

Criminalizing Condoms



HOW POLICING PRACTICES PUT SEX WORKERS AND HIV
SERVICES AT RISK IN KENYA, NAMIBIA, RUSSIA,
SOUTH AFRICA, THE UNITED STATES, AND ZIMBABWE



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“We use condoms to protect ourselves from HIV/AIDS, but they don’t allow us to carry them, so how can we protect ourselves?”

—A sex worker in Cape Town, South Africa

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Research for this report was conducted in August and September 2011 in six countries: **KENYA** | **NAMIBIA** | **RUSSIA** | **SOUTH AFRICA** | **THE UNITED STATES** | **ZIMBABWE**

RESEARCH WAS CONDUCTED BY:

- Bar Hostess Empowerment and Support Programme (BHESP) | Kenya
- Federation of Women Lawyers (FIDA) | Kenya
- The Red Umbrella (TRU) | Namibia
- The Saint Petersburg Charitable Public Organization for Support of Social Initiatives (Assistance) | Russia
- Women's Legal Centre (WLC) | South Africa
- Providers and Resources Offering Services to Sex Workers (The PROS Network) | United States
- Sexual Rights Centre (SRC) | Zimbabwe

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Key Findings

- ▶ Police confiscate and destroy sex workers' condoms, putting sex workers' and clients' health at risk.
- ▶ Police cite condom possession as justification to detain or arrest people on charges related to sex work.
- ▶ Police harass and abuse sex workers who carry condoms and use the threat of arrest on the grounds of condom possession to extort and exploit them.
- ▶ Some sex workers opt not to carry condoms because they fear police harassment and detention, thus increasing their risk of exposure to HIV and compromising their health and the health of their sexual partners.
- ▶ Police harass and arrest outreach workers, limiting their ability to distribute condoms and educate sex workers about safer sex practices.

KEY DATA

In **SOUTH AFRICA**, **80%** (16/20) of sex workers surveyed said they had been intimidated or harassed by police for being a sex worker or doing sex work.

In **ZIMBABWE**, **85%** (18/21) of sex workers surveyed said they had been extorted by police.

In **RUSSIA**, **80%** (8/10) of sex workers surveyed said police had taken their condoms.

In **NAMIBIA**, **50%** (10/20) of sex workers surveyed said police destroyed their condoms and

75% (6/8) of those who then did sex work had unprotected sex.

In **RUSSIA**, **60%** (6/10) of sex workers surveyed said police had used condoms as evidence against them.

In the **UNITED STATES**, **52%** (13/25) of sex workers surveyed said there had been times when they opted not to carry condoms because they were afraid it would mean problems with the police.

In **KENYA**, **50%** (4/8) of outreach workers surveyed said that police had harassed them during the course of their outreach work.



Methodology and Note on Future Research

METHODOLOGY

Research for this report was conducted in August and September 2011 in six countries by seven organizations working on sex worker rights. The research locations were selected from among the Open Society Foundations' existing network of partners on the basis of initial indications that violations of sex workers' rights related to condom possession were taking place and the willingness of an experienced sex worker advocacy or assistance group to participate in the project.

- 1 For the purposes of this report, sex workers are defined as adults who receive money or goods in exchange for sexual services, either regularly or occasionally.

This study was conducted in locations where exchanging sex for reward is a criminal or administrative offense punishable by a fine or term in prison, as well as locations where sex work is not a crime, but where there are laws in place to punish people for acts related to sex work, such as “loitering for the purpose of prostitution.”

Research was carried out through the administration of detailed surveys in order to gather qualitative data in the form of first-hand statements from sex workers and outreach workers and to identify possible trends in sex worker and outreach worker experiences in a given location and across locations. The surveys for sex workers and outreach workers were designed through a collaborative effort involving Open Society Foundations staff and consultants and representatives of the PROS Network, including the Urban Justice Center’s Sex Workers Project, in consultation with all participating groups. Experienced outreach workers on staff with the seven sex worker advocacy organizations administered the surveys as convenience surveys, meaning that they identified eligible sex worker and outreach worker respondents and administered the survey during the course of their regular outreach work.

Participation in the survey was voluntary and researchers obtained signed consent from all respondents. To be considered eligible for the sex worker survey, participants had to be at least 18 years old and respond positively to an initial question about whether they do street-based sex work. To be considered eligible for the outreach worker survey, participants had to be at least 18 years old and provide street-based HIV prevention outreach services, including condom distribution, to sex workers. Among those surveyed, some outreach workers had a background in sex work and were trained as peer educators. All interviews were anonymous.

In Namibia, The Red Umbrella interviewed 20 sex workers and 6 outreach workers in the capital, Windhoek, and Walvis Bay. In Kenya, the Federation of Women Lawyers and the Bar Hostess Empowerment and Support Programme interviewed a total of 43 sex workers and 8 outreach workers in Mombasa and various districts in Nairobi. In Saint Petersburg, Russia, the Saint Petersburg Charitable Public Organization for Support of Social Initiatives interviewed 10

sex workers and 5 outreach workers. In South Africa, the Women’s Legal Centre interviewed 20 sex workers and 5 outreach workers in Cape Town and its environs. In the United States, the PROS Network interviewed 25 sex workers and 10 outreach workers in several boroughs of New York City. In Zimbabwe, the Sexual Rights Centre interviewed 21 sex workers and 6 outreach workers in Bulawayo.

All of those who responded to the survey are counted as respondents, even if they declined to answer one or more questions.² The responses of all 139 sex workers and 40 outreach workers were entered into two separate databases. To illustrate some of the common issues that sex workers experience across different locations, data from sex worker respondents in all six countries is at times presented as a collective group in this paper. Similarly, cumulative data about outreach workers is also presented when appropriate. More often, however, out of recognition of the specific circumstances in each country, the information provided by sex workers and outreach workers has been disaggregated by location.

The author recognizes that the sample size in each country is too small to be statistically significant in social science terms to allow for extrapolation to the entire sex worker or outreach worker community. The uniformity of certain responses by participants in a given location do, however, indicate a shared experience and point to topics worthy of further examination.

NOTE ON FUTURE RESEARCH

This report aims to provide the public health and policy communities concerned about HIV prevention with critical information about the effect of certain police practices on sex workers’ access to condoms and ability to realize their right to health. It is hoped that the findings in this report will help give

2 Statistics presented in this report were calculated by taking the total number of respondents and comparing that to the number of respondents who gave a certain answer.

direction to larger scale research efforts in the future and will help shape and inform initiatives for policy reform and changes in police practice.

One key area of research indicated by this report would be an investigation into the mechanics of how condoms are used by prosecutors as evidence, the procedural regulations under which they are entered as evidence, the conditions under which condoms are accepted by judges as evidence of a person's involvement in sex work or intent to engage in sex work, and rates of conviction of people on sex work related charges in cases in which condoms are used as evidence.

In addition to advocating for an end to police confiscation of condoms and the use of condoms as evidence, sex workers interviewed for this report highlighted specific remedies that would improve their situation and that also deserve attention in the follow up to this report. Sex workers called for greater understanding about sex work, including the reasons people in their community sell sex. They cited a specific need for police to be better informed about the role of condoms in preventing HIV. Many sex workers said that decriminalization of sex work would improve their situation. Perhaps above all, sex workers called for recognition of their human rights and asked to be treated with dignity and respect.



Condoms as Contraband

Police treatment of condoms as contraband forces sex workers to make a choice between safeguarding their health and staying safe from police harassment or detention. While some sex workers report that they have stopped carrying condoms or sometimes opt not to carry condoms out of fear of getting in trouble with police, many sex workers continue to carry condoms in an effort to protect their health and the health of their sexual partners despite the risk of police harassment.

Research for this report found that sex workers in a range of locations are committed to condom use and understand that access to condoms is essential to protecting their health and preventing HIV. Overall, 53 percent (74/139) of sex workers surveyed said they always carry condoms. A striking 85 percent (17/20) of sex workers surveyed in South Africa and 79 percent (34/43) of those surveyed in Kenya said they always carry condoms.

International public health agencies as well as policy and public health experts recommend consistent condom use as vital to the effort to reduce the spread of HIV and protect public health. Recognition of this has led to the launch of condom distribution and education programs worldwide.³ As this report shows, however, programs to ensure access to condoms cannot stop at the distribution phase, but must also take into account what happens to people once they are in possession of condoms, specifically whether they are able to retain and use them.

POLICE CONFISCATION AND DESTRUCTION OF CONDOMS

Sex workers' efforts to ensure their access to condoms and protect their health are thwarted when police confiscate or destroy their condoms.

Sex workers' testimony in the six countries covered in this report reveals a pattern of police practice across these disparate locations that typically involves profiling a sex worker based on his or her appearance or previous involvement in sex work, stopping and searching the sex worker, and treating condoms discovered during the search as contraband. Police routinely question sex workers about condom possession and confiscate the condoms, sometimes throwing them in the trash or destroying them in front of the sex workers. These actions are often accompanied by acts of violence and abuse of power by police.

“They spilled my bag on the ground and took the condoms.”

—A sex worker in Zimbabwe

Overall, 41 percent (57/139) of sex workers surveyed reported that police had taken condoms from them. In Russia 80 percent (8/10) and in Namibia 70 percent (14/20) of sex workers surveyed said police had

3 Joint United Nations Programme on HIV/AIDS (UNAIDS), “UNAIDS Guidance Note on HIV and Sex Work,” 2009. http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

confiscated their condoms. Some said it happened daily. In Zimbabwe, those sex workers who had condoms taken from them by police reported between two and nine such encounters during the previous twelve months.

A forty-four-year-old female sex worker in Namibia who said she had been stopped and searched by police six times during the previous twelve months described a recent encounter with officers from the Namibian Police Force. She said, “They searched me and when I asked who gave them permission to touch my body, they beat me, tore my clothes, and took my money and my condoms.” She said she did sex work that night and did not use a condom because the police had taken them all.

“It was June, they found me on the street, took all the condoms I had and destroyed them.”

—A sex worker in Kenya

A fifty-year-old sex worker in New York who reported that she always carries condoms and always uses them when selling sex, said of police, “They ask if I have drugs and search my pocketbook and see condoms and throw them in the garbage.”

In South Africa, a thirty-seven-year-old female sex worker reported that she had been harassed by police “uncountable times” for doing sex work. Recalling a notable run-in with police, she said, “Two years ago I was strolling on Milner-ton beach, cops asked me if I had any condoms. I replied yes and he made me give them to him and said I wasn’t permitted to carry condoms.”

In Saint Petersburg, Russia, police have intimidated sex workers to the point where they voluntarily hand over their condoms when police appear on the scene.

In some locations, police destroy the condoms they take. Sex workers in Kenya, Namibia, South Africa, and the U.S. report that police destroy their condoms by burning them, stepping on them, driving over them with cars, tearing or cutting them up, and throwing them in the gutter. Police destroy condoms

as part of their routine policing of people who sell sex and, in some cases, as a malicious act apparently intended to deprive sex workers of the means to protect their health.

In Namibia, 50 percent (10/20) of sex workers surveyed said police had destroyed their condoms. Individual sex workers there experienced between two and fourteen incidents of condom destruction by police during the previous twelve months.

A thirty-one-year-old female sex worker from Zambia, living in Namibia, said of police, “They came and asked for my bag. When I refused, they beat me, took my condoms and burned them and said I’m a bitch.” She said that during another recent encounter with city police, a male officer conducted a full body search on her, found the condoms she’d hidden in her underwear, threw the condoms on the road, and drove over them with his police car.

In addition to their own first-hand experiences of having condoms taken away from them by police, sex workers and outreach workers report that they have witnessed police confiscate or destroy other people’s condoms and heard about such police actions in a variety of locations over many years. This testimony strongly suggests that the experiences of the sex workers interviewed for this report are not isolated incidents, but are part of a wider phenomenon

and more generalized police practice of targeting sex workers for condom possession.

“People get arrested for carrying around condoms.”

—A sex worker in Namibia

Overall, 23 percent (32/139) of sex workers surveyed said they had witnessed police confiscate or destroy others’ condoms and 38 percent

(53/139) said they had heard about such incidents. In Kenya, sex workers and outreach workers implicated police in confiscating or destroying condoms in more than a dozen cities and towns.

In Namibia, the Namibian Defense Force,⁴ Namibian Police Force, City Police, and officers from G4S, a private security company,⁵ were identified as those who harass sex workers and take and destroy their condoms.

In New York, sex workers reported that police confiscation of condoms has been going on “for years.” One sex worker recalled the practice going back to 1992, another told an interviewer about an incident as recent as August 9, 2011.

CONDOMS AS JUSTIFICATION FOR ARREST

Police cite condom possession as justification for the detention or arrest of suspected sex workers.

A thirty-seven-year-old female sex worker in New York recalled being taken into custody after police found her in possession of a condom. She said, “A few months ago they locked me up...because I had a condom. I wasn’t even prostituting. They took the condom.”

- 4 It is possible that officers from the Special Field Force of the Namibian Police have also harassed and abused sex workers. Special Field Force agents wear uniforms similar to those of the Namibian Defense Force and civilians may sometimes get them confused. The Special Field Force, a unit comprised largely of officers formerly with the People’s Liberation Army of Namibia, is infamous for using particularly brutal tactics in its policing.
- 5 The terms under which G4S officers are carrying out street-based operations akin to police patrols are unclear. It is also unclear under what authority G4S officers are stopping, searching, and questioning sex workers on the street, and in some cases confiscating or destroying their condoms and detaining them. Five out of 20 sex workers surveyed in Namibia said they had personally been approached by G4S officers on the street who harassed them for doing sex work, stopped and searched them, and confiscated or destroyed any condoms they had. Three sex workers reported that during these interactions G4S officers beat them and fellow sex workers. In another case, G4S officers demanded a bribe from a sex worker found with condoms and threatened to arrest her if she did not pay. One out of six outreach workers surveyed stated that G4S officers beat her and humiliated her on the street while she was out doing her outreach work and that she had also been stopped and searched by G4S officers while doing outreach.

A thirty-one-year-old transgender female sex worker in Namibia reported the actions of officers from G4S.⁶ She said, “They came and stopped us, asked for our bags and searched them. When they found condoms, they took us to the police station.”

In Bulawayo, Zimbabwe, a twenty-eight-year-old female sex worker described a similar pattern of police conduct. She said, “I was with three of my friends. We were searched and found with condoms and arrested because they said we were sex working.”

While many sex workers use the word “arrest” to describe being deprived of their liberty, in fact it appears that often condom possession is used by police as a pretext for detaining sex workers without cause and holding them in custody without filing any formal charges or obtaining a warrant for arrest.

A twenty-nine-year-old female sex worker in South Africa recalled, “They arrested me because they saw that I had condoms on me, but they didn’t take me to court.”

“They told me to my face that I’m a sex worker and my condoms are the evidence.”

—A sex worker in Namibia

Police leverage the threat of arrest on the grounds of condom possession to extort sex workers and sexually exploit them.

A thirty-five-year-old female sex worker in Ukunda, Kenya who says she worries that carrying condoms will get her in trouble with police, explained, “When they find condoms, they ask for money, otherwise they will arrest us.”

Officers from the South African Police Service searched a thirty-four-year-old female sex worker and raped her after finding her in possession of condoms.

6 Respondents to the survey were given the opportunity to self-identify as female, male, transgender female, transgender male, or other. People who are transgender have a gender identity that differs from the gender they were assigned at birth.

The sex worker said, “I had sex with two police [officers] against my will. I was threatened that I would be sentenced so I had sex with them.”

In Kenya, Namibia, Russia, South Africa, and the U.S., sex workers report that condoms are used as evidence against them. Police and prosecutors cite condom possession as “evidence” of a person’s engagement in sex work, to justify an arrest (make a probable cause determination) and/or as a basis for a conviction on prostitution related charges.

In Russia, 60 percent (6/10) of sex workers interviewed said that police had used condoms as evidence against them; all of these sex workers were then convicted on prostitution charges. One, a twenty-four-year-old female working in Saint Petersburg, said of police, “They wrote it in the arrest report as follows: ‘Had condoms on her person.’”

“[The police officer] said we are not allowed to give sex workers condoms because we influence them to do sex work and it is not allowed.”

—An outreach worker in Cape Town, South Africa

A twenty-five-year-old transsexual sex worker in New York said, “They arrested me for prostitution. I denied it and they said to me, ‘You were, because you were carrying two condoms in your bag.’”⁷

POLICE HARASSMENT OF OUTREACH WORKERS WHO DISTRIBUTE CONDOMS

In some locations outreach workers report that police are hostile toward them, harass them, and accuse them of promoting sex work because they distribute condoms and related materials. Outreach workers report that police have ar-

⁷ The sex worker quoted here self-identified as transsexual and did not specify male or female. A transsexual is a person who wishes to bring his or her body into alignment with his or her gender identity through hormone therapy and sex reassignment surgeries.

rested them or used violence against them in retaliation for their outreach work. There was particularly troubling testimony from outreach workers in Kenya and Namibia about police interference with their work.

An outreach worker in Naivasha, Kenya said of police, “If they get you in the street, they take your condoms and put you in their car, then throw you into a cell.”

An outreach worker based in Mombasa, Kenya said police abuse their power, harass outreach workers and ask them for sexual favors.

In Namibia, a thirty-six-year-old transgender female outreach worker said police had humiliated her in public, beat her up during outreach, and destroyed her condoms.

Police confiscate and sometimes destroy the condoms and materials that outreach workers carry for distribution in the community.

An outreach worker in Nairobi, Kenya told an interviewer, “It happened last week. The City Council Police told me I was dirtying the town with condoms and took all the condoms.”

An outreach worker in Namibia with seven years of outreach experience said, “During my outreach I had a few months ago, police officers came and destroyed all the condoms I had to distribute.” She said of the officers from the Namibian Police, “They knew that I was an outreach officer and that I always distribute condoms during my outreach.”

Sex workers have also witnessed police harassment of outreach workers and the destruction of their condoms. A Zambian sex worker in Namibia said that police in the Walvis Bay area searched an outreach worker, took condoms and burned them.⁸

8 A femidom, also sometimes called a female condom, is a sheath worn inside the vagina to prevent pregnancy or transmission of infection.

POLICE SURVEILLANCE OF OUTREACH WORKERS TO TARGET SEX WORKERS

Police often keep outreach workers under surveillance and tail them in order to identify and target sex workers.

An outreach worker in Saint Petersburg, Russia recalled a recent incident when she and fellow outreach workers were apparently being watched by police who then went after the sex workers they had been talking to. She said, “When the sex workers left us, a policeman searched one of the girls, and took condoms, syringes, and money from her purse.”

An outreach worker in Kenya recalled, “Last year, me and my colleague were conducting an outreach meeting. Following the meeting, police came along and arrested all the sex workers attending the meeting.”

A thirty-two-year-old transgender female sex worker in Namibia also reported on the police practice of targeting sex workers seen interacting with outreach workers. She said, “I am doing my sex work in town during late night hours and if the outreach officer gives us condoms, they come and take them and you go to prison.” She described a recent encounter with police in Windhoek, saying, “An outreach worker was showing us how to use a femidom and they came and searched us, took the condoms, threw them out and drove on them.”



Consequences of Condom Confiscation and Destruction and the Use of Condoms as Evidence of Sex Work

By hindering sex workers' ability to carry and use condoms, police actions increase sex workers' risk of exposure to HIV and other sexually transmitted infections, as well as unwanted pregnancies, compromising sex workers' health and the health of their sexual partners.

Sex workers whose condoms are taken by police are more likely to have unprotected sex and to be at risk for HIV. Individual sex workers interviewed for

this report said they had unprotected sex after police took away or destroyed their condoms and, in one case, tested positive for HIV as an apparent direct consequence.

In Namibia, where 50 percent (10/20) of sex workers surveyed had their condoms destroyed by police, 75 percent (6/8) of those who then did sex work had unprotected sex.

A forty-four-year-old female sex worker in Namibia explained, “After they take my condoms, I go with a client with or without a condom.”

In the U.S., 48 percent (12/25) of sex workers surveyed had their condoms confiscated by police. Of those sex workers who did sex work after police took their condoms away, 50 percent (2/4) had unprotected sex.

“Why do they take our condoms, do they want us to die?”

—A sex worker in the U.S.

When asked how police practices of confiscating and destroying condoms or harassing and arresting sex workers with condoms had affected her ability to negotiate condom use with clients, a twenty-two-year-old transgender female sex worker living in a homeless shelter in New York said, “I just know that after they harass me, I wanna make my money and hit it, so I’ll take whatever, so I can be on my way.”

In response to the same question about the effect of police actions, a twenty-six-year-old female sex worker in Zimbabwe pointed out, “Without condoms, you can’t make a client use them.”

The experience of one Namibian sex worker who tested positive for HIV when she had unprotected sex after police took her condoms illustrates the serious risk that all sex workers face as a consequence of this police practice. The sex worker, a thirty-one-year-old transgender female, said the incident took place about two years ago, when she had just started selling sex. Officers from the Namibian Police took her condoms and afterwards she had sex with a client

without a condom. She said it was the first time she'd had unprotected sex with a client. She contracted a sexually transmitted infection so she went to a clinic for treatment and there she tested positive for HIV.

Police actions, such as confiscation and destruction of sex workers' condoms and reference to condom possession to justify detention, arrest and extortion, make sex workers afraid to carry condoms. Sex workers express fear about being "caught" with condoms by police and the risk that police will use their possession of condoms as a pretext to take them into custody or demand a bribe.

A forty-year-old female sex worker in Cape Town, South Africa told an interviewer, "Sometimes the girls are afraid to use condoms because they are afraid of the police."

Sex workers intent on securing their access to condoms, but aware of the risk of police harassment and arrest when carrying them, employ a range of survival strategies. Sex workers say they hide condoms in their bras, underwear, shoes, or even in the bushes near where they work.

An eighteen-year-old transgender female sex worker in Namibia said, "I hide them in my boots so that police can't find them when they search me."

Recalling an encounter with police, a twenty-nine-year-old female sex worker in South Africa said, "They asked me what I was doing around here and they searched me and asked if I had any condoms. I said no. Luckily they didn't find the condoms. I hid them in my shoe."

A twenty-two-year-old sex worker⁹ in New York reported being stopped and searched by police who took nine condoms. The sex worker said, "Luckily I had condoms in my Altoids box or I'd have had to have raw sex."¹⁰

In some cases, sex workers opt not to carry condoms at all, because they fear condom possession can be used by police as a pretext to harass, extort, or arrest them.

9 This sex worker self-identified as gender non-conforming.

10 The term raw sex refers to sex without a condom. Altoids are a brand of breath mint.

Overall, 34 percent (48/139) of sex workers surveyed said there had been times when they opted not to carry condoms because they feared it would get them in trouble with law enforcement. In some locations, fear of police has had an especially dramatic effect on condom possession among sex workers. Eighty-five percent (17/20) of sex workers interviewed in Namibia and 52 percent (13/25) of sex workers interviewed in the U.S. said there had been times when they did not carry condoms because they were afraid it would mean problems with the police.

In South Africa, where 45 percent (9/20) of sex workers surveyed said they were afraid to carry condoms because of police, a thirty-four-year-old female sex worker explained, “Because if police search me and find condoms they will arrest me.”

“I feel afraid that the police are going to arrest me for carrying condoms.”

—An outreach worker in the U.S.

A thirty-seven-year-old female sex worker in South Africa said she sometimes refuses condoms from outreach workers because she’s afraid that police who find her with condoms will assume she is either engaged in sex work or on her way to do sex work.

In Namibia, a twenty-two-year-old female sex worker said she sometimes opts not to carry condoms because, when police “catch” sex workers with condoms, “We have to pay by sleeping with them.”

Sex workers are not alone in feeling constrained by police actions and afraid to be out on the street with condoms. Outreach workers’ experiences with police and fear of police harassment, extortion, or arrest can cause them to change or even stop their outreach work, further reducing sex workers’ already limited access to health services and information.

In Kenya, where 50 percent (4/8) of outreach workers surveyed said that police had harassed them during the course of their outreach work, 37 percent (3/8) said that their interactions with police had made them less likely to distribute condoms to sex workers.

One outreach worker in Nairobi, Kenya said of her work, “We do it in fear and even sometimes we don’t do it at all.”

Another outreach worker in Mombasa, Kenya, who said that her interactions with police have made her less likely to distribute condoms, explained, “I do not display condoms in the presence of police officers, especially at night.”

The police practice of shadowing outreach workers in order to target sex workers for detention and abuse has a chilling effect on the relationship between sex workers and outreach workers. Police harassment of sex workers who interact with outreach workers, and their confiscation of the condoms that outreach workers distribute, make outreach ineffective and can lead to situations in which outreach programs actually function to endanger sex workers. This police practice must be taken into account in the design of outreach programs, since it forces outreach workers into an ethical dilemma: they must choose between accessing sex workers where they are and possibly putting them at risk or curtailing street outreach in order to avoid becoming accessories to police harassment of sex workers.

When police use surveillance of outreach workers to target sex workers it also leads sex workers to mistrust outreach workers and makes sex workers reluctant to engage with them or accept condoms from them.

A forty-four-year-old female sex worker in Namibia said she had declined condoms from an outreach worker, “Because the police officer was on the scene and I was afraid to take them.”

Another sex worker in Namibia, a twenty-eight-year-old transgender female, said she had refused condoms from outreach workers, adding, “Some people pretend they want to help us, but they just want to get us in trouble.”

In Kenya, 62 percent (5/8) of outreach workers surveyed said there had been times when sex workers refused condoms from them.

One outreach worker in Kenya reported that sex workers had refused condoms from her and said, “The sex workers fear harassment and intimidation by police, so they do not carry condoms.”



Criminalization of Sex Work Undermines HIV Prevention

Around the world, the practices of national law enforcement agencies and local police forces are dramatically out of sync with the declared policies of government health officials. While one arm of government works to get condoms into people's hands, another is taking them away. Police officers' frequent interactions with sex workers on the street mean that they are uniquely positioned to connect sex workers to health services and promote the reach of public health programs such as condom distribution to the sex worker community. Police could be working in partnership with national health programs to help prevent the spread of HIV by allowing at-risk groups such as sex workers to have access to condoms and education. Instead, police policies and practices

treat condoms as contraband and position law enforcement in opposition to outreach efforts. Sex work's illegal status also creates an environment in which police can act outside the law, abusing their positions of authority in ways that put sex workers at increased risk for HIV.

THE LINK BETWEEN HIV RISK AND PUNITIVE LAWS

The link between the HIV risk among sex workers and punitive laws against sex work has been acknowledged for some time. The first part of Guideline No. 4, paragraph (c) in the UNAIDS International Guidelines on HIV/AIDS and Human Rights prescribes that, “With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients.”¹¹

The UNAIDS guidance on HIV and sex work also recommends that, “States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal laws and penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work. To the degree that states retain non-criminal administrative law or regulations concerning sex work, these should be applied in ways that do not violate sex workers’ rights or dignity and that ensure their enjoyment of due process of law.”¹²

11 Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS (UNAIDS), “International Guidelines on HIV/AIDS and Human Rights: 2006 Consolidated Version,” 2006. http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf

12 Joint United Nations Programme on HIV/AIDS (UNAIDS), “UNAIDS Guidance Note on HIV and Sex Work,” 2009. http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

Recent studies point to the need for greater attention to the link between punitive laws and the high HIV burden among sex workers. Research released in March 2012 analyzing 102 studies representing 99,878 female sex workers in 50 countries found that the HIV burden among female sex workers is disproportionately high and that there is “an urgent need to scale up access to quality HIV prevention programmes” for sex workers. The authors called for such programs to take into consideration the “legal and policy environments in which sex workers operate” and specifically pointed out that legal and regulatory policies regarding sex work are among the structural factors that have “been shown to contribute to sex workers’ increased risk of HIV infection by limiting their ability to negotiate safer sex.”¹³

Female sex workers are not alone in experiencing the negative health consequences of a punitive legal environment. Research indicates that transgender female sex workers are disproportionately affected by factors that heighten HIV risk. Meta-analysis of 25 studies involving 6,405 participants in 14 countries found that as many as one in four transgender female sex workers is HIV positive. The study’s authors noted that, “many health policy approaches to reduce HIV risk for sex workers are challenged by legal frameworks that criminalize prostitution.”¹⁴ UNAIDS data shows that HIV prevalence is higher among male sex workers than female sex workers in some locations.¹⁵

Researchers Kate Shannon and Joanne Csete, who have looked closely at the connection between violence against sex workers and the ability of sex workers to negotiate condom use, have concluded that, “Eliminating law enforcement practices that inhibit condom use (such as using condom possession as

13 Stefan Baral, Chris Beyrer, Kathryn Muessig, Tonia Poteat, Andrea L. Wirtz, Michele R. Decker, Susan G. Sherman, and Deanna Kerrigan, “Burden of HIV among female sex workers in low-income and middle-income countries: a systematic review and meta-analysis,” *The Lancet* (March 2012): 1-2, 8. doi:10.1016/S1473-3099(12)70066-X.

14 Don Operario, Toho Soma, and Kristen Underhill, “Sex Work and HIV Status Among Transgender Women,” *Journal of Acquired Immune Deficiency Syndrome* 48 (May 2008): 97, 102. doi: 10.1097/QAI.0b013e31816e3971.

15 UNAIDS, “2009 AIDS Epidemic Update.” <http://www.unaids.org/en/Dataanalysis/Epidemiology/2009AIDSEpidemicUpdate/>

grounds for arrest) and protecting sex workers from violence are critical for the prevention of HIV/STI acquisition and transmission.”¹⁶

THE EFFECT OF SANCTIONED AND UNSANCTIONED POLICE PRACTICES

The criminalization of sex work establishes an adversarial relationship between police and sex workers. Criminal law positions sex workers as criminals and, as such, as legitimate targets of police attention. In this context, and where sex work is an administrative offense, policing sex work is part of what it means for police to do their job.

In some situations, police are following official policy by treating condoms as evidence of a person’s engagement in or intent to engage in illegal activity and using condoms found on a person as grounds to justify an arrest. While carrying condoms itself is not a crime, in some jurisdictions the laws allow for and courts accept condoms as evidence of illegal behavior. Police in these settings are adhering to official policy and responding to laws against sex work that allow the treatment of condoms as evidence, as well as exhortations by superiors to curb prostitution in their area. In carrying out their jobs, police may be instructed to engage in unethical and legally unjustifiable policing practices such as profiling people based on their clothing, appearance or past participation in sex work, or conducting intimidating and intrusive surveillance of people who are walking or standing in public places at night.¹⁷

16 Kate Shannon and Joanne Csete, “Condom Negotiation, and HIV/STI Risk Among Sex Workers,” *The Journal of the American Medical Association* 304 (August 2010): 573-574. doi:10.1001/jama.2010.1090

17 For instance, in South Africa, a 2011 document issued by the National Prosecuting Authority explicitly instructs officers enforcing the country’s sexual offences act to take note of a subject’s clothing to show it is “indecent,” thereby encouraging officers to profile people as sex workers based on their clothing and appearance. The South Africa guidelines also call on officers to determine whether the subject is a “known prostitute,” whether he or she “has a habit of frequenting certain streets,” and has been observed in those “certain streets on numerous occasions.” Such guidelines create official incentive for officers to practice intimidating and intrusive surveillance of suspected sex workers in order to enforce anti-prostitution laws.

The harmful situation created by the criminalization of sex work and policies allowing or encouraging the use of condoms as evidence of illegal activity is exacerbated where police generally act with impunity, employing unsanctioned and illegal policing practices. In some jurisdictions, police may make excessive use of their power to stop and search people on the street, harass, extort, threaten, and abuse those found in possession of condoms, and take or destroy the condoms that they find.

Officially sanctioned and unsanctioned police practices work in concert to compromise sex workers' health and safety. As documented in this report, sex workers are denied access to condoms in settings where police routinely confiscate condoms and use condom possession to justify arrest or as leverage to harass and abuse sex workers.

The illegal status of sex work makes sex workers more vulnerable to police exploitation and abuse because police can threaten sex workers with criminal charges, fines, and detention. Overall, 82 percent (115/139) of sex workers surveyed for this report said they had been intimidated or harassed by police for being a sex worker or doing sex work. Many shared details about specific acts of intimidation and abuse by police officers. Sex workers reported experiencing systematic police harassment and extortion, being treated roughly by police, sprayed with pepper spray, beaten, sexually exploited, sexually assaulted, and raped. Some police officers have put sex workers at direct and immediate risk for HIV and other sexually transmitted infections by demanding unprotected sex in exchange for not placing them under arrest.

Their criminal status makes sex workers reluctant to bring charges for crimes committed against them, such as rape, so the majority of these abuses go unpunished. Police harassment and abuse of sex workers causes sex workers to mistrust police and the justice system generally and further reduces the likelihood that sex workers will file complaints. Despite the high rates of police harassment and abuse reported by sex workers, only 10 percent (14/139) of sex workers interviewed said they had ever filed a complaint about police behavior. Sex workers' survey responses about police antagonism toward them, including refusals to investigate their complaints or failure to take them seriously, show that sex workers' lack of faith in the justice system is often justified.

Criminalization of sex work, and police exploitation of the power imbalance it creates, forces many sex workers to conduct their business and their lives “underground,” hindering their ability to access health services and making them more difficult for outreach workers to reach with essential health services.¹⁸ The poisonous environment created by punitive laws against sex work and laws and policies allowing condoms to be used as evidence is illustrated by police suspicion of and hostility toward outreach workers. Outreach workers are engaged in legal activity, often with the support of state funds and encouragement of government agencies that see outreach as critical to protecting public health. Instead of aligning themselves with outreach workers, police sometimes target and harass outreach workers who interact with sex workers, regard outreach workers’ proximity to sex workers as facilitation or promotion of sex work, and treat them as complicit in illegal activity. Police intimidation and harassment of outreach workers hinders their ability to carry out their work, including condom distribution and education, and creates yet another barrier to sex workers’ access to health services.

Policy responses to the AIDS pandemic must take into consideration sex workers’ ability to protect their health and the health of their sexual partners. To be meaningful, programs to promote sex worker health should include not only mechanisms for distributing condoms to sex workers but also strategies to enable sex workers to keep and use the condoms they receive. A crucial step toward preventing HIV will be the removal of punitive laws against sex work and laws and policies allowing condoms to be used as evidence that act as structural barriers to the realization of sex workers’ right to health.

18 Kate Shannon, Thomas Kerr, Steffanie A. Strathdee, Jean Shoveller, Julio S. Montaner, and Mark W. Tyndall, “Prevalence and structural correlates of gender based violence among a prospective cohort of female sex workers.” *British Medical Journal* 339 (August 2009): doi: 10.1136/bmj.b2939.



Recommendations

TO NATIONAL AND LOCAL GOVERNMENT AGENCIES

Research for this report revealed that there are many steps that need to be taken by national and local government agencies to stop police harassment and abuse of sex workers and promote condom access and use. The following policy recommendations are relevant to the governments of all six countries covered in this report. As a matter of priority:

- ▶ National and/or local lawmakers should pass legislation decriminalizing sex work and removing administrative sanctions on sex work. As a first step, justice officials or representatives from other responsible government agencies should present to legislators a draft law on decriminalization of sex work, with accompanying explanation about the role of decriminalization in reducing the spread of HIV, violence, and other health risks.

- ▶ Pending decriminalization of sex work, national and/or local lawmakers should pass legislation that prohibits condoms from being used by police or prosecutors as evidence of prostitution. Corresponding guidelines should be issued to judges instructing them to deem condom possession inadmissible as evidence of a person's engagement in or intention to engage in sex work.
- ▶ National and local law enforcement officials should issue written and verbal instructions to officers to cease the confiscation of condoms from sex workers or anyone else, and discipline violators of this policy.
- ▶ Government health officials should coordinate with police and other relevant agencies to establish trainings for police officers about HIV and the importance of condom use to preventing its spread.
- ▶ Representatives of the head of state at the highest possible level should instruct all government agencies to ensure that their policies are consistent with the policies and aims of national programs to prevent HIV and internationally recognized best practices to stop its spread.
- ▶ Internal investigations departments and general prosecutors' offices should investigate and punish police officers who rape or otherwise assault sex workers and who abuse their power by sexually exploiting or extorting sex workers. Information about police being held to account for such crimes should be widely publicized, including in the sex worker community.
- ▶ National and local law enforcement officials should issue written and verbal instructions to officers to immediately stop arresting or following outreach workers for carrying out their work and to cease harassment of outreach workers. Opportunities should be found to sensitize police about the work of outreach workers and their role in HIV prevention.

TO PUBLIC HEALTH AND HIV/AIDS RESEARCHERS AND AGENCIES

The public health community and agencies tasked with preventing HIV must take policing into account in their program design and evaluation, and should commit funding to removing structural barriers to sex workers' realization of their right to health. As a matter of priority:

- ▶ National and international agencies working to prevent HIV should advocate for the removal of laws that criminalize and penalize sex work, including through support to legislative reform campaigns by sex worker groups and through direct advocacy to government officials.
- ▶ International organizations working on HIV and AIDS and relevant state agencies should fund research on the effect of policing practices on sex worker health and HIV prevention.
- ▶ HIV and AIDS programs should ensure that the health effects of police abuse and harassment are captured in the design and evaluation of programs aimed at sex workers.
- ▶ HIV and AIDS programs should be designed in consultation with sex workers, meaningfully engage sex workers in their implementation, and address the issues most relevant to securing sex workers' rights to health and wellbeing.
- ▶ HIV and AIDS programs should consider barriers to effective outreach to the most vulnerable populations, including police harassment of outreach workers and police practices that engender mistrust of outreach workers.
- ▶ Funding and other support should be provided to sex worker rights groups to conduct community-based research to document ongoing police abuse and harassment, as well as the confiscation of condoms and

their use as evidence in criminal proceedings and to justify detentions. Funding should also be provided to community groups to provide legal aid and other direct services to those whose rights have been violated, and to carry out community organizing and human rights trainings.

In countries around the world, police are actively engaged in stopping and searching sex workers and confiscating or destroying condoms found in their possession. In many cases, possession of condoms has been used by prosecutors as evidence of prostitution. This treatment of condoms as contraband forces sex workers to make a choice between safeguarding their health and staying safe from police harassment or arrest. *Criminalizing Condoms* documents these practices in six countries and identifies their consequences on sex workers' lives, including their vulnerability to HIV.



Condoms as Evidence is a short animated film featuring sex worker voices from Kenya, Russia, South Africa, United States, and Zimbabwe. In this multilingual film, sex workers talk about what it means when police confiscate or destroy their condoms. They call on police worldwide to “stop taking our condoms.”



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