pornography campaign in more than a decade. The police forces deployed, the geographic area covered, the number of sex work venues shut down, and the number of people arrested were unprecedented.²⁴ In order to maintain a certain anti-prostitution momentum, many local governments assign specific quotas to the police with regard to the crackdown on sex work.²⁵ Law enforcement is thus an inevitable part of sex workers' lives. Harsh policing and the fear of harsh policing are part of these workers' daily environment, with consequences for their physical safety and health.

In 2004, China identified injecting drug users, sex workers, and MSM as "high risk" groups for HIV transmission.²⁶ The government adopted specific measures to reduce the HIV vulnerability of these key populations, which emphasized awareness raising and behavioral interventions.²⁷ As in other countries, the fact that a population affected by HIV (such as sex workers) is also a target of police activities poses a potential health and human rights challenge.

In an effort to control the transmission of sexually transmitted infections and HIV, condom programs have become an important element of China's HIV response. The government has devoted great efforts to promoting condom use. As of 2004, condoms were already identified as an HIV program priority not only by the Ministry of Health but also by authorities charged with overseeing such areas as mass media and family planning.²⁸ China's 2006 legislation addressing HIV/AIDS requires certain

public venues—such as hotels, nightclubs and public baths—to provide condoms. Furthermore, it 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."²⁹ In some provinces, such as Yunnan Province, some venues have received administrative penalties for "not displaying condoms or condom-vending equipment in their places of business in accordance with regulations."³⁰ The central government also 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 and community-based organizations across the country.

However, some policies and practices have not lived up to these goals of condom promotion or have undermined progress in this area. In particular, the police, while ostensibly part of an inter-sectorial response to HIV, are mandated to see condoms in another light. According to the Ministry of Public Security's guidelines, in sex work cases, condoms are "tools of an offense," and law enforcement officers should, "following seizure, take photographs of the condoms, and then destroy them following the conclusion of the case."³¹ This view of condoms on the part of the police is easy to sustain given the image of condoms in the public mind. Although the Chinese government has issued various policies requiring the state media to promote condom use, in reality condoms are rarely mentioned in the mainstream media. Commercial advertisement for condoms was banned for 25 years by a document issued by the State Administration for Industry and Commerce in 1989, which was quietly scrapped in 2014.³² This legal obstacle prevented condom manufacturers from advertising their products to the public on television or in public places such as the subway. When condoms appear in news reports, it is usually only in relation to anti-sex work and anti-pornography crackdowns.³³ These reports often show police officers raiding vice dens and sex

workers being arrested, along with descriptions of the discovery of large numbers of condoms. Such reports associate condoms with sex work and thus portray them as evidence of an illegal activity. In an environment in which sex work is considered dirty and harmful to public morals, condoms are likewise associated with such qualities.

As early as 1998, when health departments were aware that the appearance of condoms in media reports on vice raids had an adverse effect on HIV prevention, the Ministry of Health joined with eight other ministries and commissions to issue an order requiring “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.”³⁴ But the document’s lack of legal power has left the order unimplemented, and associations between condoms and illegal activity continue to be refreshed in the public mind.

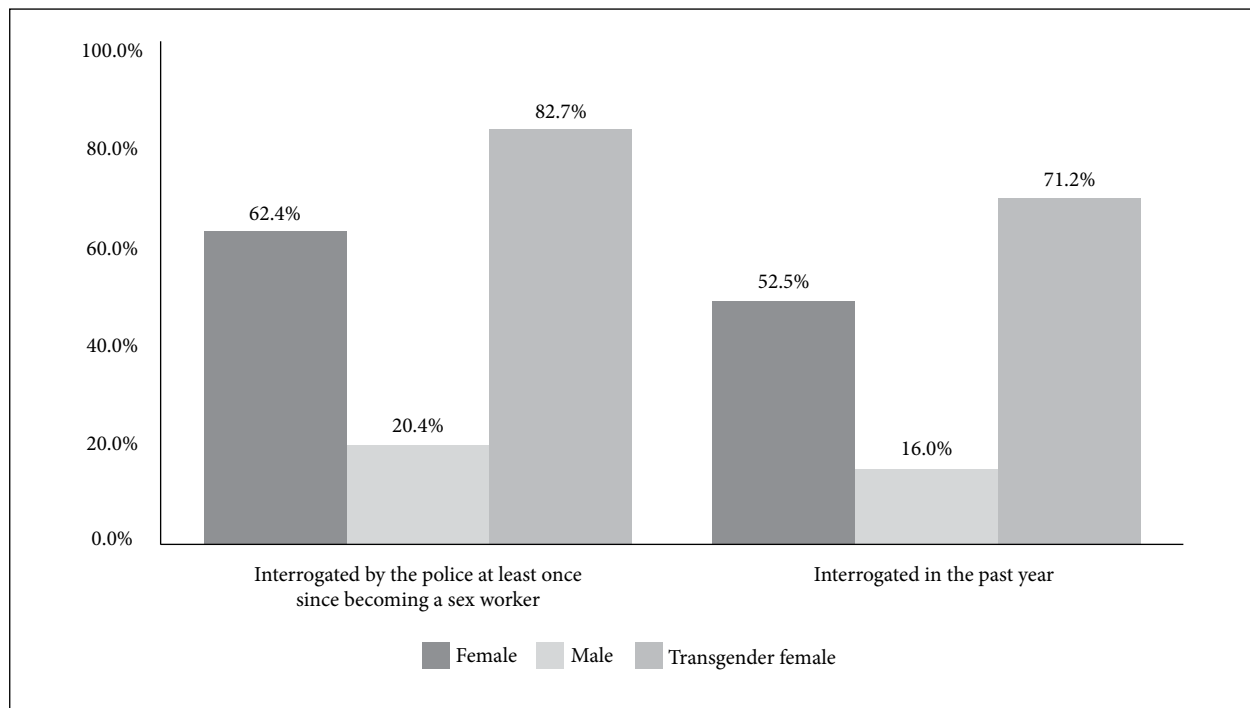
In addition, while the government has been actively implementing its HIV strategy among sex workers, crackdowns on the sex industry have continued and have been actively encouraged

in some major HIV prevention documents. For example, the 2004 and 2010 State Council notices to strengthen the HIV response and China’s Thirteenth National AIDS Action Plan all have the stated objective of preventing HIV, but nevertheless require “public security departments to continue, as before, to crack down on prostitution, the assembling of licentious activity and other unlawful and criminal behavior.”³⁵ Crackdowns take the form of regular raids on sex work venues, often leading to the arrest and detention of sex workers and sometimes the cessation of commercial sex activities at that venue.

Results

The 517 survey sample was 59% female, 31% male, and 10% transgender, with an average respondent age of 32.6. The survey found that a high percentage of sex workers had been interrogated by the police, both during their time as sex workers and in the past year (see Figure 1). More than half (51.3%) of sex workers reported that they had been interrogated

FIGURE 1. Percentage of sex workers interrogated by the police at least once since becoming a sex worker and in the past year



by the police at least once since beginning sex work, and 42.9% said that they had been interrogated in the past year. Among respondents who had been interrogated in the past year, 64.9% had been interrogated once, and 35.1% had been interrogated twice or more. Among those who had been interrogated twice or more, the overwhelming majority (78.2%)

were women.

Among survey respondents who were interrogated during their time in sex work, most had negative experiences as part of those interrogations: 78% had experienced verbal humiliation, 64.5% had experienced entrapment, 64.5% had experienced entrapment, 50.9% had experienced physical violence, and 50.9% had experienced physical violence (see Figure 2).

FIGURE 2. Negative experiences encountered by sex workers during police interrogations

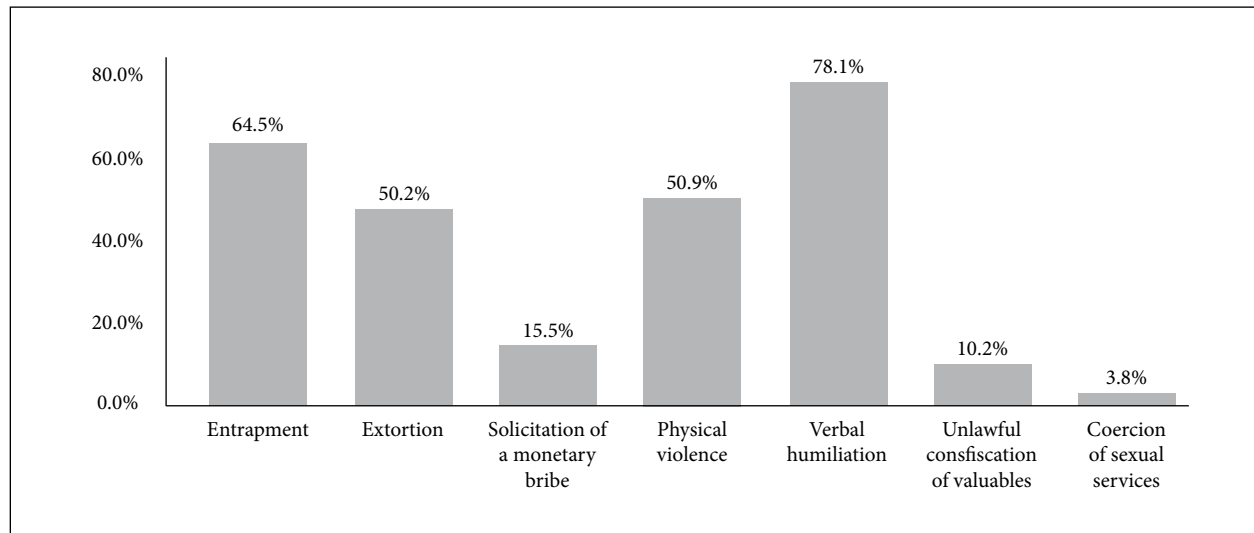
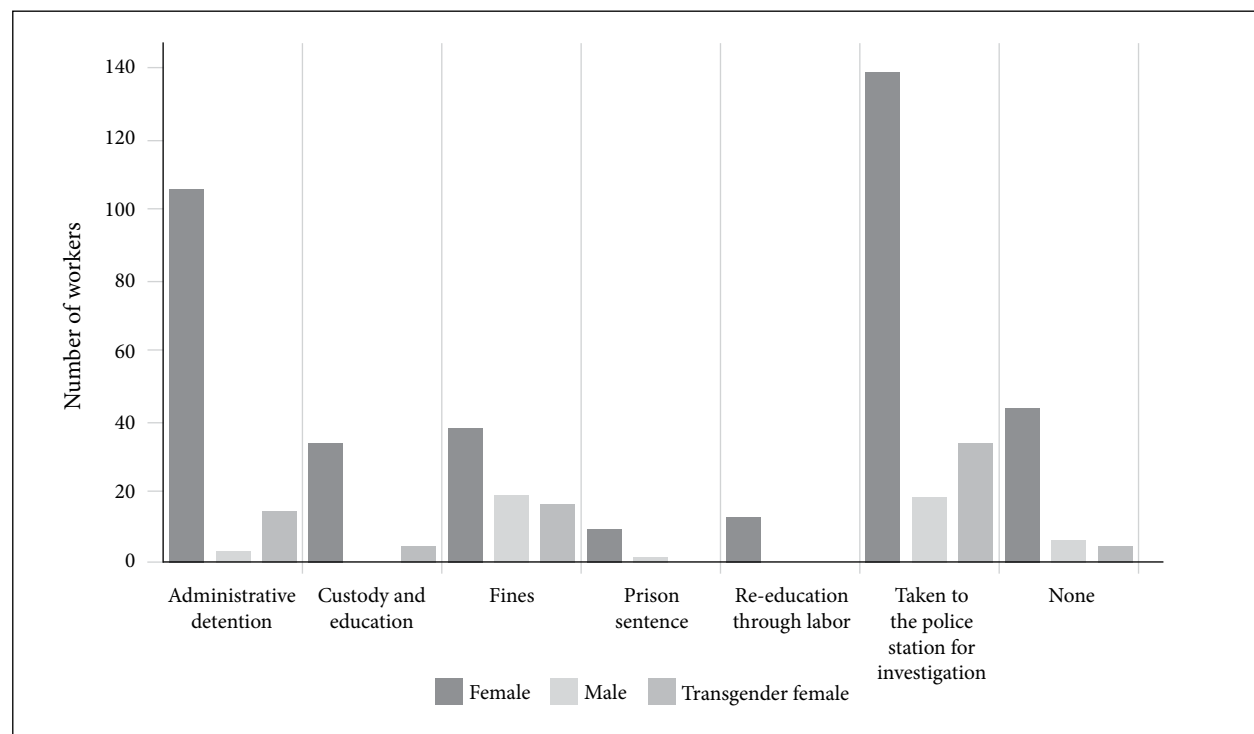


FIGURE 3. Penalties received by sex workers who had been interrogated by the police



Among the survey respondents who had been interrogated by the police as sex workers, 70.9% were taken to the police station for questioning. According to Chinese law, police officers can detain suspects for questioning, usually for no more than 24 hours. Though the questioning itself is not a form of administrative or criminal penalty, it triggers a formal investigation process, and a penalty can be imposed as result of the investigation.³⁶ Having been taken to the police station was frequently reported across genders, with 72.5% of women sex workers, 60.6% of male sex workers, and 72.1% of transgender sex workers experiencing this. Just over 47% of those interrogated by the police were subjected to administrative detention, and 26.8% were required to pay fines. Women respondents (56.1%) were more likely to be subject to administrative detention than men (9.1%) and transgender respondents (37.2%). Male and transgender respondents (57.6% and 39.5%, respectively) were more likely to be subjected to fines.

Over one-third (35.4%) of respondents said that the police had searched them for condoms at least once during their time as sex workers. Police officers' principal actions toward condoms included confiscating unused condoms (36%), collecting used condoms (38.2%), and asking sex workers about condoms (72%). Qualitative interviews from this study indicated that police used 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 were the main focus of police action in both operations. Among the 74 qualitative interview respondents, more than half (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.

The experiences of sex workers in this study indicated that the aforementioned instructions to police about condoms are effective—that is, there is a common belief among police officers that merely possessing condoms is hard evidence of selling sex. Respondents' experiences showed that the police treat finding condoms as the determinative factor in whether to take a sex worker back to the police station for further inquiries or penalties. Among the 29 interview respondents who experienced police searches in sex work venues when they were not involved in a sexual transaction and condoms were found, 69% were taken to the police station and received an administrative penalty, 14% were taken to the police station for further inquiries but did not receive any penalties, and 17% had no further action taken against them.

Law enforcement actions and the use of condoms as evidence against sex workers have a direct impact on condom use and availability among sex workers. In this sample, the condom use rate (during the previous month) among sex workers who had been interrogated by police in the past year was 47.7%, compared to 67.8% among those who had no such experience. There were similar findings with regard to possession of condoms: 47.7% of sex workers who had been interrogated by the police always carried condoms in the previous month, compared to 75.9% of those who had not been interrogated.

Respondents reported that, to the extent possible, they promptly disposed of condoms before encountering the police. For example, sex workers working in a room would throw their condoms out the window or flush them down the toilet before the

Streetwalking keeps you on pins and needles; as soon as I see [the 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.

—Xiaoyan, a female sex worker

After I came out [from a detention center], 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.

—Xiaoxue, a female sex worker

police entered, and street-based sex workers would throw away their condoms as soon as they saw a police officer in the vicinity. The fear of arrest drove sex workers to shorten their service time with clients as much as possible, making them more likely to agree to a client’s demand not to use a condom. Sex workers were also reluctant to carry a sufficient quantity of condoms, preferring to carry just a few to avoid police suspicion and making efforts to hide condoms in various places. Reducing the number of condoms carried or not carrying them at all creates a direct health risk for sex workers and their clients.

Respondents’ experiences also highlighted other ways in which public health policy and police practice are in conflict. Because of law enforcement practices, some managers of sex work venues did not want to display condoms publicly, as required by public health policy, resulting at times in a reduction in the overall availability of condoms in sex work venues. In other words, while condom displays are required at entertainment venues by the health department, if condoms are actually

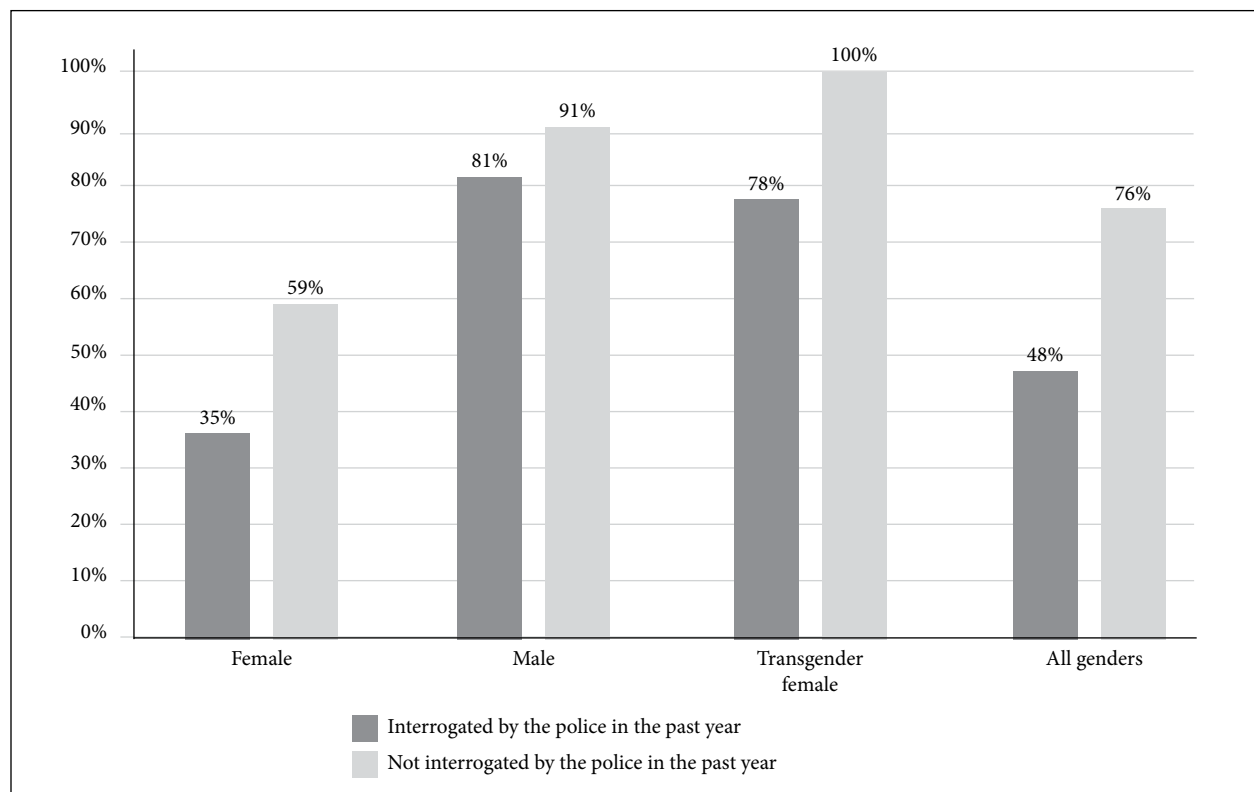
displayed the police will consider the venue to be a “place of prostitution.” Many venues react by putting condoms out when the health authorities come, and putting them away when police officers come, according to respondents.

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.
 —A-Hong, a male sex worker

Discussion

This study, conducted in three major Chinese cities, found that coming into contact with the police is a common occurrence for male, female, and transgender sex workers and that these sex workers struggle to protect their safety and health as a result. Condoms, a tool that can protect sex workers from HIV and other sexually transmitted infections, are categorized and targeted as a “tool of offense” in police actions against sex workers.

FIGURE 4. Percentage of sex workers reporting possession of condoms in the previous month



The police search for and confiscate condoms, and possession of condoms is used as leverage to pressure individuals into a confession. This practice has a significant impact on sex workers. Sex workers are more likely to agree to client demands not to use condoms, reduce the numbers of condoms they carry, not carry condoms at all, or try various methods to hide condoms. Entertainment venues are also deterred from publicly displaying condoms in their establishments, despite central government policies advising them to do so. This problem is compounded by the limited communication and coordination between health and police authorities. There is no formal mechanism for police and public health departments to work together on interventions for sex workers. With the government's launch of large-scale crackdowns on sex work in recent years, the police have taken an even harsher approach toward sex workers, decreasing opportunities for the police force's participation in HIV prevention efforts aimed at sex workers.

The crackdowns and other police practices documented in this study constitute violations of sex workers' human rights and have direct negative health impacts. Law enforcement authorities' practice of treating condoms as evidence of sex work has also been documented in other countries, including Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe.³⁷ Based on a thorough review of the evidence, the World Health Organization has stated that "the police practice of using possession of condoms as evidence of sex work and grounds for arrest should be eliminated."³⁸

A survey conducted by UNFPA focusing on HIV and sexual and reproductive health programs for lower-paid female sex workers in four counties in China from 2011 to 2015 found that the involvement of other government departments (beyond health departments) in efforts to prevent HIV among sex workers has been decreasing.³⁹ Some 75.8% of health officers reported that they "often worked with other departments" at the beginning of these programs in 2012, but this collaboration dropped to 51.4% by the end of the programs in 2015.⁴⁰ The major drop in collaborative work was with the police department, at a time when the police were more focused on

cracking down on sex work than on supporting HIV prevention goals, which are meant to be a priority for all departments. UNFPA concluded that this change was one important reason behind the significant decline in the number of sex workers receiving HIV-related health services during this period.⁴¹

The human rights abuses experienced by sex workers in our study could possibly be addressed if sex workers had functioning organizations of their own. In many parts of the world, collectives and other organizations of sex workers have been crucial for enabling sex workers to collaborate to ensure condom use among all clients in a given location, to stand up to the police, and to have a political voice.⁴² In China, nongovernmental organizations (NGOs) operate in a very restrictive environment, although the NGO sector has been growing rapidly in the past decade. For a long time, it was very difficult to officially register as an NGO, so many organizations remain registered as private businesses or unregistered altogether. In recent years, registration requirements have been eased for organizations focusing on service delivery, and the Chinese government has provided increasing financial support to NGOs.⁴³ Nevertheless, receiving government support usually requires recognition from or close ties with local authorities.

The formation of sex worker organizations, however, has not been encouraged. In its work to address the sexual transmission of HIV, the government has acknowledged the importance of community-based organizations in reaching out to and conducting interventions among sex workers, though most of those interventions are led by health-related organizations rather than sex worker organizations.⁴⁴ The number of organizations serving sex workers is minimal in light of the size of China's population, and they are largely not organizations of sex workers themselves. Among 1,309 NGOs documented in the 2015 China HIV NGO Directory, which is published by the China HIV/AIDS Information Network, only 6.2% work with female sex workers, whereas, for example, 22.6% work with MSM and 23% work with people living with HIV.⁴⁵

This greater focus on MSM compared to sex

workers may be partly due to the relatively low and stable HIV prevalence among female sex workers. As noted above, there has been a rapid rise in HIV incidence among MSM in recent years. The resources available for prevention among MSM sex workers, in addition to other MSM, are considerably greater than for other sex workers. In addition, while consenting same-sex behavior is legal, sex work is illegal, and it is potentially riskier for NGOs to work with illegal groups. The illegality of sex work also makes it more difficult for sex workers to organize. By contrast, MSM groups are quite well established, and channels have been created for them to be consulted and involved in the work of health departments. But for sex workers and drug users, such consultation and partnership opportunities have not materialized.⁴⁶

In 2009, with support from UNAIDS China, the China Sex Worker Organization Network Forum was established with the aim to support the development of member groups, improve occupational health for sex workers, and promote sex workers' human rights. The network consisted of 17 organizations, including two in Hong Kong and Taiwan.⁴⁷ During its time in operation, the network undertook important work to advocate for the rights of sex workers. For example, in 2011, it conducted qualitative and quantitative research to assess the impact of a massive crackdown on sex work in 2010. But China's restrictive policy environment constrained the network's operation. During a major domestic AIDS conference in 2012, the network was supposed to share the findings of its 2011 research, but its presentation was removed from the agenda because of the sensitiveness of the issue. Due to a lack of funding and human resources, the network suspended operations in 2014, leaving sex workers again without an organizational platform.

With China's rapid economic growth, many international donors that previously funded China's HIV response have withdrawn their support. Those funders, including the Global Fund to Fight AIDS, Tuberculosis and Malaria, previously supported prevention efforts directed at key populations, including sex workers, drug users, and

MSM. The withdrawal of this funding has led to the closure of many small community-based organizations. The Chinese government promised to compensate for this gap in funding, and now 98% of the HIV response in China is shouldered by the government.⁴⁸ But the funding provided by the Chinese government is generally restricted to service delivery, such as HIV testing, counseling, and treatment, with little support for programs addressing discrimination, human rights violations, and other legal and policy barriers facing by marginalized populations.⁴⁹

In spite of the official focus on service delivery, there is an increasing awareness among the few organizations working with sex workers about the importance of enabling sex workers to understand their rights under the law. Some organizations have started working with lawyers to provide legal training to local sex workers. The United Nations Development Programme has also initiated a program to provide legal support for people living with HIV and at-risk populations.⁵⁰ Still, this work is taking place on a very small scale, with few lawyers available to provide legal support and scarce funding to support the programs. And the government's repression of human rights lawyers and activists makes it even more difficult to find lawyers willing to work with a population whose activities are forbidden by law.⁵¹

China has also increased its control over the operations of international NGOs working in the country. In 2016, the government passed the Law on Management of Domestic Activities of Overseas Non-Governmental Organizations.⁵² This law, which took effect in January 2017, requires that any international organization wishing to fund or conduct activities in China first register with or get approval from the Public Security Bureau and also requires the organization to work under the direction of a government agency that acts as its "professional supervisory unit." The new law has led to greater police oversight and stricter financial scrutiny of international NGOs.⁵³ It is believed that the law's ultimate goal is to restrict Chinese NGOs by cutting off their connections with foreign groups

and funding.⁵⁴ This will further constrain the development of sex worker organizations, networks, and coalitions.

Sex workers, together with other “illegal groups,” are seen as immoral by many in Chinese society. Their behavior is considered harmful to themselves and society. There is thus some tolerance for police repression of sex workers. However, police actions have sometimes been so extreme as to raise concerns in society for the well-being of sex workers. Besides the massive crackdown on entertainment venues, police have threatened and humiliated sex workers in many other ways. For example, in 2006, in the southern city of Shenzhen, the police sponsored a public “shame parade” of 100 sex workers. The sex workers who were arrested by local police were handcuffed and paraded along the city’s main avenue.⁵⁵ And in 2010, police in Hangzhou sent letters to the families of women who were detained for engaging in sex work, informing them of the infractions of their family member.⁵⁶ Finally, in January 2017, the police in a city in Guizhou Province set up an “exposure board” on the street that publicized photos and information on 10 people who had been detained for engaging in the sale and purchase of sexual services, gambling, and drug use.⁵⁷

Some of these actions caused an outcry among the public, and people even called for respecting the dignity of sex workers. In 2010, the Ministry of Public Security issued a statement calling on the police to respect women, stressing that police officers should not humiliate or discriminate against sex workers during law enforcement actions. It also suggested that sex workers be referred to as “women who lost their way” (失足妇女) instead of “prostitutes.”⁵⁸ Now the term “prostitute” is seldom used in state media; however, the phrase “women who lost their way” portrays sex workers as persons without agency and without capacity for rational decision making. These sporadic calls for respecting sex workers and this ill-conceived attempt to find more respectful terms ring hollow when police abuse and social marginalization persist.

Waves of crackdowns and other forms of

repression and humiliation of illegal groups, including sex workers, have been shown to cause great harm to these populations’ human rights and to undermine China’s HIV prevention and treatment efforts. China should stop using the repression of sex workers to express a moral judgment of the state. This misuse of state power has a high cost: sex workers fear using testing and treatment services, and police actions prevent the condoms distributed by the government and community-based organizations from being accepted and used. China’s experience in dealing with sex workers shows that sex work can never be eliminated, but those who practice it can be driven underground and away from health services, which in turn fuels their risk of contracting HIV and other sexually transmitted infections.

Conclusion and recommendations

The experience of sex workers in this study illustrates that a useful public health policy can be undermined by police action against a socially marginalized group, especially where public health authorities cannot or will not stop harmful police practices. An accountability mechanism for harmful police action is needed. Intersectoral collaboration may be the answer, but it is not easy.

China’s HIV response toward sex workers is hampered by the absence of human rights protections, conflicting policies, and a lack of coordination among the various government departments, including the police, that should be doing their part. China should immediately cease the use of possession of condoms as evidence to arrest, question, or detain persons suspected of sex work. Any directives to the police to view condoms in this way should be rescinded. Moreover, HIV strategies at various levels must take note of the effect that law enforcement actions are having on the spread of HIV so that their response does not directly undermine parallel efforts by health departments. With the government’s recent launch of large-scale crackdowns on sex work, the police have taken an even harsher approach and attitude toward sex workers, undermining enforcement

authorities' participation in HIV prevention efforts for sex workers and exposing sex workers to HIV risk and human rights abuses.

The Chinese government should also encourage and support partnerships between local governments and NGOs and establish mechanisms for NGOs to be involved in policies and programs targeting sex workers. Resources should also be allocated to support and build sex worker networks that are led and managed by sex workers themselves and that would enable sex workers to participate meaningfully in developing and implementing projects that affect them.

None of this is likely to be possible without decriminalizing sex work-related offenses and removing sex work itself as an infraction under administrative law. A number of other Asian countries have decriminalized at least some aspects of sex work without witnessing the unraveling of social mores.⁵⁹ The United Nations Special Rapporteur on the right to health has noted that “[t]he failure of legal recognition of the sex-work sector results in infringements of the right to health, through the failure to provide safe working conditions, and a lack of recourse to legal remedies for occupational health issues.”⁶⁰ The fact that some of the police's more humiliating and heinous abuses of sex workers have elicited criticism from at least some in Chinese society may be a positive sign for liberalization of the law on sex work in the years to come. In the near term, however, improving coordination between public health and law enforcement authorities in the pursuit of the government's multisectoral HIV strategy—and the pursuit of some level of health-related accountability of police practice—is essential. UNAIDS, the World Health Organization, and other international actors represented in the country should advocate for modifying police practices in order to remove repressive policing as a barrier to sex workers' access to and utilization of HIV services.

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