

Men at work

MALE SEX WORKERS, HIV AND THE LAW

Brendan Michael Conner

In its recent report on what they called the *epidemic of bad laws* fueling the spread of HIV, the Global Commission on HIV and the Law called for the decriminalisation of sex work, along with sex workers, their family members, clients and managers. The Commission is an independent board of government

officials, lawyers and scientists called together by the UN Development Programme and UNAIDS to analyse human rights and law in the context of HIV. The Commission's report, *HIV and the Law: Risks, Rights and Health*, is significant because it directly addresses national governments. Sex workers

seeking law reform hope to use the findings of the Commission to argue against harmful national laws and police practices.

While the Commission's recommendations are generally worthy of praise, sex workers are concerned about the lack of detail

San Francisco/旧金山 2007, Photo Craig Seymour www.craigseymourphotography.com



about how decriminalisation might work. The report also fails to examine the intersections between different groups (called 'populations') that are key to a successful response to HIV.

For male sex workers, the Commission's approach creates two gaps. One concerns laws and police practices that affect male sex workers more than other men who have sex with men (MSM). Recommendation 3.3 on MSM calls for the repeal of anti-sodomy laws, vagrancy and the raid and closure of sex venues, which also affect male sex workers. But no mention is made of the disproportionate impact these laws have on male sex workers, their particular vulnerabilities to HIV transmission or the barriers to treatment they face compared to other MSM. The other gap is in Recommendation 3.2 on sex work, which calls for repeal of anti-prostitution laws but does not address harmful police practices against male sex workers, such as profiling them as pimps or traffickers.

On Men Who Have Sex with Men

Recommendation 3.3 on MSM is based on the finding that laws punishing MSM contribute significantly to the spread of HIV. Anti-sodomy laws in 78 countries that lead to raids and closures of bars and bathhouses ignore that 'such social institutions are where safe sex was born' (p 48). But the recommendation neglects to specify *which men* among this imaginary community of MSM are most often arrested, harassed and brutalised.

In contrast, the MSM Global Forum has called life as a male sex worker a 'double curse' because we are doubly likely to face stigma, violence and detention at the hands of police. Laws and law enforcement sometimes do punish people based on their status alone (for example, homosexual or HIV-positive), but most laws technically require people to commit a 'guilty act'. It is not surprising that police almost exclusively target the men whose 'guilty acts' are most visible – male sex workers.

The Commission also fails to mention policing that targets male sex workers as a way of repressing MSM in general, such as 'public nuisance' lawsuits (nuisance means something generally annoying – for example a threat to public health or morality). In common-law countries (like the USA)

these are civil (not criminal) actions that fine and close businesses. When the authorities want to get rid of a sex business, a prostitution arrest means the court will automatically decide there was nuisance.

Why Male Sex Workers are Different

The situation of male sex workers is different from other MSM in terms of HIV vulnerabilities and obstacles to getting treatment:

- We are not always able to choose our partners
- We are sometimes offered more money to have unprotected sex
- We need to maintain a variety of safer-sex resources (condoms, lubrication) to be able to take different sex roles with clients with different kinds of bodies
- Our condoms may be confiscated as evidence of prostitution
- There are fewer HIV-prevention and -treatment programs for MSM who do not identify as gay (common amongst sex workers)
- We are policed and jailed for prostitution-related crimes
- We are profiled as pimps or traffickers, which exposes us to more kinds of policing

It is widely accepted that criminalisation pushes all sex workers underground, making our work more risky. Merely disclosing we are sex workers to public authorities and police can result in punishment when we are reporting crimes against us – even in countries where sodomy is decriminalised. For instance, the Kenyan group HOYMAS has cited police harassment and doctors' refusal to treat for HIV as impediments to carrying out anti-retroviral and legal-assistance programs. And the Swedish Federation for LGBT Rights reports that male sex workers are often denied access to services because of a widespread assumption that only females need certain kinds of help.

Non-prostitution Laws are also Used against Male Sex Workers

The Commission's Recommendation 3.2 calls for sex work to be fully decriminalised but neglects several other kinds of laws and police practices that tend to criminalise male sex workers. For example, in New York City,

where more than half the young people who trade sex identify as male, 21 per cent report that their friends negotiate with customers for them and also share customers with them: a way of pooling resources for mutual protection. Yet these men are now being arrested as pimps and traffickers by the police.

Male sex workers may also be arrested and harassed by police more often than female sex workers, under laws not directly targeting prostitution, such as criminal nuisance, loitering, assault, theft and the use and sale of drugs. In 2008 in New York City, 81 per cent of young men who trade sex were found to have a history of arrest, three times the proportion of young women, and the majority of these crimes were not prostitution-related. This suggests that police may target young men who trade sex with men because they are sex workers, even if the crime charged does not have the word prostitution in its name.

The Next Step Forward

While the separation of key groups into populations can be important for groups whose identity has historically been ignored (such as when transgender people are mis-categorised as MSM), we need more focus on the intersections between groups. To separate us into populations without connecting the dots between us erases our solidarity and may imply that one group is more respectable than the other. Both the NSWP and the MSM Global Forum have said that the liberation of the two groups – MSM and sex workers – is linked. It is time for the Commission to recognise what our communities already know to be true.

About the author

Brendan Michael Conner is a former male sex worker and Editor-in-Chief of *\$pread* magazine. He now works as a law and policy specialist in New York City.

Contact: brendan.michael.conner@gmail.com

Note

HIV and the Law: Risks, Rights and Health is available at www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf

男性

性工作者、艾滋病和法律

Brendan Michael Conner

全球艾滋病和法律委员会最近发布了一份报告，该报告主要关注“坏法导致艾滋病传播”的问题。在这份报告中，委员会呼吁对性工作、性工作者及其家庭成员、顾客和管理者去罪化。全球艾滋病和法律委员会是联合国发展计划署和联合国艾滋病规划署召集成立的，由独立的政府官员、律师和科学家组成，致力于在艾滋病的背景下分析人权和法律问题。委员会的报告《艾滋病和法律：风险、权利和健康》直指国家政府，其重要性不容忽视。性工作者们正在寻求法律改革，该报告能够为他们所用，彰显有害的国家法律和执法行为。

总体而言，委员会的建议是值得赞扬的。但报告中缺乏对去罪化的详细建议，性工作者担心这会使报告的效果大打折扣。该报告也未对不同群体之间的交叉人群进行检视，而这正是有效应对艾滋病的关键。

对于男性性工作者而言，委员会的报告有两方面不足。一是未提及法律和政策实践对男性性工作者的影响要比一般的男男性行为者要大得多。建议3.3主要针对男男性行为者，呼吁撤除反鸡奸法、流浪和搜查及关闭性工作场所的法律，这也影响到男性性工作者。但报告没有提到这些法律对男性性工作者所造成的更为严重的影响，以及与一般男男性行为者相比，男性性工作者面临更大的艾滋病传播风险，或在获得治疗方面所面临的障碍。二是建议3.2，主要关于性工作，建议撤消反对卖淫的法律，但并没有提到针对男性性工作者的有害的执法行为，如把他们当作皮条客或人口贩卖者。

关于男男性工作者

建议3.3的根据，是研究发现惩罚男男性工作者的法律显著导致艾滋病传播。78个国家中的反鸡奸法导致了搜查和酒吧、浴池的关闭，却忽略了“这些场所正是安全性行为的诞生地”（p48）。但该建议却没有指出，在所谓的男男性行为者社群中，哪些人最常被逮捕、骚扰和摧残。

实际上，MSMs全球论坛将男性性工作者的生活称为“双重诅咒”，因为我们更可能面临加倍的污名、暴力和逮捕。有时法律和执法行为的标准是人们的身份，基于某种身份就施以惩罚（如同性恋或者艾滋病阳性），但大部分的法律要求人们要有“犯罪行为”才进行惩戒。所以当警察几乎全都针对那些“犯罪行为”最明显的男性，也就是男性性工作者时，我们并不感到惊奇。

委员会也没有提及，针对男性性工作者的警察执法行为，如“滋扰公众”（滋扰指让人不舒服、难受等，如对公共卫生和道德的威胁），实际上是为了抑制男男性行为者整个社群。在普通法国家（如美国），这些是民事（非刑事）行为，会遭到罚款和关闭性工作场所。如果当局想消除性产业，那么性工作者被拘捕意味着法律自动认为他们滋扰公众。

为什么男性性工作者如此不同

在面对艾滋病时的脆弱性和获得治疗的障碍方面，男性性工作者和一般的男男性行为者的情况是不同的：

- 我们并不总是能够选择伴侣；
- 我们有时会付更多钱来获得无保护的性行为；
- 我们需要获得安全性行为的资源（安全套、润滑剂），以便能够用身体的不同部位、扮演不同的角色来为客人提供服务；
- 安全套可能会被作为卖淫的证据；
- 对于那些不被认为是同性恋的男男性行为者（这在男性性工作者当中很常见）来说，提供艾滋病预防和治疗服务的项目很少；
- 我们会因为与卖淫相关的犯罪被关押和审讯；
- 我们会被当作皮条客和人口拐卖者，因而会面临更多指控。

刑事化导致性工作者转入地下，使得我们的工作更加危险。这个事实已经得到了广泛的承认。即使是在鸡奸已经被去罪化的国家，如果我们在面临危险时向警察报告，仅仅是披露我们的性工作者身份就会导致惩罚。例如，肯尼亚的一个组织HOYMAS声称警察的骚扰和医生拒绝提供治疗，使得抗病毒治疗和法律援助项目无法有效开展。瑞典LGBT权利联合会报告称，男性性工作者常常被剥夺获得服务的权利，因为人们以为只有女性才需要帮助。

非卖淫法律也加诸于男性性工作者

委员会的建议3.2要求对性工作完全去罪化，但忽略了其他的法律和执法行为也可能针对男性性工作者。例如，在纽约市，参与性交易的青年人中有超过一半为男性，其中21%的人报告说他们通过朋友



来帮助与客人进行谈判，也和朋友相互介绍客人：这是集中资源、互相保护的一种方式。但他们会被警察当作皮条客和人口贩卖者而逮捕。

男性性工作者也可能比女性性工作者更多遭受警察逮捕或骚扰，基于那些不直接针对卖淫的法律，如刑事骚扰、游荡、打架斗殴、盗窃，毒品使用和贩卖等。在纽约，2008年中81%的青年男性性交易者有过逮捕记录，这是青年女性的三倍，而大部分被逮捕的罪名与卖淫无关。这表明，警察针对青年男性性交易者是因为他们是性工作者，即使所指控的罪名中并没有包括卖淫。

下一步

尽管把重点人群进行分类，能够让我们找到那些常常被忽略的人群（如跨性别人士被错误地划分在男男性行为者中），但我们也需要更多地关注不同群体之间的交叉人群。将人群进行分类，而不考虑人群之间的共同点，会伤害我们之间的团结协作，也可能会错误传达这样的信息：即一些人群比另外一些人群更值得尊重。全球性工作项目网络和MSM全球论坛称，这两个群体——男男性工作者和性工作者，是有所区别又相互联系的。是时候应当让委员会承认社区的知识和经验。

关于作者

Brendan Michael Conner曾是一名男性性工作者，曾担任《Spread》杂志的主编。目前他住在纽约，是法律和政策方面的专家。

联系：brendan.michael.conner@gmail.com

注

《艾滋病和法律：危险、权利和健康》：
www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf