



**"Custody and Education":  
Arbitrary Detention for Female Sex Workers in China**

Asia Catalyst

December 2013



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## Laws Cited in Chinese and English

中共中央关于全面深化改革若干重大问题的决定  
Chinese Communist Party Center Committee, Resolution Concerning Some Major  
Issues in Comprehensively Deepening Reform

中华人民共和国刑法  
Criminal Law of The People's Republic of China

中华人民共和国宪法  
Constitution of the People's Republic of China

全国人民代表大会常务委员会关于严禁卖淫嫖娼的决定  
Decision of the Standing Committee of the NCP on Strictly Prohibiting Prostitution  
and the Visiting of Prostitutes

中华人民共和国治安管理处罚法  
Law on Penalties for Administration of Public Security

中华人民共和国行政处罚法  
Law of the People's Republic of China on Penalties for Administrative Penalty

中华人民共和国立法法  
Legislation Law of the People's Republic of China

卖淫嫖娼人员收容教育办法  
Measure on the Custody and Education of Prostitutes and their Clients

收容教育所等级评定办法  
Measures for Graded Evaluation of Custody and Education Centers

收容教育所管理办法  
Measures for Management of Custody & Education Centers

公安机关办理行政案件程序规定  
Procedural Provisions for the Handling of Administrative Cases by Public Security  
Organs

公安机关办理劳动教养案件规定  
Public Security Regulation on Handling of Re-education Through Labor Cases

中华人民共和国警察法  
People's Police Law of the People's Republic of China

公民权利和政治权利国际公约  
International Covenant on Civil and Political Rights

囚犯待遇最低限度标准规则  
Standard Minimum Rules for the Treatment of Prisoners

第 14 号一般性意见：享有能达到的最高健康标准的权利  
General Comment 14: The right to the highest attainable standard of health

禁止酷刑和其他残忍、不人道和有辱人格的待遇或处罚公约  
The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment  
or Punishment

## Abbreviations Used

<b>C&amp;E</b>	Custody & Education
<b>CPPCC</b>	Chinese People's Political Consultation Conference
<b>RTL</b>	Re-education Through Labor
<b>NPC</b>	National People's Congress
<b>PLWHA</b>	People Living With HIV/AIDS
<b>PRC</b>	People's Republic of China
<b>The Measure</b>	The Measure on the Custody and Education of Prostitutes and their Clients
<b>The Decision</b>	The Decision of the Standing Committee of the NCP on Strictly Prohibiting Prostitution and the Visiting of Prostitutes

## Executive Summary

*I think it's all for money. Any talk of remolding or ideological education is bogus. It's just a way of extorting money in the name of the government and the law enforcement organs.*

*– Yi, a sex worker*

In recent years, China has placed an extraordinary emphasis on legal reform and has achieved some impressive advances in this area. During 2012 and 2013, several high profile legal cases led to heated public discussions about the continued existence and possible abolition of the Re-education Through Labor (RTL) system.<sup>1</sup> In effect since the 1950s as a form of administrative punishment, RTL had fallen into disrepute as the result of its long and notorious history of arbitrary arrest, lack of judicial process, forced labor, and infringement of human rights.

On November 15, 2013, the Chinese government announced that it would “abolish the Re-education Through Labor System [sic], perfect the laws for punishment and correction of unlawful and criminal acts, and strengthen the community correction system.”<sup>2</sup> However, largely unknown to the general public, similar administrative penalties remain in effect, including the Custody & Education (C&E) system targeting commercial sex workers and their clients. The Chinese government continues to remain silent over the C&E system and little has been written about the impact it has on sex workers or its basis in Chinese law.

Sex workers in China encounter severe prejudice and bias, and have very few channels or opportunities to have their voices heard. Their situation remains largely unknown to the general public. For this reason, while the abuses of the RTL system have spurred animated public debate, few know that sex workers are routinely subjected to an almost identical system called Custody and Education. In the name of “education” and “rescue,” large numbers of sex workers and their clients are detained for periods of six months to two years without any form of judicial oversight and, while in custody, they are subjected to forced labor and compulsory testing for sexually transmitted diseases (STDs).

This report examines the C&E system. Over the course of Asia Catalyst's research into the system, we found serious conflict between the C&E system and international human rights

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<sup>1</sup> Xu Xin, Huang Yanhao, and Lu Rongrong, “China Judicial Reform Annual Report 2012” [中国司法改革年度报告 (2012)], Political and Legal Forum [政法论坛], Issue No. 2, 2013. The Re-education Through Labor System, established in 1955, is a system of administrative penalty targeting minor unlawful acts. Under this system, public security organs can, without recourse to the courts, keep a person in custody for up to four years and impose forced labor and ideological education.

<sup>2</sup> Chinese Communist Party Center Committee, Resolution Concerning Some Major Issues in Comprehensively Deepening Reform [中共中央关于全面深化改革若干重大问题的决定], passed at the 18th Congress Third Plenary Meeting, November 15th, 2013.

law. As a coercive administrative education measure that deprives citizens of their personal liberty for extended periods of time, C&E also has an extremely fragile legal foundation in Chinese law, given that the main documents on which it is based are not laws but regulations. Individuals detained under the C&E system are denied a fair trial and lack all essential procedural rights such as the right to a defense and a hearing. This report analyzes China's relevant laws and policies, as well as documentary data from inside and outside of China.

Asia Catalyst research also found that China's public security organs are in full control of C&E-related investigations, as well as judgment, appeal, and the management of C&E centers. The regulations governing C&E are vague and deficient, granting the police enormous power over personal freedom. The authority of the public security organs in implementing C&E lacks independent oversight, and detainees have no effective recourse to appeal.

Asia Catalyst conducted 31 interviews in two cities in China along with two partner organizations. Interviewees included 30 female sex workers who experienced police detention, and a law enforcement officer. The women we interviewed told us that arrest<sup>3</sup> by police is routinely accompanied by physical abuse and photographic documentation. Some sex workers, in attempts to evade C&E, feel compelled to pay large bribes to the arresting officers to avoid detention. The C&E center emphasizes profits over rehabilitation. Detainees of C&E centers are required to engage in long hours of uncompensated labor, and have few opportunities for skill training and education. Detainees are forced to undergo physical examinations and STD testing without their informed consent or effective counseling; they are not told the results of the tests. Detainees are obliged to pay the costs of their incarceration, and the excessive charges levied for living expenses only increases the financial burden on lower-tier sex workers who work hard to support themselves and their families.

The "educational" objective of C&E has been distorted into a profit-making mechanism. Detainees are not given the opportunity to learn labor skills that might change their fates and typically spend their day doing manual labor that generates profit for the C&E centers. All of the sex workers we interviewed returned to the sex trade immediately after release from C&E.

The harsh punishment China metes out to sex workers fails to eradicate or decrease the number of persons engaged in this trade, while further infringing on their human rights. There is no evidence that C&E centers are conducive to the health or medical treatment of

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<sup>3</sup> In this report, we use the word "arrest" to refer to the initial act of the apprehension of a sex worker or her client by a state agent. It is important to note, however, that as a matter of Chinese law, sex workers are rarely "arrested" (逮捕) as the term is defined and explained in the PRC Criminal Procedure Law, because sex workers and their clients are subject to administrative punishments, and thus their cases are generally not handled through the criminal justice process.

detainees, nor do they provide effective care or protection.<sup>4</sup>

The International Community has reached consensus that punitive laws and their implementation have a negative impact on the health and situation of sex workers, and a number of international organizations have called for countries to remove the punitive laws that target sex workers and related parties. For example, The Global Commission on HIV and the Law found that punitive laws, discriminatory and brutal policing, as well as denial of access to justice for people with and at risk of acquiring HIV are fueling the epidemic.<sup>5</sup> The Commission has called for countries to reform their approach towards sex work. Rather than punishing consenting adults involved in sex work, countries must ensure safe working conditions and offer sex workers and their clients access to effective HIV and health services and commodities.<sup>6</sup>

In its guidelines on what constitutes effective HIV programming in the context of sex work, the World Health Organization (WHO) recommends that all countries work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.<sup>7</sup> Furthermore, twelve UN organizations have called on all countries to immediately close down compulsory rehabilitation centers for sex workers.<sup>8</sup>

### Recommendations

Asia Catalyst echoes the recommendations made by UN agencies and international organizations, and urges the Chinese government to:

- Enact a moratorium halting any further admission of sex workers into C&E centers;
- Close down all C&E centers for sex workers and their clients without delay and release the individuals detained;
- Remove laws and regulations that prohibit consenting and voluntary adults to buy or sell sex; stop campaigns that periodically crack down on sex work;

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<sup>4</sup> UNAIDS et al, "Joint Statement: Compulsory Drug Detention and Rehabilitation Centers," March 9, 2012, <http://www.unodc.org/southeastasiaandpacific/en/2012/03/detention-centres/story.html>, [http://www.unaids.org.cn/cn/index/Document\\_view.asp?id=583](http://www.unaids.org.cn/cn/index/Document_view.asp?id=583).

<sup>5</sup> Global Commission on HIV and the Law, "Risks, Rights and Health," July 2012, <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>.

<sup>6</sup> Global Commission on HIV and the Law, "Risks, Rights and Health," July 2012, <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>.

<sup>7</sup> World Health Organization, Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-income Countries: Recommendations for a Public Health Approach, December 2012, [http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf).

<sup>8</sup> UNAIDS et al., "Joint Statement: Compulsory Drug Detention and Rehabilitation Centers," March 9, 2012, <http://www.unodc.org/southeastasiaandpacific/en/2012/03/detention-centres/story.html>.

- Provide sex workers and their clients with voluntary quality and evidence-informed health care, including prevention and treatment of HIV/AIDS and opportunistic infections, other sexually transmitted infections (STIs), as well as social, legal and education services; support community-based organizations with funding and technical support to enable their involvement in this process;
- Stop police abuse and extortion against sex workers, provide law enforcement officers with human rights training in the appropriate treatment of sex workers; investigate and punish abusive and otherwise improper treatment of sex workers.

## I Research Methodology

Asia Catalyst and two partner organizations carried out a survey in two cities in northern China from the end of 2012 to July 2013. The survey consisted of 31 interviews, 30 of which were with female sex workers, among whom 24 who had undergone C&E for six months to one year; the remaining interview was with a Chinese law enforcement officer.

The interviews were all carried out with the verbal informed consent of the interviewees; in accordance with their wishes, their real names have been concealed in order to protect their privacy and safety, and all of the names used in this report are pseudonyms. All of the interviewed sex workers were from lower-tier establishments such as hair salons, massage parlors, saunas, and other such small-scale providers of sexual services. Some offered their sexual services in the streets. The interviewees came from many different localities, but most originated from rural areas. Their ages ranged from 19 to 50 years old.

The interviews were open-ended and were conducted at venues chosen by the interviewees. Most interviews were carried out at the sex worker's place of employment and others, at the interviewee's request, were carried out in the relative confidentiality of hotel rooms. A portion of the interviews were conducted in the offices of our partner organizations. One interview was conducted with a sex worker inside a C&E center.

Given the severe social bias sex workers face in China, and their routine harassment by police and local gangs, it was extremely challenging to gain the trust of sex workers and encourage them to describe their experiences of arrest and detention. Asia Catalyst partners with community-based service organizations that have long served sex worker communities, building up good relationships through the provision of health care. This was a crucial component in our success in making contact with sex workers. Even so, the interview process was difficult and laborious. Given their lack of rights awareness and the secrecy in which they are forced to operate, sex workers do not like to talk about their experiences in general or their stories from detention. For this reason, Asia Catalyst worked with its partners to organize workshops aimed at empowering sex workers, informing them of their rights and helping them understand the laws and regulations that apply to them. The stable community foundation and empowerment activities helped us win their trust.

While Asia Catalyst was conducting this research, local governments were in the process of carrying out "vice raids" in two cities, and five core volunteers of our partner organizations were arrested and sent to C&E.<sup>9</sup>

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<sup>9</sup> In China, the public security organs regularly launch campaigns that carry out sudden inspections and raids of entertainment venues.

The C&E system only targets female sex workers and their clients, male sex workers were not prevalent at the time when the system was developed. The scope of this report is confined to the marginalization of female sex workers, and due to limited resources and manpower, our study does not include interviews with detained male clients.

## II Sex Work in China

### A General Survey of Sex Work

In China, sex work is illegal, and subjected to social bias and public censure. Even so, sex work is prevalent. Sex workers work throughout China's large and small cities and its rural areas, from high-class entertainment venues to roadside hair salons and pedicure shops, and even in streets and parks. In 2009, it was estimated that there were 2.68 million female sex workers and 26.5 million clients of female sex workers in China.<sup>10</sup>

Most lower-tier female sex workers are from the countryside or impoverished regions; they are typically poorly educated and lack the capacity to find stable work. With aspirations of improving their lives, they leave their home villages for the economically developed urban areas. China's rapid economic development has driven many young workers to cities; in 2012, China had 262.61 million migrant workers, 62 percent of whom were working away from their places of origin.<sup>11</sup> This population both demands and supplies a flourishing sex industry.

The development of China's sex industry is inseparable from the country's recent history of economic reforms. In the process of economic liberalization, major cities showed a massive shift of rural laborers toward non-agricultural industries in the early 1990s. Although some women were able to find work in the service industries or manufacturing, a considerable number moved into the sex trade. The decline in rural enterprise employment is contrasted by the sharp increase in sex workers detentions during the same period, which could indicate that the number of people involved in sex work has increased.<sup>12</sup> Social inequality is another reason for the emergence of the sex industry. Compared with urban women, women in rural areas have fewer years of schooling and are more likely to encounter bias when looking for work. Over the course of China's impressive economic development, rural women have become increasingly marginalized and relegated to society's lowest stratum. Lacking better options, they turn to sex work.<sup>13</sup>

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<sup>10</sup> HIV and AIDS Data Hub for Asia-Pacific, "China Country Reviews," March 2011, [http://aidsdatahub.org/dmdocuments/China\\_Country\\_Review\\_2011\\_HIV\\_and\\_AIDS\\_Data\\_Hub\\_for\\_Asia\\_Pacific.pdf](http://aidsdatahub.org/dmdocuments/China_Country_Review_2011_HIV_and_AIDS_Data_Hub_for_Asia_Pacific.pdf) (accessed November 15, 2013).

<sup>11</sup> Ministry of Human Resources and Social Security of the People's Republic of China, "Human Resources and Social Security Development Bulletin of 2012" [2012 年度人力资源和社会保障事业发展统计公报], [http://www.mohrss.gov.cn/SYrzyshshzbz/dongtaixinwen/shizhengyaowen/201305/t20130528\\_103939.htm](http://www.mohrss.gov.cn/SYrzyshshzbz/dongtaixinwen/shizhengyaowen/201305/t20130528_103939.htm) (accessed November 20, 2013).

<sup>12</sup> Yu Dongbao, Edmund Settle, Ruotao Wang, and Lenore Manderson, "Decriminalizing Sex Work: Implications for HIV Prevention and Control in China," in *Gender Policy and HIV in China: Catalyzing Policy Change* (The Spring Series on Demographic Methods and Population Analysis), ed. Joseph Tucker and D.L. Poston (Springer Science+Business Media, 2009), 201-215.

<sup>13</sup> *Ibid.*

## Sex Work Under the Law

In China, sex work is considered immoral and a violation of traditional values and ethics. For this reason, Chinese law and policies focus on prohibition and cracking down on sex work rather than providing a framework to ensure the health and safety of sex work as a profession.

Under Chinese domestic law, those who engage in sex work or who patronize sex workers are subject to administrative penalties. According to the Law on Penalties for Administration of Public Security, sex workers and their clients can be detained by police for ten to 15 days and/or fined up to 5,000 yuan (US \$834). In less serious cases, the maximum detention is five days and the maximum fine is 500 yuan (US \$84). Seducing, sheltering, or introducing another person to prostitution is also subject to detention and/or fines.<sup>14</sup>

In 1991, the National People's Congress (NPC) Standing Committee passed the Decision of the Standing Committee of the NCP on Strictly Prohibiting Prostitution and the Visiting of Prostitutes ("the Decision"), which reaffirmed the previous administrative regulations. It further authorized public security organs to force sex workers and their clients to "assemble for compulsive education in law and morality and participation in productive labor in order to rid them of their vice," otherwise known as Custody & Education (C&E) for a term of six months to two years.<sup>15</sup> Recidivists are subject to up to four years of Re-education Through Labor (RTL) and a fine of up to 5,000 yuan (US \$834).<sup>16</sup> In 2013, the Chinese government announced the suspension of RTL, but policies governing C&E remain in effect.<sup>17</sup>

Organizing or forcing others to engage in sex work is subject to even harsher penalties. According to the Criminal Law of The People's Republic of China, arranging for or forcing another person to engage in sex work can result in imprisonment for five to ten years and incur a fine. Serious cases can result in life imprisonment or the death penalty, as well as the confiscation of property.<sup>18</sup>

Additionally, public security organs regularly launch "vice sweeps" or "strike hard" campaigns in which they carry out sudden inspections and raids of entertainment venues and other areas or localities frequented by sex workers. Typically, police close down the entertainment venue and the sex workers and their clients are arrested. On August 15,

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<sup>14</sup> Standing Committee of the National People's Congress, Law on Penalties for Administration of Public Security [ 中华人民共和国治安管理处罚法 ], March 1, 2006, Articles 66 and 67.

<sup>15</sup> Standing Committee of the National People's Congress, Decision of the Standing Committee of the NCP on Strictly Prohibiting Prostitution and the Visiting of Prostitutes [ 全国人大常委会关于严禁卖淫嫖娼的决定 ], September 4, 1991, Article 4.

<sup>16</sup> *Ibid.*

<sup>17</sup> Chinese Communist Party Center Committee, Resolution Concerning Some Major Issues in Comprehensively Deepening Reform [ 中共中央关于全面深化改革若干重大问题的决定 ], passed at the 18th Congress Third Plenary Meeting, November 15th, 2013.

<sup>18</sup> Criminal Law of The People's Republic of China [ 中华人民共和国刑法 ], passed in 1979, amended in 2011, Article 358.

2013, in one district of Chongqing, police launched a raid involving more than 1,000 police officers and 110 police vehicles on the district's hostels, saunas, hair salons, and bars.<sup>19</sup>

Low-tier sex workers are the most likely to be targeted in these law enforcement operations. A 2008 survey of 348 female sex workers in Beijing found that 62 percent of street-based sex workers had been arrested, and that their risk of arrest was two to four times greater than those who worked within establishments.<sup>20</sup> Although the law provides for equal punishment of sex workers and clients, the survey showed that female sex workers are more likely to be arrested than their clients.<sup>21</sup> These law enforcement exercises are driven by political considerations, to protect social order, particularly around major public or political events such as the National People's Congress (NPC) and Chinese People's Political Consultation Conference (CPPCC) sessions and the Olympics. They are also income-driven: the profits generated from fines on sex workers and their clients have become an important supplementary source for public security budgets.<sup>22</sup>

### Sex Work and HIV/AIDS

At the end of 2011, it was estimated that 780,000 people were living with HIV/AIDS (PLWHA) in China. Heterosexual intercourse is the main channel for the transmission of HIV/AIDS, accounting for 46.5 percent of all PLWHA. Sex workers are one of the key affected populations.<sup>23</sup> The HIV prevalence among sex workers increased from 0.02 percent in 1996 to 0.6 percent in 2011,<sup>24</sup> with higher prevalence in the provinces of Yunnan, Sichuan, and Guizhou, as well as the autonomous regions of Xinjiang and Guangxi.<sup>25</sup>

Sex workers at starred hotels or high-class entertainment venues tend to be better educated, and their clients are usually wealthy businessmen or officials, so the rate of condom use is quite high in this group. Sex workers at lower tier establishments such as dance halls, pedicure salons, and hair salons, as well as those who work in the streets, are typically overseen by madams or pimps. They have little control over their work. Sex

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<sup>19</sup> Yang Yanyu. "1,000 Chongqing Police Crack Down on Massage Parlors" [重庆警方千余人夜间“扫荡”保健按摩娱乐场所], Chinanews.com, August 16, 2013, <http://www.chinanews.com/tp/hd2011/2013/08-16/236033.shtml> (accessed October 5, 2013).

<sup>20</sup> Yi Huso, Joanne E. Mantell, Rongrong Wu, Zhao Lu, Jing Zeng, and Yunhai Wan, "A Profile of HIV Risk Factors in the Context of Sex Work Environments among Migrant Female Sex Workers in Beijing," *Psychology, Health, and Medicine* 15, no. 2 (March 2010): 172-187.

<sup>21</sup> UNDP Asia-Pacific Regional Center, *Legal Environments, Human Rights and HIV Responses among Sex Workers in Asia and the Pacific*, Consultation Draft: East Asia Sub-region, August 2011.

<sup>22</sup> Fu Hualing and D.W. Choy, "Administrative Detention of Prostitutes," in *Gender Policy and HIV in China: Catalyzing Policy Change* (The Spring Series on Demographic Methods and Population Analysis), ed. Joseph Tucker and D.L. Poston (Springer Science+Business Media, 2009), 189-198.

<sup>23</sup> Ministry of Health of the People's Republic of China, UNAIDS, and the World Health Organization, "2011 Estimates for the HIV/AIDS Epidemic in China," November 2011, <http://www.unaids.org.cn/pics/20130521161757.pdf>.

<sup>24</sup> UNAIDS, "2005 Update on the HIV/AIDS Epidemic and Response in China," 2006; Xiang Shen Chen, Yue-Ping Yin, Ning Jiang, "Was the HIV Infection Burden in Female Sex Workers in China Overestimated? *The Lancet Infectious Diseases* 13, no. 1 (January 2013): 13.

<sup>25</sup> 2011 Estimates for the HIV/AIDS Epidemic in China.

workers in lower tier establishments tend to regard the use of condoms as a disincentive to clients.<sup>26</sup> The managers of these establishments generally have a negative attitude toward condom use and education regarding sexually transmitted diseases. They worry that if sex workers demand the use of condoms, clients will be scared off and business will be affected.<sup>27</sup>

Overall, the rate of condom use among sex workers is fairly low. In 2011, it was estimated that 60 percent of sex workers were unable to maintain consistent condom use with every sexual act.<sup>28</sup> Law enforcement actions targeting sex work often hampers the development of HIV/AIDS-prevention work among this group.<sup>29</sup> Sex workers report that police use the possession of condoms as evidence against them, and as a result, they avoid carrying condoms to minimize the risk of arrest.<sup>30</sup> The risk of being arrested and taken into custody pushes sex workers even further underground, and makes them even more unwilling to obtain HIV/AIDS prevention, treatment, and services. Studies show that police vice raids cause sex workers to operate more covertly, so that grassroots organizations have difficulty locating their target groups for HIV/AIDS prevention work, while sex workers, fearing that the possession of condoms will be regarded as evidence of prostitution, are less willing to use them.<sup>31</sup>

The conflict between the work of public security organs and health departments was highlighted in the 12<sup>th</sup> Five Year Action Plan of China HIV/AIDS Control, Prevention and Treatment. This action plan set the following objective: "To raise the level of effective intervention among highly at-risk groups to a rate of 90 percent or higher, and to increase the rate of informed HIV/AIDS testing to 70 percent or higher." At the same time, however, this plan requires that "public security departments continue attacking prostitution and public lewdness and other such unlawful and criminal acts."<sup>32</sup>

Studies indicate that incarcerated sex workers have even more difficulty obtaining AIDS-related services, as shown in the 2010 study below:<sup>33</sup>

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<sup>26</sup> Yi, Mantell, et al, 172-187.

<sup>27</sup> HIV and AIDS Data Hub, "Sex Work & HIV China," August 2010, [http://www.aidsdatahub.org/sites/default/files/documents/sex\\_work\\_hiv\\_china.pdf](http://www.aidsdatahub.org/sites/default/files/documents/sex_work_hiv_china.pdf).

<sup>28</sup> UNAIDS, "HIV in China, Facts and Figures," <http://www.unaids.org.cn/en/index/page.asp?id=197&class=2&classname=China+Epidemic+%26+Response>.

<sup>29</sup> Yi, Mantell, et al, 172-187.

<sup>30</sup> Human Rights Watch, "'Swept Away': Abuses Against Sex Workers in China," (New York: Human Rights Watch, 2013), <http://www.hrw.org/reports/2013/05/14/swept-away-0>.

<sup>31</sup> China Sex Worker Organization Network Forum, "Research on the Impact of 2010 Crackdown on Sex Work and HIV Interventions in China," December 2011, <http://asiacatalyst.org/blog/2012/01/the-impact-of-2010-crackdown-on-sex-work-and-hiv-interventions-in-china.html>.

<sup>32</sup> PRC State Council Secretariat, "12th Five Year Action Plan of China HIV/AIDS Control, Prevention and Treatment" [中国遏制与防治艾滋病], January 13, 2012, [http://www.gov.cn/zwgk/2012-02/29/content\\_2079097.htm](http://www.gov.cn/zwgk/2012-02/29/content_2079097.htm).

<sup>33</sup> Joseph Tucker, Xin Ren, and Flora Sapio, "Incarcerated Sex Workers and HIV Prevention in China: Social Suffering and Social Justice Countermeasures," *Social Science and Medicine* 70 (2010): 121-129.

<b>Variable</b>	<b>Chinese sex workers outside of detention centers</b>	<b>Chinese sex workers while at detention centers</b>
HIV test accessibility	Voluntary testing at free voluntary counseling and testing centers	Mandatory testing, patients may not get results
HIV anti-retroviral therapy accessibility	Free through government programs	Dependent on detention center and sex worker/guard relationships
HIV prevention access	Easily available through periodic public health campaigns	Once per year, depending on detention center's relations with STI/HIV clinic

The Global Commission on HIV and the Law states that the legal environment can play a powerful role in the well being of people living with HIV/AIDS and those vulnerable to HIV. Good laws, fully resourced and rigorously enforced, can widen access to prevention and health care services, improve the quality of treatment, enhance social support for people affected by the epidemic, protect human rights that are vital to survival and save the public money.<sup>34</sup>

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<sup>34</sup> Global Commission on HIV and the Law, "Risks, Rights and Health," July 2012, <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>.

### III Research Findings

#### What is Custody & Education?

Custody and Education (C&E) is a compulsory administrative education and detention measure targeting sex workers and their clients. The 1991 Decision, mentioned above, stipulates that public security organs may "compel sex workers and their clients to assemble for compulsive education in law and morality and participation in productive labor in order to rid them of their vice for a term of six months to two years. Specific measures are stipulated by the State Council."<sup>35</sup> In 1993, the State Council promulgated the Measure on the Custody and Education of Prostitutes and their Clients ("the Measure"), which became the legal basis for this system.

In addition to the administrative penalties stipulated in the Law on Penalties for Administration of Public Security, this system authorizes public security organs to sentence sex workers and clients whose offenses do not qualify them for Re-education Through Labor to custodial sentences ranging from six months to two years. Sex workers are marked in state discourse as contaminated, and requiring rescue, discipline, and control.<sup>36</sup> The primary stated purpose of C&E is education and behavioral correction: 1) educating incarcerated individuals according to the principle of "education, persuasion, and rescue," 2) organizing their participation in labor, and 3) carrying out the testing and treatment of sexually transmitted diseases.<sup>37</sup>

The idea of the C&E system is rooted in the early days when the People's Republic of China (PRC) was established. After its founding in 1949, the PRC made serious and reportedly successful efforts at eradicating sex work. All brothels were closed and sex workers were put into female rehabilitation and treatment centers.<sup>38</sup> State propaganda highlighted the role of these facilities in reeducating, training and nurturing women to be self-sufficient new citizens.<sup>39</sup>

The economic liberalization launched by Reform and Opening<sup>40</sup> created conditions for the

<sup>35</sup> Standing Committee of the National People's Congress of the PRC, Decision of the Standing Committee of the NCP on Strictly Prohibiting Prostitution and the Visiting of Prostitutes [ 全国人大常委会关于严禁卖淫嫖娼的决定 ], September 4, 1991.

<sup>36</sup> Susanne Y.P. Choi, "State Control, Female Prostitution and HIV Prevention in China," *The China Quarterly* 205 (March 2011): 96-114.

<sup>37</sup> State Council of the People's Republic of China, Measure on the Custody and Education of Prostitutes and their Clients [ 卖淫嫖娼人员收容教育办法 ], September 4, 1993, articles 2 and 7.

<sup>38</sup> HIV and AIDS Data Hub, "Sex work & HIV China," August 2010.

<sup>39</sup> Choi, 96-114.

<sup>40</sup> After the People's Republic of China was founded in 1949, the Chinese government carried out a system of planned economy, and targets and quotas for various spheres of economic development were all set by the special "planning committees" of the state. The system limited the development of the economy and sapped its vitality and at the end of the 1970s, China's leaders made a decision to reform China's economic system, introducing capitalist market principles. The first stage of the reform in the late 1970s and early 1980s, involved the decollectivization of agriculture, the opening up of the country to foreign investment, and permission for entrepreneurs to start-up businesses. The second stage of the reform, in the late 1980s and 1990s, involved the privatization and contracting out of much state-owned industry and the lifting of price controls, protectionist policies, and regulations.

reestablishment of a flourishing sex industry. In the early 1980s, cities such as Shanghai and Wuhan had established C&E centers for the purpose of STD treatment and education of workers and clients of the sex industry. C&E centers were considered "an effective measure for suppressing and eradicating prostitution," and public security departments required all localities to "actively establish C&E centers for prostitutes and their clients."<sup>41</sup>

C&E work is carried out and overseen by the Ministry of Public Security which proposes, plans, manages, and budgets the establishment of C&E centers.<sup>42</sup> Some C&E centers are established within Re-education Through Labor centers.<sup>43</sup> Men and women are detained in separate quarters inside C&E centers.<sup>44</sup> Sex workers we interviewed said the C&E centers in which they were held had some 1,000 detainees.<sup>45</sup> According to an official at the Liaoning Province Public Security Bureau, some public security bureaus must meet a quota for the number of people held in C&E centers, which gives rise to "sting operations" and other improper law enforcement methods.<sup>46</sup>

The Chinese government does not publish regular updates on the number of people held in C&E centers, but, as of 2002, some 200 C&E centers for sex worker and their clients had been established throughout China, and 28,000 people were held in C&E that year. A total of more than 300,000 people were held in C&E from 1987 to 2000,<sup>47</sup> but the number of people in C&E has steadily decreased in recent years, resulting in the closure of some C&E centers.<sup>48</sup>

A 2007 survey conducted in a C&E center in Hangzhou City, Zhejiang Province, found that among 369 detained women, 62 percent came from impoverished regions, 55 percent had annual household incomes of less than 1,200 yuan (approximately US \$196), and 69.1 percent were engaged in the sex trade due to financial hardship. These women typically worked in lower-tier establishments such as hair salons, dance halls, or pedicure salons. They were poorly educated, most of them illiterate or with no more than a primary school

<sup>41</sup> Ministry of Public Security, "Minutes of Forum on Further Crack Down and Prohibit Prostitution," [进一步打击取缔卖淫嫖娼活动和做好收容教育工作座谈会纪要], June 2, 1988.

<sup>42</sup> The Measure, articles 3-4.

<sup>43</sup> Ministry of Public Security, "Minutes of Forum on Further Crack Down and Prohibit Prostitution" [进一步打击取缔卖淫嫖娼活动和做好收容教育工作座谈会纪要], states: "Wherever there is free space in a Re-education Through Labor [sic] center, initiative must be taken to consult the judicial department to make full use of the existing venue to open a Custody & Education center, where the judicial department will be responsible for managing education, with the cooperation of public security, civil administration, health, Women's Federation, and other departments."

<sup>44</sup> Ministry of Public Security, Measure for Management of Custody and Education Centers, promulgated April 24, 2000, Article 19.

<sup>45</sup> Interview with Fang, May 12, 2013; interview with Lian, May 26, 2013; interview with Lu, June 18, 2013; interview with Xiao Cao, July 6, 2013; interview with Xiaohong, October 10, 2013.

<sup>46</sup> Gao Fan, "Liaoning Specified 14 Categories of Prostitution that do not send to Custody and Education" [辽宁规定14类卖淫嫖娼者不予收容教育], Xinhua News Agency, November 4, 2006, [http://news.xinhuanet.com/legal/2006-11/14/content\\_5328884.htm](http://news.xinhuanet.com/legal/2006-11/14/content_5328884.htm) (accessed October 7, 2013).

<sup>47</sup> Xing Jing, "The Procedure of Custody and Education—From the Perspective of Due Process" [收容教育程序研究——以正当程序的视角]. Zhengzhou University, April 2010.

<sup>48</sup> Zhan Wei, "A Study on China's Custody and Education System for Prostitutes" [中国对卖淫嫖娼人员收容教育制度的研究报告], in *To Refrain From The Restrictions of Personal Freedom* [限制对人身自由的限制——中国行政性限制人身自由法律处分的法治建设], ed. Guo Jian'an and Zheng Xiaze, (Beijing: Law Press China, 2005), 416-466.

education.<sup>49</sup>

The Public Security Ministry in 2000 tabled the Measures for Management of Custody & Education Centers, which outlines the conditions that C&E centers must meet. These include the deployment of female police officers, the provision of educational opportunities, and the provision of testing and treatment for STDs.<sup>50</sup> In addition, the Public Security Ministry in the same year issued the "Measures for Graded Evaluation of Custody and Education Centers," which evaluated C&E centers into Class 1, Class 2, Class 3, and substandard facilities.<sup>51</sup>

### Human Rights Violations

Our research focused on police treatment of sex workers during the arrest and investigation stage; and the detainees' treatment and experiences in the C&E center. We found that sex workers reported a range of abuses by the police, including taking photographs as evidence, physical violence to intimidate them into admitting and signing the interview record, as well as police extortion of bribes from sex workers.

Life in the C&E center is also not easy for sex workers. Detainees spend most of their time doing manual labor that generates profit for the center but not for themselves; the limited education provided in the center becomes a superficial formality because of the time demands of labor- and profit-oriented activities. It is rarely for detainees to acquire skills that they can use to support themselves following release. Additionally, detainees have to pay for their stay in the center, as well as medical examinations and treatment. The center imposes strict rules for detainees who are not even prisoners. Some interviewees report that they were sickened because of the strict rules on toilets. They also face restrictions on external communications.

#### Excessive Use of Force by Police

*Several men ganged up on beating me. Some hit my head, some my body, and some pulled my hair. One yelled, "Fuck you, you shameless thing!" They beat me for at least ten minutes.*

– Hong, April 20, 2013

Sex workers encounter all types of improper behavior from law enforcement officers. Our interviews found that police officers forcibly photographed sex workers and their clients as

<sup>49</sup> Yao Shuijuan, "An Analysis of the Factors of Entering Prostitution, Health Knowledge, Behavior Characteristics and Sexual Health Education Among Prostitution" [暗娼从业因素、健康知识、行为特征及性健康教育评析], in 2007 Zhejiang Province STD&HIV/AIDS Prevention and Control Academic Annual Conference [浙江省性病艾滋病防治学术年会], 2007.

<sup>50</sup> Ministry of Public Security, Measure for Management of Custody and Education Centers [收容教育所管理办法], promulgated April 24, 2000, articles 12, 34, 35 and 43.

<sup>51</sup> Ministry of Public Security, Measure on Graded Evaluation of Custody and Education Centers [收容教育所等级评定办法], 2000.

evidence, as well as physically and verbally abusing them.

### ***Taking Photographs as Evidence***

Chinese law does not expressly stipulate what is allowable as evidence of sex work. However, in order to constitute the administrative offense of prostitution, two factors must be present: the occurrence of sexual relations, and a financial transaction. Because of the difficulty in obtaining evidence, it is hard to prove both factors in the same instance, so police officers often use different means to obtain evidence. Our research found that police officers forcibly photographed sex workers and their clients for the purpose of evidence, in disregard of their dignity and privacy.

Lin, employed at a pedicure salon, was serving a customer when the police burst in:

Four people rushed in and lifted up my skirt to take a picture. I twisted away with all my strength, but in the end I'm just a weak woman, and finally they tore off all my clothes. I was totally naked, not wearing a stitch, when they took the pictures.<sup>52</sup>

Hong likewise had her pants forcibly removed before she was photographed:

The police kicked the door in and I quickly pulled my pants on, but my client didn't have time. Several men came in, and only the last one was wearing a police uniform. The men in plain clothes came over and pulled my pants off so I was completely exposed, then they took pictures.<sup>53</sup>

Forty-seven-year-old Lingling, from the northeast, recalls:

When the police came in they pulled off the client's pants and saw he was still wearing a condom. The police tore my clothes to expose my breasts and then photographed me with the client.<sup>54</sup>

Stripping off a person's clothing and photographing them to secure evidence violated basic human dignity. Article 38 of the Constitution of the PRC states that the personal dignity of citizens of the People's Republic of China is inviolable.<sup>55</sup> In fact, the photographs that police take only prove that sexual relations have occurred and are not proof of a financial exchange, and therefore cannot establish a crime of prostitution for punishment. Even more important is the fact that police investigation to secure evidence must be reasonable and lawful. Article 37 of the Procedural Provisions for the Handling of Administrative Cases by

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<sup>52</sup> Interview with Lin, January 22, 2013.

<sup>53</sup> Interview with Hong, April 20, 2013.

<sup>54</sup> Interview with Lingling, March 16, 2013.

<sup>55</sup> Constitution of the People's Republic of China, Article 38.

Public Security Organs stipulates: "When conducting investigation on administrative cases, the collective of evidence should be lawful, timely, objectives and comprehensive, and should be reviewed and verified."<sup>56</sup>

### ***Violent Treatment at the Investigation Stage***

After being removed from the scene, sex workers and their clients are taken to a dispatch office or police station for interrogation and investigation. Sex workers we interviewed said that police officers used violence to force them to admit to prostitution. Unable to bear the pain of beating, these women were compelled to confess.

Thirty-seven-year-old Lian, a native of Guizhou, was taken to the local police station after accepting a client for a fee of 70 yuan (US \$11) late one night:

They took me to another room, where there was a bunk bed, and they handcuffed me to the frame of the upper bunk. The tall, fat policeman who had arrested me smacked my face with a flip-flop to make me confess. I still refused to talk. Then he poured mustard oil into my nose, and he punched my stomach with a very large, thick book... After beating me for a while, they left, but they came back a short time later to beat me, and they did this over and over again for a very long time. I really couldn't bear it and even longed for death; finally I confessed.<sup>57</sup>

After Xiao Cao was taken to the dispatch station, four police officers struck her with electric prods when she refused to confess to prostitution:

Four policemen took me to a room with a bed in it, and they pushed me onto the bed and used an electric prod this long [gesturing to indicate a length of 20-30 cm] to shock me on my hands, neck, thighs, and armpits. The pain was unbearable, as if I were being stuck with needles all over. I cried out for help, and they covered my mouth so I couldn't shout... They grabbed the electric prod, and it was making this buzzing sound, and they brought it close to my face. That was the pain I feared most, and that they would disfigure my face, so I confessed.<sup>58</sup>

Violence occurs not only at the interrogation stage; some interviewees said that police officers used violence and beating to force them to sign the record of interview. Yan, from Jiangxi, was arrested when a client turned her in. The police arrived at her workplace two days later and took her to the dispatch station:

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<sup>56</sup> Procedural Provisions for the Handling of Administrative Cases by Public Security Organs, Article 37.

<sup>57</sup> Interview with Lian, May 26, 2013.

<sup>58</sup> Interview with Xiao Cao, July 6, 2013.

The police read out the record of interview to me; it was about prostitution. Since they hadn't arrested me in the act [at a vice den], I said I didn't do it. Two policemen beat me, smashed my head against the wall and kicked me to force me to sign it. I said I wouldn't sign it, so the two grabbed my hand and made me sign. I intentionally grabbed the pen and tore the paper with it, and for doing that I was viciously beaten.<sup>59</sup>

This police violence against sex workers clearly violates relevant domestic law. Article 24 of the Procedural Provisions for the Handling of Administrative Cases by Public Security Organs stipulates: "Extortion of a confession by torture or collecting evidence by threat, deceit, or other unlawful means is strictly prohibited."<sup>60</sup> Statements or pleas collected from a suspect through the extortion of confession by torture or other unlawful means, or statements collected from a victim or testimony from other witnesses obtained through violence, threat, or other unlawful means, also cannot be used as the basis for a judgment.<sup>61</sup> Article 22 of the PRC People's Police Law stipulates that the police may not extort confession by torture or subject offenders to corporal punishment or maltreatment; they may not beat a person or instigate another to do so.<sup>62</sup>

Police violence against sex workers also violates international norms. Article 5 of The Universal Declaration of Human Rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>63</sup> China in 1988 acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This convention defines torture as "any act inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining information or a confession or for other reasons."<sup>64</sup> The violent extortion of confessions from sex workers by police constitutes torture. The Convention also obligates State parties to adopt effective legislative, administrative, judicial, or other measures to prevent torture being committed anywhere under its jurisdiction.<sup>65</sup>

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<sup>59</sup> Interview with Yan, November 7, 2012.

<sup>60</sup> Procedural Provisions for the Handling of Administrative Cases by Public Security Organs, Article 24.

<sup>61</sup> *Ibid.*

<sup>62</sup> National People's Congress, People's Police Law of the People's Republic of China [ 中华人民共和国警察法 ], adopted at the 12th Meeting of the Standing Committee of the Eighth National People's Congress on February 28, 1995, and promulgated by Order No. 40 of the President of the People's Republic of China on February 28, 1995.

<sup>63</sup> Universal Declaration of Human Rights, Article 5.

<sup>64</sup> United Nations General Assembly, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly (A/RES/39/46) on 10 December 1984, and came into force on June 26, 1987, Article 1.

<sup>65</sup> United Nations General Assembly, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2, Paragraph 1.

### **Extortion and Corruption**

C&E is an excessive penalty for such a minor offense as the provision of sexual services. The majority of sex workers are working without the knowledge of their families, and they are deeply concerned that being arrested and put into custody will expose this fact. Some sex workers are single mothers of small children, and when they are locked up, their children are left with no one to care for them.

Public security organs have considerable discretion over what form of administrative punishment to impose. They often take advantage of sex workers' unwillingness to be taken into custody to extort bribes from them. The law stipulates that the police can impose fines of up to 5,000 yuan (US \$833) on sex workers.<sup>66</sup> Our study found, however, that sex workers pay even larger amounts to the police and intermediaries.

Sex workers we interviewed said that as soon as they were arrested, action had to be taken before the local dispatch station referred the case to the next higher level for examination; once the case was referred to a higher level, it would be very difficult to reverse a decision for custody. Forty-six-year-old Niu, from Jilin, said:

After the police arrested me, my friend quickly use connections to find out which police station I'd been taken to, and paid the station chief 30,000 yuan (US \$4918). I'm lucky for my friend's prompt action. If they'd already sent the file up, all would have been lost, and no amount of money would have kept me from being put into custody.<sup>67</sup>

Sex workers at the bottom rung of society always need to use various connections to locate the person who can solve their problem. A complex web of interests binds the public security apparatus to the sex trade, and sex workers are the lowest and most heavily exploited element in this web. They not only have to pay bribes to the police, but also have to cover the costs of intermediaries. Xiao Yang, from Sichuan, was arrested once a few years ago, so when she was arrested again this year, she worried she would be sent to C&E:

When the police began interrogating me, they said my boss had found someone, and if I quickly confessed and paid up after giving a statement, I'd be released. That night they said they'd let me off for 15,000 yuan, but at that time my boss couldn't round up so much money. By the next day, the police were demanding 30,000. My boss borrowed 45,000 yuan (US \$7,377) from someone from my home village and several colleagues, paying the police 30,000 yuan (US \$4,918) and giving the other 15,000 yuan (US \$2,459) to the intermediary.<sup>68</sup>

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<sup>66</sup> Law on Penalties for Administration of Public Security, Article 66.

<sup>67</sup> Interview with Niu, September 23, 2013.

<sup>68</sup> Interview with Xiao Yang, March 25, 2013.

These extortionate bribes impose a heavy economic burden on sex workers and their families. Sometimes the entire family has to be mobilized to raise the required amount. After Lingling was arrested, her husband and daughter went around to everyone they knew and finally paid 70,000 yuan (US \$11,475) to have her released:

I'd saved up more than 30,000 yuan (US \$4,918) and planned to send it home for my son to pay off a loan shark, but now I had to spend it all. Then my son had to borrow another 10,000 yuan (US \$1,639), and my daughter put in 20,000 (US \$3,278) and my brother 10,000 (US \$1,639) so I could finally pull together 70,000 yuan.<sup>69</sup>

The experience of being arrested also inflicts psychological damage on sex workers. Lingling described her feelings after being released:

After I got out, whenever I was walking around and saw a policeman, my legs would go weak. When I got home and my husband wanted to do that with me, I didn't let him because I was afraid the police would come and arrest me. Sometimes I'd just rather be dead – thinking about this humiliating incident makes life seem meaningless.<sup>70</sup>

### Inside Custody and Education Centers

*The center I was in took on all kinds of jobs: wrapping disposable chopsticks, peeling garlic for dumpling shops, cutting rubber strips to mend tires... What kind of custody and education is this? It's nothing but forced labor.*

– Yi, January 15, 2013

### Forced Labor

In the late 1970s, China embarked on reforms of economic liberalization. Economic liberalization resulted in the decentralization of government, which was accompanied by the de-funding of local governments. Funding for public security and the related administrative apparatus declined, and the government budget was inadequate to cover outlay. For this reason, these organs were forced to identify external sources of funding.<sup>71</sup> This change affected the operation of C&E centers directly managed by the public security organs, and distorted the purpose of C&E.

The 'Measure' requires persons held under C&E to take part in productive labor. The income obtained from that labor is used to improve the living conditions of detainees and the C&E

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<sup>69</sup> Interview with Lingling, March 16, 2013.

<sup>70</sup> *Ibid.*

<sup>71</sup> Fu Hualing et al, "Administrative Detention of Prostitutes."

facilities.<sup>72</sup>

Interviewees said that almost all their time in the C&E centers was taken up with labor, and that even after completing their work assignments, they often had to put in overtime.

Twenty-three-year-old Fang, from Guizhou, said she was held in C&E for half a year:

One month [after being sent to C&E], I was sent down every day to labor. It was folding paper bags used to wipe dogs' bottoms – I heard it was for export to Japan. There were 50 to a packet, and every day I had to fold 1,250 little paper bags and 1,300 large paper bags. If you didn't meet the quota, you had points docked, and docking points meant being held for several days longer.<sup>73</sup>

Xiao Lan's job was making cloth toys:

We were all making cloth toys – horses, tigers, whatever. I'd get up every morning at 6 o'clock, eat at 7, then go to work until 11, take a noon rest, then start up again at 2 o'clock, and then again at night from 7 to 11 o'clock. We had to work nights, too, because there was always work to get done. An order would arrive requiring so many items to be completed in a few days, and we had to get them done. I worked nine hours each day.<sup>74</sup>

Detainees are not paid any kind of wages for their labor in the C&E center. Article 13 of the Measure stipulates: "Persons held in custody who engage in productive labor may be paid a working wage according to the provisions."<sup>75</sup> The sex workers we interviewed said they were never paid any kind of wages. The C&E encouraged them to work hard by offering early release in return.

Lian, from Guizhou, said:

We weren't paid for our work, but if you work more, you could deduct a few days. I worked hard in hopes of getting out early. In the end I worked off three days.<sup>76</sup>

Yi said that C&E center staff exaggerated the amount of time that would be deducted from custody in order to get her to work harder:

They didn't give me any wages. At the outset, the corrections staff said whoever worked hardest would get out a month early, so I killed myself cutting [rubber strips]. I

<sup>72</sup> The Measure, Article 13.

<sup>73</sup> Interview with Fang, May 12, 2013.

<sup>74</sup> Interview with Xiao Lan, December 26, 2012.

<sup>75</sup> The Measure, Article 13.

<sup>76</sup> Interview with Lian, May 26, 2013.

cut more than anyone else, but when I asked her about it, I knew I'd been cheated. She said there was no way I could get out a month early, but she gave me six days. I have no idea how they calculated how many days to deduct.<sup>77</sup>

The work carried out by detainees was all for jobs undertaken by the C&E centers. The C&E centers handed their assignments directly to the detainees and used detainees' labor to create income for the centers. Haige, the law enforcement officer, said:

There are profit markets inside the C&E centers also. The work carried out by people sent to the centers is accepted from outside by the C&E center management. One hundred percent is kept by the C&E center, and the workers don't get a cent.<sup>78</sup>

Forced labor without pay violates the International Covenant on Civil and Political Rights. The Covenant stipulates that no one should be forced or coerced into working. The use of penal labor in custody as a punishment for a crime requires a proper judgment from the courts.<sup>79</sup>

According to the UN's Standard Minimum Rules for the Treatment of Prisoners, work assigned in prison should "maintain or increase the prisoner's ability to earn an honest living after release." It further states, "The interests of the prisoners and of their vocational training... must not be subordinated to the purpose of making a financial profit from an industry in the institution," and that "[t]here shall be a system of equitable remuneration of the work of prisoners."<sup>80</sup> While detainees in C&E centers are not actually prisoners, since they were never sentenced by a court, the standards in C&E centers are harsher than in prisons.

### ***Inadequate Education in the C&E Centers***

One of the main stated objectives of C&E is to provide detainees with education to eliminate illiteracy and provide technical training so that they can master a skill to support themselves following release. Asia Catalyst found that the C&E centers do carry out some efforts to provide education to detainees, including literacy and STD&HIV knowledge. However, given the emphasis on labor and profit in C&E centers, education has become a burden for detainees and often a mere formality.

From Asia Catalyst's research, it became apparent that when detainees first enter a C&E center, the emphasis is on making them "obey" and "follow the rules"; they are required

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<sup>77</sup> Interview with Yi, January 15, 2013.

<sup>78</sup> Interview with Haige, May 30, 2013.

<sup>79</sup> International Covenant on Civil and Political Rights, Article 8, Paragraph 3.

<sup>80</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders, "Standard Minimum Rules for the Treatment of Prisoners," adopted and approved by the Economic and Social Council by resolutions 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977.

to memorize the Behavior Rules for Custody and Education Centers as one of their main tasks. Under some circumstances, this is supplemented with the much harsher practice of "benching" to make stubborn detainees more compliant.

The first time she was arrested, Lin was sent to C&E for half a year. She says:

The first month at the C&E center, I had to memorize the rules [Behavior Rules for Custody and Education Centers]. While memorizing I had to sit on small plastic bench about 20-30 cm high. I had to sit with my back straight and without slouching or extending my legs – it was terrible. At first, sitting like that was very painful, but eventually my buttocks developed dark calluses, and it didn't hurt any more.<sup>81</sup>

Yan came from Jiangxi with her two children. She said:

When I entered into the C&E center, the first two weeks was "education time." We had to wake up at dawn every day, eat breakfast, and then write out the thirty-three rules [from the Behavior Rules for Custody and Education Centers] one by one. The ones who knew how to write had to teach the ones who didn't know, two people to a group. I didn't know how to write, but I learned to write the rules very well, page after page in a notebook. We sat on the bench. Then a noon meal, a break, and then back to writing in the afternoon.<sup>82</sup>

In addition, the C&E center will invite teachers to give classes to detainees on legal issues relating to sex work, and on STDs and HIV/AIDS.

Meizi said:

When I first went in, I had to memorize the thirty-three rules. Then someone came from a university to give lectures, forty-five minutes each time, seven or eight times. It was all about laws relating to prostitution, STDs, the Marriage Law, stuff like that—I don't remember.<sup>83</sup>

Xiao Lan said:

When I first went in, I had to go to classes for a week. They were all taught by a policeman from the center. He didn't give us a textbook but issued notebooks to us, and we had to write down whatever he said. He talked about AIDS, health, and the law. He taught us we couldn't do that [sex work] and had to turn ourselves around, because this work was dangerous and could lead to us getting raped or murdered. He didn't tell

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<sup>81</sup> Interview with Lin, January 22, 2013.

<sup>82</sup> Interview with Yan, November 7, 2012.

<sup>83</sup> Interview with Meizi, July 6, 2013.

us everything about the law, but talked about the thirty-three rules, which were related to this [sex work], and we had to memorize them.<sup>84</sup>

According to the Measures for Management of Custody & Education Centers, C&E centers under certain conditions can organize vocational training for detainees.<sup>85</sup> But this training is often just to satisfy inspections by supervisors. Yan said:

We only had training classes when leaders were making inspections. We learned all kinds of things, computer and so on. I learned to read because I'm illiterate. Without inspections by leaders, we wouldn't have had those classes.<sup>86</sup>

Interviewees felt that the results of their education in the C&E centers were very limited. After half a year in a C&E center, Xiao Lan said, "I felt it was useless locking us up. The classes about AIDS were very useful and helped us understand what kind of disease it was, but everything else I forgot—I just worked."<sup>87</sup>

Although the Chinese government has been cracking down on sex work, the number of sex workers continues to rise.<sup>88</sup> C&E has not met the expectations of policymakers in reducing the number of sex workers. Detainees also have no way of receiving effective vocational training. Given that detainees are required to cover their own living expenses in custody, it's hard to imagine that this kind of education can be effective. All of the sex workers we interviewed returned to the sex industry as soon as they left the C&E center. As Hong from Sichuan put it: "I feel we were taken into custody just for the money. What's this about educating us to correct our view of life? How many come out and don't go right back to work? If we don't do this, how can we make a living?"<sup>89</sup>

### ***Charging Fees in C&E Centers***

Unlike other forms of custody such as RTL, detention centers, and prisons, living expenses inside C&E centers have to be covered by the detainees themselves. The 'Measure' stipulates: "The living expenses of individuals being held in Custody & Education are generally charged to the inmate or the inmate's family."<sup>90</sup> In cases of genuine hardship, the C&E center may petition the local department of finance to resolve it. The merchandise pricing departments of public security bureaus set the standard rates and charges in accordance with local standards.<sup>91</sup>

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<sup>84</sup> Interview with Xiao Lan, December 26, 2012.

<sup>85</sup> Measures for Management of Custody & Education Centers, Article 36.

<sup>86</sup> Interview with Yan, November 7, 2012.

<sup>87</sup> Interview with Xiao Lan, December 26, 2012.

<sup>88</sup> Yi, Mantell, et al.

<sup>89</sup> Interview with Hong, April 20, 2013.

<sup>90</sup> The Measure, Article 14.

<sup>91</sup> The Measure, Article 39.

Our study reflects the charging practices in some localities. Interviewees said that when first admitted to a C&E center, they were required to pay 1,900 yuan (US \$311 USD), which included "monthly living expenses of 200 yuan (US \$33)" (for six months it is 1200 yuan(US \$197)and an additional 700 yuan (US \$115) for "bedding, uniforms, a washbasin," and other daily articles they were required to purchase.<sup>92</sup>

Before paying this money, detainees are still kept and fed at the C&E center, but their treatment is different. Given that most sex workers conceal their work from their families, and arrests occur without warning, most are not carrying the necessary funds at the time of their arrest. They are therefore obliged to borrow from friends or employers after arriving at the C&E center. Some interviewees described the hardship encountered before this payment can be made.

One interviewee nicknamed Henan Sister said: "People who couldn't pay 1,900 yuan (US \$311) were only given steamed buns to eat, while those who paid up got buns and rice. Everyone got vegetables, but others got meat or an egg while I didn't."<sup>93</sup> She had an even more discomfoting experience:

I'd just joined a group [work team] for a couple of days when my time came [menstruation]. I didn't have money for sanitary pads, because the 200-plus yuan (US \$33) I had on me when I was arrested wasn't enough for the first payment. You have to pay 1,900 yuan (US \$311) the first time, and if you don't have that, you can't buy things. I was panicking, so I did some work for other sisters, massaging their legs and so on, so they would give me a packet of sanitary pads.<sup>94</sup>

The money paid to the C&E center is to cover basic living expenses while the purchase of other necessary items or better food requires more money. The endless stream of detainees into C&E centers becomes a consumer market. Interviewees told us that the items they purchased inside the C&E centers cost several times more than what they would pay outside. Interviewees said that half a year in C&E typically cost them 5,000) to 10,000 yuan ((US \$820 to \$1639).

Hong said:

It's expensive inside—a bottle of detergent costs 10 yuan (US \$1.60), when it's only around 3 yuan (US \$0.5) outside. Whenever I bought things, I had to spend 300 or 500 yuan (US \$50-\$82). By the time I got out, I'd spent the full 6,000 yuan (US \$984) my friends had loaned me. If you don't pay up when you come in, you have to come up

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<sup>92</sup> Interview with Fang, May 12, 2013.

<sup>93</sup> Interview with Henan Sister, May 30, 2013.

<sup>94</sup> Interview with Henan Sister, May 30, 2013.

with the money before you're released." <sup>95</sup>

Xiao Lan spent even more in the C&E center:

You have to pay for everything inside, and things cost triple what they do outside. You have to be rich to be in prison; otherwise you can't afford to be there. Your family has to come up with the money. I spent more than 10,000 yuan (US \$1639) in half a year. <sup>96</sup>

Part of the reason why C&E centers make detainees work and charge them for their living expenses and medical examinations and treatment (discussed below) is that the centers themselves aren't guaranteed adequate funding for their operations. Many C&E centers operate on very tight budgets or without adequate material resources. Since many detainees are themselves impoverished, they can't pay for their own upkeep, and the C&E center is obliged to bear their costs. In 2004, one Shanghai C&E center was more than 80,000 yuan (US \$13,115) in arrears for medical and living expenses. <sup>97</sup>

### ***Medical Examinations and Treatment***

The C&E system requires detainees to undergo compulsory testing and treatment for sexually-transmitted diseases. Article 10 of the 'Measure' stipulates that "testing and treatment for sexually transmitted diseases shall be carried out. The cost of testing and treatment for sexually transmitted diseases will generally be covered by detainees or their families." <sup>98</sup> The 'Measure' does not require detainees' informed consent, and detainees have no right to refuse testing or treatment.

Interviewees said their informed consent was not obtained for these tests, and they were not told the results. Detainees found to have STDs were simply isolated from the others for treatment.

Xiao Lan said:

I was given an exam in the detention center and in the C&E center. I had to pay more than 500 yuan. They took blood samples and tested for syphilis and so on. There was no counseling and they didn't give us an examination report. The ones found to be sick had their names called and were all held in one building. Those whose names weren't called weren't sick. <sup>99</sup>

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<sup>95</sup> Interview with Hong, April 20, 2013.

<sup>96</sup> Interview with Xiao Lan, December 26, 2012.

<sup>97</sup> Zhan Wei.

<sup>98</sup> The Measure, Article 10.

<sup>99</sup> Interview with Xiao Lan, December 26, 2012.

Xiao Cao said:

Later they tested for STDs, but they didn't say which one, just that it was for STDs. They took blood samples, checked you down there, took urine samples, that's all. The ones who tested positive were all put in one room. The testing fee was something like 170 yuan (US \$29).<sup>100</sup>

Detainees have to cover the full cost of medical examinations and treatment. Lian tested positive for an STD while at a C&E center:

I tested positive for gonorrhoea. They gave me two injections and I took medicine for a week. Later I found out the cost of the testing and treatment was deducted from my funds, a total of more than 500 yuan (US \$82).<sup>101</sup>

The compulsory testing and treatment carried out in C&E centers violates detainees' right to health. The United Nations General Comment No. 14 on the right to the highest attainable standard of health points out: "The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body... and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation."<sup>102</sup>

Non-consensual testing and treatment also violates internationally accepted principles on medical examinations. UNAIDS and the World Health Organization hold that confidentiality, counseling, and informed consent are the fundamental principles of testing for HIV/AIDS. These principles require that the person undergoing examination and testing must understand the process and clearly express consent to undergo it. The examination should be confidential and accompanied by appropriate pre- and post-examination counseling. WHO and UNAIDS do not support carrying out mandatory or compulsory examination and testing for STDs on public health grounds.<sup>103</sup>

The lack of a counseling process and not being notified of the testing results is not conducive to an understanding of one's illness or personal condition. Before examination and testing are carried out, a detainee's informed consent should be obtained, and s/he should be told the results. Regardless of the results, detainees should be provided with effective counseling.

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<sup>100</sup> Interview with Xiao Cao, July 6, 2013.

<sup>101</sup> Interview with Lian, May 26, 2013.

<sup>102</sup> Committee on Economic, Social and Cultural Rights, General Comment 14 on the Right to the Highest Attainable Standard of Health (E/C.12/2000/4) UN Doc. HRI/GEN/1/Rev.7(2004). Paragraph 8, <http://www.unhcr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En?OpenDocument>.

<sup>103</sup> World Health Organization and UNAIDS, "Statement on HIV Testing and Counseling," November 28, 2012, [http://www.who.int/hiv/events/2012/world\\_aids\\_day/hiv\\_testing\\_counselling/en/index.html](http://www.who.int/hiv/events/2012/world_aids_day/hiv_testing_counselling/en/index.html).

### **Toilet Privileges, Letters and Visits**

In the C&E centers, sex workers' rest, labor, and education are strictly managed, along with a basic human physiological need, using the restroom. Interviewees said they were given restroom access only at fixed times. The greatest hardship was a prohibition against defecation at night; many suffered medical disorders as a result. Meizi, who raised her children alone after her husband left, told Asia Catalyst:

[In the C&E center,] we could only go to the toilet at certain times: from 6:30 to 7:00 in the morning, at 11:30 in the morning, and at 5:30 in the evening. Any other time, we had to ask permission, and that would depend on the section head's mood. If she was in a good mood, she'd let you go, but if she was in a bad mood, you had to hold it. We weren't allowed to defecate at night, because the toilet was outside and the cells were locked at night, and we were just given two basins to use in the cell. I eventually developed cystitis.<sup>104</sup>

Lu worried about needing the restroom at night, so she didn't dare eat too much: "I ate very little at noon and in the evening, because we couldn't use the toilet at night."<sup>105</sup>

Article 7 of the International Covenant on Civil and Political Rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>106</sup> Persons detained in C&E are not criminals, and such strictly controlled access to the toilet is not consistent with C&E being an administrative compulsory education measure. Restrictions that cause illness among detainees violate the purpose of C&E.

Persons held in C&E are allowed to communicate with the outside world by telephone, visits, and letters, but they also face restrictions. Detainees are allowed to telephone family members or friends at set times. Some interviewees said that they were only allowed to speak Mandarin when making phone calls. This is a challenge to some women from remote rural areas who have come to the cities to work.

Fang, from Guizhou, said:

After one month I was allowed to telephone my family. The guard told us each person was allowed only three minutes, and we could only use Mandarin so the guard could understand what we were saying. I was careless and out of habit I spoke to my husband in our native dialect, and the guard disconnected the phone.<sup>107</sup>

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<sup>104</sup> Interview with Meizi, July 6, 2013.

<sup>105</sup> Interview with Lu, June 18, 2013.

<sup>106</sup> International Covenant on Civil and Political Rights, Article 7.

<sup>107</sup> Interview with Fang, May 12, 2013.

Detainees are allowed to receive letters from outside, but our interviewees said they had no real privacy. Hong said:

If a letter came from home, we had to read it in the presence of a guard, and the letter wasn't in an envelope – it had already been opened. When we finished reading, we had to give it back to the guard and couldn't keep it with us. We weren't allowed to write back.<sup>108</sup>

In addition, some C&E centers charge visitors a fee. When a staff member of our partner organization went to a C&E center to visit an interviewee during the survey period, after being granted permission to enter the reception room, she was required to pay 200 yuan (US \$33). No one told her what the 200 yuan was for, and she was not given a receipt. When she visited the detainee, the C&E center gave her some fruit and a drink, but the value of these items was not even close to 200 yuan.

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<sup>108</sup> Interview with Hong, April 20, 2013.

## IV Legal Analysis

### Conflict between C&E and International and Domestic Law

Under the C&E system, sex workers and their clients are arrested and then taken into custody for periods exceeding six months without recourse to the courts. As a form of administrative detention, individuals held in the C&E system are not entitled to the protections for criminal suspects guaranteed in the Chinese Criminal Procedure Law.<sup>109</sup> Their personal freedom is restrained without due process, which constitutes arbitrary detention and a violation of their right to a fair trial.

The Universal Declaration of Human Rights, a backbone document of international customary human rights law, includes human rights protections in the case of detention and arrest. Article 9 states: "No one shall be subjected to arbitrary arrest, detention or exile." Article 10 states: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."<sup>110</sup>

Furthermore, the People's Republic of China (PRC) became a signatory to the International Covenant on Civil and Political Rights (ICCPR) in 1998, and is making preparatory steps for its ratification.<sup>111</sup> As a signatory, China is required to "refrain from acts which would defeat the object of purpose" of the treaty.<sup>112</sup> Article 9 of the Convention stipulates the following:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.<sup>113</sup>

Article 14 stipulates the following:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial

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<sup>109</sup> United Nations Working Group on Arbitrary Detention, Report of the Mission to China (E/CN.4/2005/6/Add.4), December 29, 2004.

<sup>110</sup> United Nations General Assembly, Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), December 10, 1948, articles 9-10.

<sup>111</sup> United Nations Working Group on Arbitrary Detention, Report of the Mission to China (E/CN.4/2005/6/Add.4), December 29, 2004. .

<sup>112</sup> Vienna Convention of the Law of Treaties, United Nations, Treaty Series, vol.1155, p.331, entered into force on January 27, 1980, Article 18.

<sup>113</sup> United Nations General Assembly, International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) on December 16, 1966, entry into force March 23, 1976, Article 9.

tribunal established by law.<sup>114</sup>

This kind of arbitrary deprivation of personal liberty also violates the Constitution of the People's Republic of China. Article 37 of the Constitution states the following:

The freedom of the person of citizens of the People's Republic of China is inviolable.

No citizen may be arrested except with the approval or by decision of a people's procuratorate<sup>115</sup> or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of the person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.<sup>116</sup>

C&E is decided and carried out by public security organs without the intervention of the procuratorates or courts. This is in clear violation of the letter and spirit of the PRC Constitution.

The United Nations Working Group on Arbitrary Detention noted in its 2005 report on its mission to China: "There exists no genuine right to challenge administrative detention.... [...] As far as minor administrative offences are concerned, it [the Working Group] recommends that all conduct subject to sanction be described in great detail, and that all persons deprived of their liberty on account of administrative offences be guaranteed a public and adversarial trial."<sup>117</sup>

The Working Group report also stressed that the fact that China classified RTL as an administrative penalty does not affect its responsibility to ensure due process: "International law provisions and standards referred to above require that everyone deprived of his/her liberty should be given an opportunity to contest before a court the lawfulness of the detention. The fact that the legal system of China classifies re-education through labor [sic] as an administrative deprivation of liberty as opposed to judicial deprivation of liberty governed by criminal law, does not affect China's obligation to ensure judicial control over this form of deprivation of liberty."<sup>118</sup>

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<sup>114</sup> International Covenant on Civil and Political Rights, Article 14.

<sup>115</sup> The people's procuratorates in China are state organs of legal supervision. Their organization corresponds to that of the people's courts. The people's procuratorates have the right to exercise procuratorial authority. They exercise this authority over cases endangering state and public security, damaging economic order and infringing citizens' personal and democratic rights, and other important criminal cases; examine cases scheduled for investigation by the public security agencies, decide on whether a suspect should be arrested or not, and whether a case should be prosecuted or exempt from prosecution; institute and support public prosecution in criminal cases; and oversee the activities of public security agencies, people's courts, prisons, houses of detention and reform-through-labor institutions.

<sup>116</sup> Constitution of the People's Republic of China, adopted on December 4, 1982, Article 37.

<sup>117</sup> United Nations Working Group on Arbitrary Detention, Report of the Mission to China (E/CN.4/2005/6/Add.4), December 29, 2004. .

<sup>118</sup> *Ibid.*

One serious problem with the C&E system is that it lacks a solid legal foundation. In China, the National People's Congress and its Standing Committee exercise the legislative power of the State.<sup>119</sup> Article 8 of the 2000 Law on Legislation stipulates that mandatory measures and penalties that deprive citizens of their political rights or restrict the freedom of their person must be governed by law.<sup>120</sup> Article 9 of the Law on Legislation goes a step further by stipulating that the National People's Congress or its Standing Committee may authorize the State Council to formulate some administrative regulations, but it excludes delegating authority for compulsory measures and penalties that deprive citizens of their political rights or restrict the freedom of their persons.<sup>121</sup> Article 9 of the Law of the People's Republic of China on Administrative Penalty, promulgated in 1996, likewise stipulates, "Administrative penalties that restrict the freedom of the person shall only be created by law."<sup>122</sup> Compulsory measures and punishments that restrict citizens' personal freedom can therefore only be enacted into law by the National People's Congress and its Standing Committee.

Do the documents that define the C&E system qualify as laws? The 1991 Decision by the Standing Committee of the NPC was the first to propose the C&E system, and it confers authority on the State Council to establish concrete measures for C&E. The State Council promulgated the related 'Measure' in 1993. In the 'Decision', the Standing clearly violates the Law on Legislation by authorizing the State Council to issue the 'Measure' on C&E, which restricts citizens' freedom for up to two years. As the 'Measure' is a type of State Council regulation it is therefore different from national laws that are formulated and passed by the National People's Congress or its Standing Committee.

In addition, the 'Measure' prescribes C&E as an interim measure between a public order penalty and RTL.<sup>123</sup> As the Law on Penalties for Administration of Public Security has removed RTL for sex workers and their clients and the Chinese government has already announced it will abolish RTL, we cannot ignore the existence of other measures such as C&E and allow their continued application.

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<sup>119</sup> Legislation Law of the People's Republic of China [ 中华人民共和国立法法 ], adopted at the Third Session of the Ninth National People's Congress on March 15, 2000, Article 7.

<sup>120</sup> *Ibid.*, Article 8.

<sup>121</sup> *Ibid.*, Article 9.

<sup>122</sup> National People's Congress, Law of the People's Republic of China on Penalties for Administrative Penalty [ 中华人民共和国行政处罚法 ], adopted at the Fourth Session of the Eighth National People's Congress on March 17, 1996, and promulgated by Order No. 63 of the President of the People's Republic of China on March 17, 1996, Article 9.

<sup>123</sup> The original text states that with regards to sex worker and their clients, apart from the penalties stipulated under Article 30 of the Law of the People's Republic of China on Penalties for Administration of Public Security, where Re-education Through Labor is not warranted, the public security organ may decide to impose Custody & Education. The 2011 State Council Resolution Regarding Scrapping and Amending a Portion of Administrative Regulations amended this to read "apart from the penalties stipulated under Article 66 of the Law of the People's Republic of China on Penalties for Administration of Public Security" (emphasis added).

### **C&E's Violation of Due Process**

In Article 9 of the 'Measure', the approval procedures for C&E are quite vague, but it makes clear that public security organs possess all decision-making power regarding C&E. Article 8 of the Measure stipulates the following regarding the process of C&E:

The implementation of Custody & Education toward sex workers and their clients is decided by public security organs at the county level or above. The county-level public security organ that decides to implement Custody & Education must fill out a Custody & Education Decision form. A copy of the Custody & Education Decision form must be provided to the individual who is taken into Custody & Education, and within 15 days of the date of the Decision, notification must be provided to the individual's family, work unit, and local public security dispatch office.<sup>124</sup>

In this process, there is no external oversight, nor is there a requirement to submit an application for review and approval by a judicial organ. Whereas the constitution and the criminal justice system in China provide the basis for a public trial, judicial process, and a right to appeal, administrative detention has no parallel system of checks and balances.<sup>125</sup>

According to Haige, the law enforcement officer we interviewed, the actual implementation of the C&E process in his city follows these steps:

- 1). The Public Security Bureau (PSB) office that handles the investigation of cases sends the individual's case files to the legal division of the PSB at a superior level.
- 2). The legal division of the PSB approves the decision of 14-day administrative detention and C&E.
- 3). If the legal division of the PSB decides not to impose C&E, the Public Security Bureau office that handles the investigation of cases has to submit the case to the legal division of the Public Security Bureau Public Security Management Corps, which then hands down a decision on whether or not to impose a C&E sentence.<sup>126</sup>

The public security organs are also responsible for examining and verifying applications for reconsideration of C&E cases. Article 20 of the 'Measure' stipulates that if a person is dissatisfied with a decision to be placed under C&E, s/he may, in accordance with the Regulations on Administrative Reconsideration, appeal for review by the next higher level of public security organ. In other words, the same body is responsible for issuing the decision, the examination carried out by the public security apparatus, and the reconsideration

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<sup>124</sup> The Measure, Article 8.

<sup>125</sup> Tucker, Xin and Sapio.

<sup>126</sup> Interview with Haige, May 30, 2013.

process.

According to Haige, applications in his city for administrative redress by persons in C&E are categorically refused.<sup>127</sup> None of the sex workers we interviewed had applied for a review of their case; one person summarized the general feeling by stating: "What's the point of applying for a review when there's no chance of success?"<sup>128</sup>

The decision for early release or extension of a C&E sentence is also made by the public security apparatus. According to Articles 17 and 18 of the Measure, abbreviation or extension of a term in C&E requires the C&E center to obtain permission from the public security organ that issued the original decision.<sup>129</sup>

It is clear that the detainee is deprived of all basic procedural rights, including the right to plead not guilty, the right to make a statement, the right to an effective hearing, the right to defense, and an open decision process.<sup>130</sup> The Procedural Provisions for the Handling of Administrative Cases by Public Security Organs, issued in 2012, includes C&E within the scope of administrative cases, but the stipulations regarding hearings have not been applied to C&E.<sup>131</sup> By way of contrast, the suspended RTL system had a stipulation on hearings that guaranteed the defendant's right to know the facts of the case and to plead his/her case.<sup>132</sup>

Furthermore, C&E centers are operated and managed by the Ministry of Public Security. According to the 'Measures,' the establishment of C&E centers is proposed by local public security organs based on the operational needs for C&E, and is approved by the corresponding local government office. The management of the C&E center is the responsibility of the public security bureau that established it.<sup>133</sup>

This shows that under the C&E system, public security bureaus not only investigate the case and make the decision for C&E, but also have full control over the review process and are responsible for managing the C&E centers. As the controlling body, the public security organ merges the four functions of decision, execution, supervision, and arbitration into one.<sup>134</sup> Given the lack of judicial intervention and external supervision, abuse of power and corrupt

<sup>127</sup> Interview with Haige, May 30, 2013.

<sup>128</sup> Interview with Yi, January 15, 2012.

<sup>129</sup> The Measure, articles 17-18.

<sup>130</sup> Hu Renbin, "Crisis of Legitimacy—A Legal Analysis of the Custody and Education System" [合法性的危机——对收容教育制度的法理分析], *Hangzhou Shifan Xueyuan Xuebao (Yixue Ban)* 3 (2006).

<sup>131</sup> Ministry of Public Security, *Procedural Provisions for the Handling of Administrative Cases by Public Security Organs* [公安机关办理行政案件程序规定], adopted at the ministers' executive meeting of the Ministry of Public Security on December 3, 2012, entered into force on January 1, 2013. Article 99 states that the suspected law offender should be informed of his right to demand a hearing before a decision is made to impose the following administrative penalties: 1) ordering suspension of business; 2) revoking a permit or license; 3) a relatively large fine; 4) other circumstances under which laws, regulations, and rules stipulate that the suspected law offender may demand a hearing. C&E is not included among the listed circumstances.

<sup>132</sup> Ministry of Public Security, *Public Security Regulation on Handling of Re-education Through Labor Cases* [公安机关办理劳动教养案件规定], April 12, 2002, Notice No. (2002) 21, Chapter 4.

<sup>133</sup> The Measure, Article 4.

<sup>134</sup> Xing Jing.

practices are inevitable.

Personal liberty is a basic human right. State organs wishing to restrict or deprive someone's personal freedom must abide by proper and reasonable procedural requirements. This is the general practice of all countries governed by rule of law.<sup>135</sup> Sex workers and their clients should enjoy the same rights as all other people, and the forms and procedures of punishment must conform to the principles of rule of law.

### **Arbitrary Targeting and Disproportionate Penalties**

The designation of targets of C&E in existing legislation is very vague, and the power to decide on taking someone into custody is given entirely to the public security organs.

The 'Decision' proposes penalties under the Law on Penalties for Administration of Public Security (public security penalties), with C&E and RTL to be used as the penalties to be imposed on sex workers and their clients, and explicitly states that RTL is to be used to punish recidivists. The 'Measure' goes a step further in categorizing C&E as an interim measure between public security penalties and RTL. But neither document explains whether it is necessary to first impose a public security penalty before imposing C&E, or under what circumstances a public security penalty should be imposed as opposed to C&E.<sup>136</sup>

In actual practice, these decisions are always made by the police; their execution is arbitrary and lacks set standards. One of the sex workers we interviewed said that she had been placed under public security detention several years earlier, and when subsequently arrested again, was sent to C&E; others spoke of being sent to C&E on their first arrest. Some public security organs impose fines as a substitute for C&E, or impose C&E only on those who lack the money to pay a fine.<sup>137</sup> The Shanghai Public Security Bureau in 2004 issued a new regulation stating that sex workers or clients arrested for the first time should generally be detained and fined, and that only those found to have STDs or who are being arrested for a second time should be sent to C&E.<sup>138</sup> The vagueness and arbitrariness of the provisions could result in the loss of six months to two years of a person's life and personal freedom, while also damaging the rigor and dignity of the law.

In addition, as a measure for penalizing minor unlawful acts, C&E is excessively harsh. Depriving a person of her personal freedom in C&E is harsher than some punishments for criminal behavior under the Criminal Law such as fines, confiscation of property, or deprivation of political rights.<sup>139</sup> In addition, C&E is much harsher than some sentences that

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<sup>135</sup> Hu Renbin.

<sup>136</sup> Xing Jing.

<sup>137</sup> Xing Jing.

<sup>138</sup> Zhan Wei.

<sup>139</sup> Criminal Law, chapters 6-8, amended 2011.

deprive individuals of their freedom under Criminal Law, among them, terms of control and surveillance from three months to two years and short detention from one month to six months; and fixed terms of imprisonment.<sup>140</sup>

As previously mentioned, sex workers and their clients are subjected to fines and short-term detention, according to the Law on Penalties for Administration of Public Security, and the public security penalties do not include C&E.

C&E is a penalty in addition to public security penalties. The public security organs often first impose a public security penalty on sex workers, and then impose C&E as well. All of the sex workers we interviewed said that after being detained for ten days or more, they were then sent to C&E. Under the Criminal Law, when passing a judgment of a fixed custodial sentence, time spent in pre-trial detention is counted as time served.<sup>141</sup> Regarding those held in C&E, however, time spent in public security detention is not subtracted from their term in C&E. Article 52 of the Measures for Management of Custody & Education Centers stipulates: "After a person in C&E has been held in public security detention for the same act, and a decision is made to place that person in C&E, the time spent in public security detention shall not be deducted from the term in C&E."<sup>142</sup> That is to say, a person is punished twice for a single unlawful act, which only increases the harshness of the penalty under C&E.

The original intention of C&E was to penalize unlawful behavior that did not reach the level of a criminal offense but, in fact, it has become a penalty even harsher than criminal penalties, and violates the basic legal principle of proportionality.

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<sup>140</sup> Criminal Law, chapters 2-4.

<sup>141</sup> Criminal Law, Article 47.

<sup>142</sup> Measures for Management of Custody & Education Centers, Article 57.

## V Conclusion and Recommendations

In 2012, twelve UN organizations issued a joint statement calling on all nations to immediately close down compulsory drug rehabilitation and health centers for drug users and sex workers. The statement pointed out that such compulsory drug rehab and health centers often lack legal procedures, and detainees routinely encounter violence and forced labor, extremely limited medical treatment, and other actions that violate their human rights. There is no evidence showing that these centers contribute to the cure or recovery of detainees, and these centers do not provide effective care or protection.<sup>143</sup>

This description fits C&E centers in China. Under the C&E system, police arbitrarily arrest sex workers and their clients, and arrested persons have little opportunity to challenge the arrest, either before or after being taken into custody. In the C&E centers, medical exams and treatment are imposed on an involuntary basis in violation of detainees' right to health.

In the C&E centers, detainees are required to engage in forced labor, usually without any form of payment. Detainees also need to pay for their stay in the center. According to international law, persons taken into custody should undergo proper procedures and a court judgment before they are subjected to penal labor, and this cannot be carried out by an administrative or law enforcement organ.<sup>144</sup>

The stated purpose of C&E is to provide vocational training and moral education that helps detainees change their behavior. Throughout the world, there is no evidence showing that the incarceration effectively prevents women detained for sex work from returning to this occupation; nor is detention an effective means of helping them find another means of livelihood.<sup>145</sup>

C&E undermines the effectiveness of China's efforts in HIV/AIDS prevention and treatment. In China, at least half of all people living with HIV/AIDS are ignorant of their condition.<sup>146</sup> For this reason, China has focused on expanding testing in its efforts against HIV/AIDS. However, the risk of being incarcerated and punished drives sex workers even further underground, where it is difficult for them to obtain services related to HIV/AIDS.

The Chinese government has already decided to abolish RTL, which shows the government's

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<sup>143</sup> UNAIDS et al, "Joint Statement: Compulsory Drug Detention and Rehabilitation Centres," March 8, 2012, <http://www.unaids.org/en/resources/presscentre/featurestories/2012/march/20120308adetentioncenters/> (accessed October 21, 2013).

<sup>144</sup> International Covenant on Civil and Political Rights, Article 8.

<sup>145</sup> United Nations in Viet Nam, Position on Administrative Detention for Sex Workers and People Who Use Drugs, August 2011, [http://www.unaids.org.vn/index.php?option=com\\_content&view=article&id=574%3Anew-un-position-paper-on-administrative-detention-for-sex-workers-and-people-who-use-drugs&catid=47%3Apress-releases&Itemid=168&lang=en](http://www.unaids.org.vn/index.php?option=com_content&view=article&id=574%3Anew-un-position-paper-on-administrative-detention-for-sex-workers-and-people-who-use-drugs&catid=47%3Apress-releases&Itemid=168&lang=en).

<sup>146</sup> UNAIDS, "Confidentiality Key to Expanding HIV testing in China," April 13, 2012, <http://www.unaids.org.cn/cn/index/topic.asp?id=830&classname=Statements%20and%20Updates&class=2> (accessed September 20, 2012).

commitment to protect citizen's human rights and that it is able to do so. It is time for the Chinese government to review all the systems similar to RTL and take action to ensure legal rights and equality for its people, no matter which groups in society they belong to.

The neighboring country of Vietnam, which is heavily influenced by China, at one time also had many such forced detention centers targeting sex workers and drug users. In 2011, Vietnam had 183 such centers, holding 46,000 detainees.<sup>147</sup> These centers were denounced by international organizations for lacking proper procedures while limiting personal freedom for extended periods, forcing people to undergo drug rehabilitation and limited treatment for HIV/AIDS, and imposing forced labor.<sup>148</sup> In October 2012, Vietnam's National Assembly passed a new administrative penalty law that terminated the incarceration of sex workers, and guaranteed persons undergoing compulsory drug rehabilitation the right to a court hearing and legal representation.<sup>149</sup> China would do well to examine Vietnam's example.

Asia Catalyst echoes the recommendations made by UN agencies and international organizations, and urges the Chinese government to:

- Enact a moratorium halting any further admission of sex workers into C&E centers;
- Close down all C&E centers for sex workers and their clients without delay and release the individuals detained;
- Remove laws and regulations that prohibit consenting and voluntary adults to buy or sell sex; stop campaigns that periodically crack down on sex work;
- Provide sex workers and their clients with voluntary quality and evidence-informed health care, including prevention and treatment of HIV/AIDS and opportunistic infections, other sexually transmitted infections (STIs), as well as social, legal and education services; support community-based organizations with funding and technical support to enable their involvement in this process;
- Stop police abuse and extortion against sex workers, provide law enforcement officers with human rights training in the appropriate treatment of sex workers; investigate and punish abusive and otherwise improper treatment of sex workers.

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<sup>147</sup> Anand Grover, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Mission to Viet Nam (A/HRC/20/15/Add.2), 4 June 2012, para. 47.

<sup>148</sup> *Ibid.*; United Nations in Viet Nam, Position on Administrative Detention for Sex Workers and People Who Use Drugs, August 2011.

<sup>149</sup> UNAIDS, Alternative Action on Compulsory Detention: Innovative Responses in Asia, October 5, 2012, <http://www.unaids.org/en/resources/presscentre/featurestories/2012/october/20121005detentioncenters/> (accessed September 20, 2012)

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## Annex 1: Measure on the Custody and Education of Prostitutes and their Clients

### 卖淫嫖娼人员收容教育办法

中华人民共和国国务院令  
(第127号)

现发布《卖淫嫖娼人员收容教育办法》，自发布之日起施行。

总理 李鹏  
一九九三年九月四日

第一条 为了教育、挽救卖淫、嫖娼人员，制止性病蔓延，根据《全国人民代表大会常务委员会关于严禁卖淫嫖娼的决定》，制定本办法。

第二条 本办法所称收容教育，是指对卖淫、嫖娼人员集中进行法律教育和道德教育、组织参加生产劳动以及进行性病检查、治疗的行政强制教育措施。收容教育工作实行教育、感化、挽救的方针。

第三条 收容教育工作由公安部主管。

第四条 收容教育所的设立，由省、自治区、直辖市或者自治州、设区的市的公安机关根据收容教育工作的需要提出方案，报同级人民政府批准。地方计委、财政部门应当将收容教育所的基本建设投资 and 所需经费列入基建计划和财政预算。

第五条 收容教育所根据工作需要，配备辅导、医务、财会等工作人员。

第六条 收容教育所应当设置收容室以及教育、劳动、医疗、文化等活动等场所。

第七条 对卖淫、嫖娼人员，除依照《中华人民共和国治安管理处罚条例》第三十条的规定处罚外，对尚不够实行劳动教养的，可以由公安机关决定收容教育。

对有下列情形之一的卖淫、嫖娼人员，可以不予收容教育：

- (一) 年龄不满十四周岁的；
- (二) 患有性病以外其他急性传染病的；
- (三) 怀孕或者哺乳本人所生一周岁以内婴儿的；
- (四) 被拐骗、强迫卖淫的。

第八条 对卖淫、嫖娼人员实行收容教育,由县级公安机关决定。决定实行收容教育的,有关县级公安机关应当填写收容教育决定书。收容教育决定书副本应当交给被收容教育人员本人,并自决定之日起十五日内通知其家属、所在单位和户口所在地的公安派出所。

第九条 收容教育期限为六个月至二年。收容教育日期自执行之日起计算。

第十条 收容教育所对入所的被收容教育人员,应当进行性病检查和治疗。检查和治疗性病的费用一般由本人或者家属负担。

第十一条 收容教育所对被收容教育人员,应当按照性别和有无性病实行分别管理。被收容教育的女性人员,应当由女性工作人员进行管理。

第十二条 收容教育所应当依法管理,建立、健全各项管理制度,严禁打骂、体罚或者以其他方式侮辱被收容教育人员。被收容教育人员应当遵守收容教育所的各项管理制度,服从管理。

第十三条 对被收容教育人员应当进行法律教育和道德教育,并组织他们参加生产劳动,学习生产技能,增强劳动观念。被收容教育人员参加生产劳动所获得的劳动收入,用于改善被收容教育人员的生活和收容教育所的建设。对参加生产劳动的被收容教育人员,可以按照规定支付一定的劳动报酬。收容教育所对劳动收入和支出应当单独建帐,严格管理。收容教育所应当实行文明管理,组织被收容教育人员开展有益的文化体育活动。

第十四条 被收容教育人员在收容教育期间的生活费用一般由本人或者家属负担。

第十五条 被收容教育人员入所时携带的物品需要由收容教育所保管的,收容教育所应当造册登记,妥善保管,在被收容教育人员离所时将原物交还本人。

第十六条 收容教育所应当允许被收容教育人员的家属探访。被收容教育人员在收容教育期间,遇有子女出生、家属患严重疾病、死亡以及其他正当理由需要离所的,由其家属或者其所在单位担保并交纳保证金后,经所长批准,可以离所。离所期限一般不超过七日。保证金收取办法由公安部规定。

第十七条 被收容教育人员在收容教育期间确有悔改表现或者有立功表现以及其他特殊情况的,可以给予表扬或者提前解除收容教育。需要提前解除收容教育的,由收容教育所提出意见,报原决定对其实行收容教育的公安机关批准。但是,提前解除收容教育的,实际执行的收容教育期限不得少于原决定收容教育期限的二分之一。

第十八条 对拒绝接受教育或者不服从管理的被收容教育人员,可以给予警告或者延长收容教育期限。需要延长收容教育期限的,由收容教育所提出意见,报原决定对其实行收容教育的公安机关批准。但是,延长收容教育期限的,实际执行的收容教育期

限最长不得超过二年。收容教育期间发现被收容教育人员有其他违法犯罪行为尚未处理的，依照有关法律、法规处理。

第十九条 对收容教育期满的人员，应当按期解除收容教育，发给解除收容教育证明书，并通知其家属或者所在单位领回。

第二十条 被收容教育人员对收容教育决定不服的，可以依照《行政复议条例》的规定向上一级公安机关申请复议；对上一级公安机关的复议决定不服的，可以依照《中华人民共和国行政诉讼法》的规定向人民法院提起诉讼。

第二十一条 被收容教育人员在收容教育期间死亡的，应当由公安机关组织法医或者指定医生作出死亡鉴定，经同级人民检察院检验，报上一级公安机关和人民检察院备案，并填写死亡通知书，通知被收容教育人员家属、所在单位和户口所在地公安派出所；家属不予认领的，由公安机关拍照后处理。

第二十二条 本办法由公安部负责解释。

第二十三条 本办法自发布之日起施行。

发布部门：国务院

发布日期：1993年09月04日

实施日期：1993年09月04日（中央法规）

## **About Asia Catalyst**

Asia Catalyst works with grassroots groups from marginalized communities in East and Southeast Asia that promote the right to health. We train our partners to meet high standards of effective and democratic governance, to establish a stable foundation for future growth, and to conduct rigorous human rights research and advocacy. We aim to help our partners become leading advocates at the local, national and global levels. For more information, see [www.asiacatalyst.org](http://www.asiacatalyst.org).