

The Anti-Prostitution Loyalty Oath: Undermining HIV/AIDS Prevention and U.S. Foreign Policy

Since the 1960s, the U.S. has provided international family planning and reproductive health care assistance to developing countries around the world. For years, opponents of family planning in Congress have worked to place burdensome and harmful restrictions on U.S. population assistance — restrictions that impede the delivery of crucial reproductive health services to the people who need them the most.

One such restriction, commonly called the “anti-prostitution loyalty oath” requires organizations receiving U.S. HIV/AIDS assistance to formally pledge their opposition to prostitution and sex trafficking. It also prohibits activities that “promote or support the legalization or practice of prostitution.” Because the law makes no distinction between privately and publicly funded programs, the U.S. government has interpreted it such that it restricts an organization’s speech and activities, regardless of funding source.

The anti-prostitution loyalty oath was introduced in 2003 by conservative anti-choice legislator Rep. Chris Smith (R-NJ) and affects all U.S. government funding for international HIV/AIDS programs overseas. Due to widespread concerns about its constitutionality – concerns that were shared by the Department of Justice

– the anti-prostitution loyalty oath was originally applied only to foreign organizations. A year later, however, the Department of Justice shifted course and the requirement was expanded to include U.S. organizations.

The Anti-Prostitution Loyalty Oath in the U.S.: Violating the Constitution

The loyalty oath requirement violates the U.S. Constitution in several ways. First, it forces private, U.S.-based organizations to espouse the government’s point of view on a controversial social issue in order to remain eligible for government grants. Second, the requirement restricts how organizations use their private funds to engage in speech or programs related to prostitution. Both of these requirements are in violation of the First Amendment. Finally, the language of the requirement is so vague that organizations do not know how to comply with it and government officials do not know how to enforce it. This lack of guidance allows the law to be arbitrarily applied, which is in violation of the due process clause of the Fifth Amendment.

Undermining Service Delivery and U.S. Foreign Policy

Failure to endorse the anti-prostitution loyalty oath means health workers striving to stop the spread of HIV/AIDS could lose funding and be forced to abandon lifesaving programs. Sex workers are at high risk for contracting the disease and spreading HIV to the general population. Health organizations focusing on the causes and repercussions of sex work agree that outreach to protect the health of this marginalized population is urgent and vital for HIV education and prevention. All efforts must be made to assist those most vulnerable to infection in order to avoid an epidemic. Requiring health professionals and international development organizations to judge – and pronounce their disapproval of – the very people they are trying to help could damage the trust between health professionals and those most in need.

The anti-prostitution loyalty oath contradicts U.S. foreign policy. The U.S. spends billions of dollars in developing countries to support democratic principles such as freedom of speech and the right to participate in the political process. This policy under-

**PATHFINDER'S APPROACH
TO PROTECTING
COMMERCIAL SEX
WORKERS FROM HIV/AIDS**

Pathfinder's programs to protect commercial sex workers from contracting STIs and HIV are varied; some aim to prevent entry into sex work, others protect those involved in sex work, and others provide assistance to sex workers to pursue other income-generating activities.

Many HIV/AIDS programs overseas provide information and condoms, and in some cases harm reduction services. However, few employ participatory approaches, address public policies and social factors fueling the epidemic, and build the capacity of associations of vulnerable groups. Pathfinder implements programs with vulnerable groups that recognize the totality of individuals and not just their sexual or drug use behavior, moving beyond condom and social marketing to include advocacy, harm reduction, capacity building, community development, and nurturing of enabling environmental factors.

mines these principles by dictating how organizations may speak out on a controversial issue and by preventing the free exchange of ideas.

The "Chilling Effect"

Because of its vague and far-reaching nature, the anti-prostitution loyalty oath compels organizations to discontinue effective and innovative programs to avoid losing critical funding. For example, the government of Brazil refused \$40 million in U.S. funds in order to continue its programs working with and empowering sex workers to advocate for their rights and protect their health. Prostitution is not illegal in Brazil and sex workers are even enrolled in government savings plans. Yet, U.S. policy would have required the Brazilian government to alter an approach that has resulted in projected HIV infection rates dropping by half from 1992 to 2002.¹

Organizations that sign the oath are forced to refrain from some of the most effective HIV prevention strategies with sex workers, for fear that the government will view the outreach as "pro-prostitution."

Increasing the Social Stigma of HIV/AIDS and Sex Work

Sex workers are confronted with violence, discrimination, and harassment. They are often reticent to seek assistance from outsiders, even NGOs, for fear of severe stigmatization, fines, and incarceration. In some cases, sex workers may be denied healthcare or

their children may be denied access to education.

As part of their work, public health organizations strive to provide non-judgmental assistance to best serve the health of a sex worker, regardless of the status or situation of the individual. An institutional policy opposing prostitution could have the effect of deterring high-risk clients from seeking assistance for fear of moralistic attitudes or forced rehabilitation.

Forcing Prostitution Underground

Legalization or decriminalization of prostitution has long been a contentious issue. Many experts are concerned that criminalization pushes prostitution further underground, allowing for increased abuse and less opportunity for sex workers to seek legal recourse when their rights are violated. Experts are also concerned that repressive laws and policies will obstruct HIV prevention efforts. The issue is further complicated by a lack of adequate data regarding the impact of legalization or criminalization on the frequency of abuse or forced prostitution.

¹ Michael M. Phillips and Matt Moffett, "Brazil Refuses U.S. AIDS Funds, Rejects Conditions," *The Wall Street Journal* 2 May 2005.