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The human immunodeficiency virus, which causes the acquired immunodeficiency syndrome (HIV and AIDS), is a pandemic that militates against public health policy and practice on a global scale. The sex industry is frequently cited as one of the growth factors contributing to increased HIV and AIDS transmission, as well as the spread of sexually transmitted infections across international lines. Therefore, the prevention of HIV and AIDS among commercial sex workers is a major goal of the public health operations of both U.S. and foreign-based organizations working in the sex sector. As it stands, current U.S. laws and policies that dictate the funding of organizations working with sex workers are deleterious to public health and run counter to best practices that prevent the global spread of HIV and AIDS, as well as human rights norms. This article is centrally concerned with the public health implications of the Anti-Prostitution Pledge, which requires foreign NGOs and U.S.-based NGOs working abroad to explicitly oppose the practice of prostitution in order to receive U.S. federal funding for HIV and AIDS prevention among commercial sex workers. Policy prescriptions concerning the public health dimensions of commercial sex work will be offered based on the analysis.

Operating from the premise that prostitution is conjoined with trafficking in persons for commercial sex, the U.S. government is prohibiting the award of federal funds to foreign non-governmental organizations (NGOs) that appear to promote or support prostitution (The State Department's Office to Monitor and Combat Trafficking in Persons, 2004). U.S. legislation and policies like the President's Emergency Plan for AIDS Relief (PEPFAR), Leadership against HIV and AIDS, Tuberculosis, and Malaria Act (AIDS Leadership Act), and Trafficking Victims Protection Reauthorization Act (TVPRA) require that foreign NGOs and U.S.-based NGOs working abroad make an Anti-Prostitution Pledge, which explicitly opposes prostitution, in order to receive U.S. federal funding for HIV and AIDS prevention targeted at sex industry workers.

The Anti-Prostitution Pledge has negative public health consequences for sex workers at risk of HIV and AIDS transmission as it

prohibits recipients of U.S. federal funds from using best practices, such as harm reduction and empowerment strategies to prevent HIV among high risk populations. Sex workers are defined as “female, male and transgendered adults and young people who receive money or goods in exchange for sexual services, either regularly or occasionally, and who many or may not consciously define those activities as income-generating” (UNAIDS, 2002). This article will consider aspects of the Anti-Prostitution Pledge, including arguments advanced in support of and in opposition to this policy. Recommendations will be offered on the policy level based on the analysis of the global public health implications of the Anti-Prostitution Pledge.

Best Practices in Public Health and Human Rights to Counter HIV and AIDS

Harm Reduction Model

Best practices in public health and human rights norms suggest that harm reduction is effective in stymieing the spread of HIV and AIDS among commercial sex workers (Rekart, 2005). Harm reduction as an approach to HIV and AIDS prevention is considered to be a simple, safe, and inexpensive line of response to HIV and AIDS infection that helps avert risk, mitigate harm, and save lives. According to Rekart (2005), HIV and AIDS infection risks associated with commercial sex are reduced using an empowerment-oriented harm reduction model in public health practice with sex industry workers. Harm reduction practices include: occupational health and safety guidelines for brothels, distribution of male and female condoms, training in condom-negotiating skills, and safety tips for street-based sex workers regarding HIV and AIDS preventative strategies.

Empowerment: A Harm Reduction Tool

Empowerment and harm reduction share a synergistic relationship. One of the hallmarks of harm reduction is respect for the individual’s right to self-determination, which is also a core concept of empowerment (Newman, 2003). The harms associated with sex work can be minimized through the empowerment of sex workers. The goal of empowerment is to provide real opportunities for sex workers through services, such as job training, language skills, access to health services, and protection from violence.

Human Rights Framework

The view that positive public health outcomes can be produced by

linking global health policy with respect for human rights is gaining increased acceptance (Loff, et al., 2000). The relationship between human rights abuses and HIV and AIDS transmission among sex workers is bidirectional. Discrimination and human rights abuses are the cause as well as result of HIV and AIDS (Csete, 2004). Many public health interventions, such as the AIDS Leadership Act, consider sex workers hazards to society (Woffers & Beelen, 2003). Restrictive policies around sex work, such as the Anti-Prostitution Pledge, increases stigma driving sex work further underground and increases the likelihood that sex workers will avoid state institutions, including those that deliver health care (Woffers & Beelen).

Anti-Prostitution Laws and Policies: PEPFAR, AIDS Leadership Act, and TVPRA

PEPFAR

PEPFAR is an executive directive aimed at stemming the spread of HIV and AIDS throughout the world. President Bush recognized HIV and AIDS as a harbinger of a “severe and urgent crisis abroad” in his 2003 State of the Union Address and proposed PEPFAR as a solution (Alliance for Open Society International, Inc. & Open Society Institute, 2005). PEPFAR mandates U.S. funding restrictions on organizations that do not adopt a pro-abstinence approach to the practice of commercial sex work. The executive directive does not consider the human rights standards and best practices in public health discussed above.

AIDS Leadership Act

PEPFAR has given impetus to the creation of a cluster of laws and policies, one of which is the AIDS Leadership Act. In May 2003, the U.S. Congress passed the AIDS Leadership Act (22 U.S.C. §§ 7601-7682, 2003), which bars the use of federal funds to “promote, support, or advocate the legalization or practice of prostitution or sex trafficking” (22 U.S.C. § 7631(e), 2003). The law requires organizations receiving U.S. HIV and AIDS funding to agree with the Anti-Prostitution Pledge and adopt a policy explicitly opposing prostitution and sex trafficking. Organizations that do not denounce prostitution could continue to lose billions of dollars in U.S. federal funding, thus impeding their efforts to prevent the spread of HIV among sex workers and undermining efforts to promote the fundamental human rights of all persons (CHANGE, 2005).

The AIDS Leadership Act is currently applicable to foreign NGOs receiving bilateral U.S. HIV and AIDS funds and U.S.-based NGOs working abroad. Although the restrictions of the law do not currently apply to multilateral organizations, there is considerable concern that the extension of the restrictions is inevitable (CHANGE, 2005). In May 2005, the Centers for Disease Control implemented funding restrictions on the Joint United Nations Programme on HIV and AIDS (UNAIDS) and World Health Organization sub-grantees, which were later abrogated after widespread public denunciation (CHANGE).

TVPRA

The TVPRA prohibits U.S. federal funding for organizations that tacitly “promote, support, or advocate the legalization or practice of prostitution” (22 U.S.C. §§ 7101-7110, 2003). The funding restrictions mandated by the TVPRA bar organizations that work with trafficking victims from employing a range of modalities to improve the public health of this group using a human rights-based framework. Due to the conflation of prostitution with trafficking in persons, organizations working to aid and empower victims of trafficking lose necessary funding to stave off health harms surrounding sex work (Ditmore, 2003).

Proponents of the Anti-Prostitution Pledge

In a December 2002 National Security Presidential Directive, the U.S. Government adopted an abstinence-based and abolitionist position against legalized prostitution. This position was adopted based upon the premise that prostitution is a harmful and dehumanizing practice that stimulates human trafficking, and the vast majority of sex workers want to escape from this practice (The State Department’s Office to Monitor and Combat Trafficking in Persons, 2004). From the vantage point of the U.S. Government, legalization of prostitution increases the demand for commercial sex work, thus providing market opportunities for criminals who traffic people into prostitution. Furthermore, the U.S. Government contends that legalized prostitution makes it difficult for law enforcement officials to identify and penalize criminals who engage in trafficking (The State Department’s Office to Monitor and Combat Trafficking in Persons). Based on this conflation between prostitution and trafficking, the U.S. Government decided to implement restrictions on HIV and AIDS funding to organizations that work with sex workers.

Anti-Prostitution Pledge advocates, also known as abolitionists, further argue that abstinence from sex and abolition of prostitution should

underpin the HIV and AIDS prevention efforts of organizations working in the sex sector. Abolitionists view sexual commerce as degrading and dehumanizing, characterizing sex work and trafficking in persons as a form of modern day slavery (The State Department's Office to Monitor and Combat Trafficking in Persons, 2004). Many ideologues from the Christian Right, as well as several radical feminists endorse this view of commercial sex work. Radical feminists who support the Anti-Prostitution Pledge view prostitution as a coerced form of male-dominated wage slavery, as well as a feminized type of exploitation reflecting patriarchy, which is harmful to all women (Jaggar, 1997). Similarly, members of the Christian Right supporting the Anti-Prostitution Pledge oppose sex work on moral grounds because these members define legitimate sexual contact as relations between two married people of the opposite sex for purposes of procreation only (CHANGE, 2004).

Anti-Prostitution Pledge advocates assume that all sex workers are perforce victimized, do not choose to engage in sex work, and seek to escape this practice. In addition, they argue that trafficking in persons is bound up and inextricably linked with the sex trade. Furthermore, abolitionists reason that the harm reduction model of prostitution encourages the practice of sex work and increases the market demand for the profession, causing a rise in persons trafficked into commercial sex on the supply side (The State Department's Office to Monitor and Combat Trafficking in Persons, 2004).

Opponents of the Anti-Prostitution Pledge

Public health practitioners working with sex workers suggest that the U.S. government's pro-abstinence, anti-prostitution stance towards HIV-prevention aid is a paternalistic and unrealistic approach (Ditmore, 2005). Therefore, pro-Anti Prostitution Pledge arguments require a more complicated and human rights based understanding of sexual commerce.

Harm Reduction Approach

Opponents of the Anti-Prostitution Pledge argue that harm reduction is a best practice and funding should not be eliminated for organizations implementing this approach (CHANGE, 2004). As discussed earlier, empirical evidence of public health operations involving sex workers suggests the greater efficacy of the harm reduction model in countering the spread of HIV and AIDS among sex workers (Newman, 2003). For example, by bringing a harm reduction model to bear on public health interventions in India, the Sonagachi Project, an

HIV-prevention program in Calcutta, significantly lowered HIV seroprevalence rates among sex workers in the city (Newman). The Sonagachi Project couples harm reduction principles with empowerment strategies to minimize the health risks of sexually transmitted diseases among sex workers. Human Rights Watch estimates that the Sonagachi Project's harm reduction approach has impacted more than 30,000 sex workers at risk for HIV and AIDS (Human Rights Watch, 2005). UNAIDS has also credited the Sonagachi Project as a best practice model for the proven effects in public health.

Furthermore, harm reduction is the precipitating factor behind the successful public health outcomes achieved among sex workers in many countries. For example, in Brazil, harm reduction and HIV and AIDS prevention programs have been lauded by the United Nations as among the best in the developing world (Reel, 2006). Current estimates indicate that there are less than 600,000 HIV-infected people in Brazil, which is half the number forecasted by the World Bank a decade ago. Through state-funded sex education and prevention workshops, the distribution of free condoms, and informational pamphlet dissemination, Brazil has managed to effectively reduce the HIV and AIDS rate in the country (Reel).

International Human Rights Violations

Opponents to the Anti-Prostitution Pledge contend that this policy is in violation of the fundamental human rights of sex workers and in conflict with a corpus of international human rights instruments and laws, such as the Universal Declaration of Human Rights (UDHR) (CHANGE, 2005). The rights emanating from the UDHR, including the right to “security of person,” freedom from “inhuman or degrading treatment,” and “equal protection of the law,” are eroded by the Anti-Prostitution Pledge (Butcher, 2003). Whereas international human rights laws lack enforcement power, as their implementation rests on governing bodies, laws and policies issuing from the U.S. federal government compel observance due to the threat of loss in funding.

It is evident that multinational institutions, including the United Nations and foreign national leaders in HIV- and AIDS-affected countries exert little pressure on U.S. federally-funded HIV and AIDS programs (Csete, 2004). Through its proscription of harm reduction as an approach to the public health of sex workers, the Anti-Prostitution Pledge counteracts human rights.

Furthermore, access to healthcare is a fundamental human right as stated in Article 25 of the UDHR (UDHR, 1948) and the constraints wrought by the Anti-Prostitution Pledge deprive sex workers of their basic right to health. The

limited range of public health interventions sanctioned by the AIDS Leadership Act fly in the face of best practices and human rights standards forcing recipient organizations of U.S. funding to adopt less effective HIV and AIDS preventive strategies.

U.S. Constitutional Concerns and Challenges

Opponents of the Anti-Prostitution Pledge raise constitutional concerns about this policy, arguing that it violates the right to freedom of speech enshrined in the First Amendment (Human Rights Watch, 2005). By forcing organizations to explicitly oppose prostitution, the Anti-Prostitution Pledge compels speech, thereby violating the First Amendment to the Constitution by requiring domestic and foreign-based organizations working in public health to align with the U.S. government's policy position. Anti-Prostitution Pledge advocates also believe that funding restrictions under the AIDS Leadership Act violate the First Amendment because the vagueness of the Pledge requirement allows the law to be applied arbitrarily (Open Society Institute, 2005). Finally, organizations working with sex workers contend that the Anti-Prostitution Pledge unconstitutionally undermines public health interventions by forcing them to either adopt an anti-prostitution policy or forego federal funding, which may limit the effectiveness of their HIV and AIDS prevention efforts (Alliance for Open Society International, Inc. et al., 2005).

Public Health Implications of the Anti-Prostitution Pledge

Opponents of the Anti-Prostitution Pledge argue that current legislation is antithetical to best practices that promote empowerment (CHANGE, 2005). Empowerment strategies intended to provide commercial sex workers with economic alternatives to sexual commerce are being affected by the government policy. For example, NGOs in Cambodia have stopped providing avenues out of sex work, such as English-language classes, for fear they would be seen as promoting prostitution (CHANGE). Additionally, the intervention strategies of EMPOWER Thailand, an organization that helps sex workers obtain high school diplomas and employment skills, were jeopardized as a result of the Anti-Prostitution Pledge (CHANGE, 2003). In short, the Anti-Prostitution Pledge can be said to have a perverse effect on the public health operations of organizations working with sex workers.

Furthermore, opponents of the Anti-Prostitution Pledge suggest that the pro-abstinence agenda is myopic insofar as it alienates sex workers, the very population essential to prevent further spread of HIV and AIDS, by

stigmatizing commercial sex work and calling for its abolition (CHANGE, 2005). Implicit in the Anti-Prostitution Pledge is the denial of the lived and embodied experiences of commercial sex workers. The condemnation of sexual commerce that organizations working with sex workers are compelled to adopt under U.S. laws and policies ratchet up the stigma around this line of work (CHANGE).

Policy Recommendations

In consideration of the sex work harms and public health concerns that this government policy engenders, we offer the following policy recommendations to the federal government of the United States:

Amendment of the AIDS Leadership Act with a View towards Greater Conformity with Constitutional Guarantees, Human Rights Norms, and Best Practices in Public Health

When sex workers are denied access to condoms or any other prevention technology or strategy, it violates both human rights principles and medical ethics (CHANGE, 2004). Furthermore, a reliance on abstinence will leave millions of people without the knowledge, information, and skills necessary to prevent infections (CHANGE). Hence, U.S. government commitment is required to maintain funding for condom procurement and delivery to decrease behavioral risk of HIV and AIDS infection among sex workers globally.

Revoke the Anti-Prostitution Pledge and Have a Re-authorization Act Excluding the Opposition to Sex Work

There is concern in policy and public health circles that the Pledge requirement undermines HIV and AIDS prevention programs specific to sex industry workers and that organizations working with sex workers will abandon innovative and effective programs for fear of losing funding. As a result, the Pledge requirement could further stigmatize commercial sex workers, leading to disastrous consequences for global public health. Hence, a revocation of the Anti-Prostitution Pledge is needed.

Include Commercial Sex Workers Affected by Laws and Policies Germane to Prostitution in Policy Decisions Concerning the Sex Trade

Sex industry workers affected by laws and policies concerning prostitution should be included in policy decisions about transactional sex

because they are associated with the transmission and prevention of HIV and AIDS. The Pledge requirement alienates sex workers who are already socially marginalized because of widespread stigma and discrimination. Evidence suggests that public health interventions repudiating targeted populations produce ineffective outcomes. Including sex workers in policy making about people-in-prostitution reduces social stigma.

Broad-based Consultation with Experts across the Professional Spectrum

Consult with a broad range of experts including but not limited to social work practitioners, public health professionals, and organizations working in the sex sector, to effectively create an overarching policy that productively stems the spread of HIV and AIDS. Broad-based consultancy ensures transparency in policymaking, consistency with U.S. and international human rights law, and the promotion of best practices in public health (CHANGE, 2005).

Avoid Conflating Sex Work with Trafficking

The U.S. government must avoid conflating sex work with trafficking as it ignores other categories of trafficking, including trafficking for forced labor. The conflation between human trafficking and trafficking for sex eclipses other forms of internal and cross-border trafficking, which promotes a narrow view of this transnational activity. Linking trafficking uniquely to sex work is harmful on the policy level as it may encourage situations of abuse for persons trafficked into other industries to go unnoticed and unaddressed (Ditmore, 2002).

Provision of U.S. Funding to Organizations Working with Sex Workers That Do Not Espouse a Specific Policy on Prostitution

Retract current funding restrictions in legislation and espouse a harm reduction model and human rights based approach to sex work. Specifically, amend the TVPRA with a greater conformity towards human rights standards and best practices in public health.

Conclusion

Productive public health outcomes can be achieved more successfully through human rights and empowerment mechanisms coupled with harm reduction models rather than an anti-prostitution and abstinence-only approach to commercial sex work. HIV and AIDS is a public health concern of global proportions. As it stands, the AIDS Leadership Act will accelerate the

transmission of HIV and AIDS, increasing morbidity and mortality rates among sex workers as well as the larger population. Therefore, a rethinking of U.S. government policy with regard to HIV and AIDS prevention is in order.

At this writing, several U.S.-based NGOs including Alliance for Open Society International, Pathfinder International, Open Society Institute, and DKT International have filed suit in New York and Washington D.C. District Courts arguing that the Anti-Prostitution Pledge violates their constitutionally-protected right to free speech (Bristol, 2006). District court judges in New York and Washington D.C. decreed that enforcement of the Anti-Prostitution Pledge would cause the plaintiff organizations to suffer irreparable harm, thus violating the First Amendment of the U.S. Constitution (05-cv-8209 (S.D.N.Y.)). While this ruling provides plaintiff U.S.-based NGOs with a legal remedy, it does not provide legal relief to foreign NGOs who do not have U.S. constitutional rights and are potentially gagged by the Pledge requirement (Bristol, 2006).

On February 27, 2007, a federal appellate court for the District of Columbia upheld the constitutionality of the Pledge requirement overturning the lower court's decision (Brennan Center for Justice, 2007). Circuit judges of a U.S. Court of Appeals decided that the funding conditionality under the AIDS Leadership Act does not compel appellate organization, DKT International, to advocate the government's position on prostitution and sex trafficking, but rather communicates the message the government chooses to fund (06-cv-5225 (D.C. Cir. 2007)). At this writing, it is uncertain as to whether or not DKT International will appeal the ruling concerning the Pledge requirement at issue. The judicial outcome of a separate action brought by the U.S. government appealing the decision of the New York district court also remains to be seen.

With more than 40 million HIV- and AIDS-infected people worldwide and the loss of funding from the U.S., one of the largest donors of HIV and AIDS prevention funding globally, implications for the public health of sex workers are disastrous (Bristol, 2006; Open Society Institute, 2004). Human suffering caused by the scourge of HIV and AIDS can be more effectively prevented on the local, national, and international level if the Pledge requirement is jettisoned for evidence-based, best practices in public health.

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