Perspectives

PEPFAR's violations of the right to health of sex workers

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Introduction

In 2003, the Bush administration established the President's Emergency Plan for AIDS Relief (PEPFAR), a program that pledged to provide $15 billion to support the global effort to eradicate HIV/AIDS over a five-year period. PEPFAR's initiatives center around both prevention and care: providing antiretroviral (ARV) medication to individuals already diagnosed with HIV/AIDS and scaling up efforts to stop the spread of new infections (About PEPFAR, 2011). In 2008, PEPFAR was renewed and expanded. Due to its efforts, PEPFAR has helped provide ARV drugs to three million individuals and has partnered with over 30 countries to give aid to 11 million individuals (Latest PEPFAR Program Results, 2011).

However, many of PEPFAR's initiatives contain ideological components that constrain the scope of its anti-HIV/AIDS missions. One such component is the "anti-prostitution pledge," a requirement of PEPFAR that prohibits its funding of organizations that do not actively denounce prostitution. Some opponents of this policy argue that it violates the right of organizations to free expression by placing restrictions on the language, beliefs and ideologies of these organizations (Kinney, 2006). However, the PEPFAR anti-prostitution pledge also violates sex workers' right to health. The anti-prostitution pledge incorporated into PEPFAR impedes the treatment of a key HIV/AIDS risk group, commercial sex workers, thus constituting a violation of these sex workers' rights by hindering their access to the highest quality medical care and placing them at an increased risk of death by AIDS due to their inability to receive care in a stigma-free setting.

The right to health and medical care was first guaranteed by the United Nations General Assembly in the 1948 Universal Declaration of Human Rights (UN General Assembly, 1948). This right was reinforced in the 1967 International Covenant on Economic, Social, and Cultural Rights, which "recognize[s] the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (Office of the United Nations , 1966). The right to health means that individuals should be guaranteed both the living conditions that are necessary for the establishment of good health (i.e., adequate food, clean water, proper sanitation, economic and political security, sufficient education, etc.) and the medical care they need when they fall ill. In terms of HIV/AIDS, the right to health includes access to preventative tools (for example, condoms), testing facilities and medical treatments, including ARVs.

In the global effort to eradicate HIV/AIDS, a human rights perspective, in which "free access to medicines should be seen as a question of making real the right to life," would provide an important means of effectively helping populations that suffer from a high risk of infection (Galvao, 2005). In fact, without a human rights approach, HIV/AIDS may never be effectively eliminated. HIV/AIDS is a disease that increasingly shows a high prevalence in marginalized populations, such as men who have sex with men, the impoverished, sex workers and injection drug users (Piot, Greener & Russell, 2007). As a result, the disease carries a great deal of stigma. Unfortunately, this discrimination can prevent people from seeking testing and treatment, thus increasing their risk of further spreading the disease (Galvao, 2005). In order to decrease stigma and to reach high risk populations, access to HIV/AIDS treatment must be freely available to all, regardless of background, and must be presented as a fundamental right to which all individuals are entitled. Otherwise, it will be impossible to eradicate the disease, for "violating the human rights of people with HIV/AIDS—through stigmatization, discrimination and violence—is increasingly recognized as a central problem that is impeding the fight against AIDS" (Galvao, 2005). Guaranteeing HIV/AIDS treatment as a fundamental human right would not only provide individuals with life-saving treatment; it would also make them more willing to seek treatment without the fear of stigma. Thus, a human rights approach to treatment constitutes an effective way of preventing the further spread of disease.

In Brazil, the government's method of fighting HIV/AIDS contains a human rights framework: anti-retroviral drugs are provided free of charge to every citizen. Opening access to treatment to the entire Brazilian population has drastically decreased HIV/AIDS rates in Brazil; though the World Bank predicted that by the year 2000 there would be over 1.2 million people in Brazil living with HIV, the efforts of the Brazilian government lowered the actual number to only 600,000 (Averting HIV and AIDS, 2011). Regarding Brazil's human rights approach to combatting HIV/AIDS, Richard Parker of the Mailman School of Public Health at Columbia University has said:

> By affirming universal access to treatment for all those infected with HIV, Brazilian policy has simultaneously reaffirmed the rights and citizenship of those who otherwise would be defined primarily by their broader exclusion in Brazilian society. Because of this, prevention becomes possible, not just as a technical exercise in public health, but as itself the right to health of all citizens (Galvao, 2005).

This case study demonstrates the benefits of a human rights approach to combating HIV/AIDS. Unless universal access to treatment is provided as a fundamental human right, marginalized populations will continue to display increased incidence of HIV, accelerating the spread of the disease and impeding prevention efforts. Inaction in this regard will have serious ramifications for the larger public, as the risk of infection increases if HIV/AIDS continues to spread from these populations to the general populace. Irrespective of one's views on the morality of prostitution, sex workers must be treated for HIV/AIDS to both improve their own health and to help guarantee the health of the larger global community.

PEPFAR certainly does aim to increase access to antiretroviral medications and declares its commitment to "expand[ing] prevention, care, and treatment in both concentrated and generalized epidemics" (About PEPFAR, 2011). However, some of PEPFAR's policies reflect a strong ideological basis that prevents PEPFAR from maintaining a completely human rights-based approach in its fight against HIV/AIDS. The anti-prostitution pledges of PEPFAR I and II (the original plan and the renewal) each contain two stipulations that reflect the "morally charged" imperatives of the United States government (Kinney, 2006). First, PEPFAR cannot fund any organization that supports the legalization of prostitution. Second, in order to receive HIV/AIDS funding, an organization must take the further step of "explicitly opposing prostitution and sex trafficking" (Fedorova, Mikdadi, Baruah & Higman, 2010). These two clauses reveal the beliefs of the United States government: prostitution is wrong and should be criminalized and eliminated. By including an anti-prostitution pledge, PEPFAR aims to eliminate any sort of legitimization of prostitution that may result from health organizations working directly with sex workers. Advocates of the anti-prostitution pledge claim that these organizations should focus on encouraging women to leave sex work. By not formally vocalizing opposition to prostitution, the rationale goes, they are in fact enabling the commercial sex industry (Loome, 2011). Organizations that do not take an official stance against prostitution are, in the US government's eyes, "inherently harmful and dehumanizing [and contribute] to the phenomenon of trafficking in persons" (Kinney, 2006). As a result, PEPFAR funding will not go to organizations that do not explicitly denounce prostitution, even if though they in no way promote it.

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PEPFAR does not deny the increased prevalence of HIV in the sex worker population; it acknowledges that "persons who engage in socially stigmatized behaviors, including sex work … are at a disproportionately higher risk for HIV" (PEPFAR Technical Working Groups, 2011). PEPFAR focuses its efforts on "engaging in targeted prevention, care and treatment outreach for prostitutes; helping governments to support alternatives to prostitution; and working to reduce demand for prostitution" (Center for Health and Gender Equity, 2011). So PEPFAR does intend to help sex workers receive care for HIV/AIDS. But because PEPFAR seeks to eliminate prostitution completely, it rejects anything it sees as legitimizing the practice and thus justifies the inclusion of the anti-prostitution pledge in its requirements for the provision of funding. Although aspects of PEPFAR's work do target sex workers and aim to help them acquire medical treatment, by forcing organizations to use language that denounces the legality and morality of prostitution, PEPFAR in fact hinders the ability of sex workers to receive the highest quality of HIV treatment. Sex workers are unlikely to feel comfortable seeking care from an organization that denounces their occupation.

In order to understand the nature of this human rights violation, it is first important to establish why sex workers are at increased risk for HIV infection. Most sex workers are driven to prostitution as a result of living in extreme poverty or lack of education (Baker, Case & Policicchio, 2003); unable to support themselves, they sell their bodies for sex in order to provide food for themselves or their families (Beyrer, 2001). Prostitutes face "vulnerable work situations with violent, non-paying clients in unprotected places and lack of protection by police and legal systems," inhibiting their abilities to engage in safe sexual practices, such as using condoms (Wolffers & Van Beelen, 2003). Forced to engage in unsafe sexual behavior by the nature of their profession, sex workers are at a high risk of contracting various sexually transmitted diseases, including HIV. In South Asia, for example, since most sex workers become heavily indebted to the brothels that hire them, they must engage in many of these risky sexual encounters to free themselves from the brothel's control (Beyrer, 2001).

While PEPFAR does encourage "out of the box solutions" (Center for Health and Gender Equity, 2011) to help sex workers, the anti-prostitution pledge constitutes a major barrier in guaranteeing prostitutes HIV/AIDS treatment as a human right. By requiring

organizations to officially oppose prostitution in order to receive funding, "PEPFAR's own policies stand in the way of adequately reaching out to marginalized populations, such as commercial sex workers…who do not have adequate access to HIV/AIDS services because PEPFAR funding is restricted for those engaged in certain activities" (Fedorova, Mikdadi, Baruah & Higman, 2010). Prostitutes find themselves condemned by the very organizations that aim to help them, and HIV/AIDS becomes further associated with prostitution as increasing numbers of sex workers become infected with the disease. Local NGOs that work directly with sex workers are unable to secure PEPFAR funding without denouncing prostitution. For example, an organization in India called Sangram provides HIV/AIDS counseling and education services to sex workers. Though its work has been recognized by the United Nations Program on AIDS (UNAIDS), it can no longer receive funding from the US government because it refuses to sign the anti-prostitution pledge and therefore cannot access important resources (Loome, 2011). Other such organizations face a similar dilemma: they must alienate their target population or lose funding. If they choose the former, they increase the stigma of being a sex worker. Therefore, sex workers are less likely to seek out the prevention and treatment services of these organizations, putting the sex workers at increased risk for both infection and death and contributing to the spread of HIV/AIDS to others (Kinney, 2006). NGOs that refuse to meet PEPFAR's requirements are excluded, so "as a result, the anti-prostitution pledge requirement works to screen out key organizations with years of experience in the field [and] established connections to targeted communities… excluding them from US-backed initiatives that work to combat HIV/AIDS and human trafficking" (Kinney, 2006). Thus, the anti-prostitution pledge violates sex workers' rights to health; either they are stigmatized by the organizations that could provide them with health services, decreasing the likelihood that they will seek out care, or the organizations best suited to help them without stigma are themselves hindered through lack of funding and exclusion from PEPFAR's international effort to eradicate HIV/AIDS.

Sex workers constitute a marginalized population that is at a significantly higher risk for HIV infection than other populations. The best way to combat the incidence and spread of HIV/AIDS is through a rights-based approach that guarantees universal access to HIV treatment in a stigma-free setting. In order for sex workers to receive the full benefits of HIV treatment, they must not be stigmatized because "groups at risk of… exploitation in the commercial sex industry do not take advantage of programs providing social, health, and legal services unless services are provided in a non-judgmental, non-discriminatory setting" (Kinney, 2006). PEPFAR's anti-prostitution pledge increases the stigma of both prostitution and HIV/AIDS and hinders NGOs from providing the highest attainable standard of health care to sex workers. Thus, this PEPFAR policy constitutes a violation of the human rights of sex workers. The only way to effectively eliminate the incidence and spread of HIV within the sex worker community, and thus prevent further spread to the general public, would be through a rights-based approach that works to eliminate stigma and marginalization.

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