

Human Trafficking, HIV/AIDS, and the Sex Sector

Human Rights for All

October 2010



Acknowledgements

The development and production of this publication would not be possible without the contributions of many people. In particular, the Center for Health and Gender Equity (CHANGE) and the Center for Human Rights and Humanitarian Law at American University Washington College of Law would like to thank the international and U.S. experts who gave their time and energy to prepare the articles for this report: Dr. Shilpa Merchant, Sylvia Mollet Sangaré, Gabriela Leite, Laura Murray, Sara Bradford, and Zoe Hudson. We would also like to thank CHANGE staff Mary Beth Hastings and Melanie Boyer for their contributions to and preparation of this report. Special thanks to Ivan Nikolic and Laurie Green, Dean's Fellows at American University, who reviewed this document.

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About this Report

Human trafficking and forced labor are global human rights abuses. Over the past ten years, the United States has supported some excellent programs but it has also adopted an ideologically-driven approach to the sex sector that harms women and their families, increases the vulnerability of sex workers to violence, trafficking and HIV infection, prevents health care workers from accessing sex workers, and does little or nothing to prevent trafficking. Sex workers who do not want to be “saved” are being subjected to violent raids and rescues and some of them are being arrested, abused, and deprived of their livelihood. Recipients of U.S. funding must sign a pledge that undermines their ability to work non-judgmentally and collaboratively with sex workers to stop trafficking, child prostitution and violence, and fight HIV/AIDS.

In March 2009, the American University Washington College of Law and the Center for Health and Gender Equity co-hosted a symposium, “Human Trafficking, HIV/AIDS, and the Sex Sector,” to explore these challenges and present examples of organizations that provide human-rights-based approaches and partnerships with sex workers.

Distinguished authorities from the field presented at the symposium, and their articles are included in this publication—Gabriela Leite, director of Davida, a Brazilian NGO devoted to human rights of prostitutes and the regulation of the industry; Sara Bradford, the former technical advisor in Cambodia for the Asian Pacific Network of Sex Workers; Dr. Shilpa Merchant, the pioneer of a groundbreaking AIDS prevention program and sex worker collective in Mumbai; and Sylvia Mollet Sangaré, the co-founder of DANAYA SO, a Malian sex worker collective that provides health services, literacy education, legal protection, and job training.

In order to change the negative attitudes and judgments that lead to harmful laws and policies, it is essential to increase public understanding about the lives, hopes, and accomplishments of sex workers and to support human-rights-based programming and partnerships with sex workers. This report brings the voices of women in the sex sector to the center of discussions around prostitution, human trafficking and HIV/AIDS, and offers analysis and recommendations based on what is happening on the ground. We hope it will contribute to meaningful, nonjudgmental discussions that can lead to new policies and programs to improve health and lives of women in the sex sector.

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Executive Summary

Over the last ten years, the United States has helped make important inroads both in combating human trafficking and treating HIV and AIDS. The anti-prostitution policies that are imbedded in the U.S. response to these issues, however, undermine U.S. success in myriad ways. Such policies ignore the very promising models of sex worker empowerment that have transformed lives around the world and successfully confronted both HIV and trafficking.

Human rights must be an essential component to defeating the world's most difficult problems. However, the United States government's opposition to prostitution eclipses human rights and evidence of effectiveness in developing human trafficking and HIV/AIDS approaches. This ideological foundation for U.S. policy has created critical failures and blind spots that severely limit U.S. success in ending these scourges.

From 2000 to 2008, as part of its response to both human trafficking and the global HIV epidemic, the U.S. government developed anti-prostitution policies and Congress passed anti-prostitution provisions that directly undermine U.S. efforts to prevent trafficking and HIV/AIDS. The focus of these policies is directed at stopping women from selling sex to earn a living.

However, sex work is not the same as human trafficking into the sex sector and should not be conflated as such.¹ Conflating human trafficking with prostitution results in ineffective anti-trafficking efforts and human rights violations because domestic policing efforts focus on shutting down brothels and arresting sex workers, rather than targeting the more elusive traffickers.

Moreover, a growing body of research finds that sex workers' high risk of HIV infection is due in part to their marginalized and illegal status. Criminalizing sex work thwarts workers' access to health care services and government benefits and makes them vulnerable to police abuse and exploitation.

The U.S. anti-prostitution loyalty oath (APLO) that is embedded in the President's Emergency Plan for AIDS Relief (PEPFAR) has exacerbated marginalization of sex workers and curtailed freedom of speech for groups and individuals who are fighting for the rights of adults in the sex sector. A human rights-based approach to HIV prevention among sex workers, which has been endorsed by UNAIDS, World Health Organization, and other leading HIV/AIDS activists, includes advocating for legal reform and addressing police violence and other instances of

¹ Sex work is more than prostitution; it includes all activities in the sex sector.

marginalization and discrimination. The APLO puts this approach at risk because of fear of losing U.S. financial support.

The impact of U.S. anti-prostitution policies has been felt around the world. In February 2008, under pressure from the U.S. to crack down on trafficking, the Kingdom of Cambodia passed the Law on the Suppression of Human Trafficking and Sexual Exploitation. Eight of its 52 articles refer to the direct criminalization of adult prostitution, or aspects of adult prostitution. Although the law does not explicitly state that all sex workers are trafficked persons, it has led to a mass campaign to crack down on all prostitution.

Raids and arrests have increased steadily and consistently in Cambodia since the new anti-trafficking/anti-prostitution law was passed. Arrests have led to numerous human rights violations, including police violence and inhumane detention conditions. It has also become increasingly difficult for NGOs to do street outreach and condom distribution to sex workers because of police harassment.

In stark contrast to the punishment paradigm, sex workers themselves are generating innovative approaches to attack HIV/AIDS and human trafficking.

Since its creation in November 2006, India's Sanghamitra has become a vibrant independent community-based organization with more than 3,000 members. Sanghamitra unites sex workers with the fundamental objectives of decreasing their vulnerability, unifying their efforts to espouse safe sexual behavior, and abating the proliferation of HIV/AIDS as well as sexually transmitted infections. It helps them vocalize their issues, aiding their fight for their rights.

Through this democratically-run collective, Sanghamitra members have opened their own bank, championed condom unity (a collective agreement that all sex workers benefit when all enforce condom use), ensured health care for sex workers and their children, and helped minors and trafficked women leave forced prostitution. Sanghamitra also advocates for sex workers by meeting with police and other municipal officials to ensure their rights are protected and enforced.

Mali's DANAYA SO is another example of a democratically-run sex worker organization. It has grown into a national organization operating in five towns. Malian society and government do not provide services for sex workers and their children, so the women organized themselves into a collective. The collective seeks to stop the marginalization of sex workers by removing the difficulties women have in accessing health care (such as HIV/AIDS prevention and treatment programs) and social services; reducing dangers from police raids; fighting housing discrimination; and facilitating participation in social events and religious practice. DANAYA SO

meets the immediate and long-term needs of sex workers and their families by providing medical, financial planning, banking, credit, education, and children's services to its members.

Sister organization LAKANA SO works to protect children of sex workers from the impact of stigma and discrimination. Before LAKANA SO, most children of sex workers did not attend school. LAKANA SO helps mothers enroll their children in school and professional training programs, pays half or all of each child's school fees, and monitors the progress of the children. As a result of the work of LAKANA SO, all members' children are now in school or professional training and highly unlikely to enter prostitution. Most children accompanied by LAKANA SO turn to professions and succeed in finding their place in the society.

Brazil offers a promising example of the contributions sex workers make to society when fully empowered. The mission of Davida—Prostitution, Civil Rights, Health—is to create opportunities for strengthening the citizenship of prostitutes, through the organization of sex workers, the defense and promotion of rights, and the mobilization and monitoring of public policy. Davida coordinates the Brazilian Network of Prostitutes; assists in the formation of new organizations; advocates for public policies in the area of prostitution and health; consults public and private entities nationally and internationally; and produces, distributes, and promotes videos, publications, and manuals on STD and HIV prevention. On a regional and local level, Davida trains organizations that want to work with sex workers and promotes educational actions and citizenship formation with sex workers.

One of Davida's most important early achievements was the formation the Sex Worker Steering Committee that is a part of the Brazilian Ministry of Health's National STD and AIDS Program in 1995. As a result, any official initiative or research project for the sex worker population in Brazil is evaluated in this committee prior to implementation.

As illustrated in the examples from India, Mali, and Brazil, innovative and human-rights-based interventions can make a difference when it comes to preventing HIV, human trafficking, and child prostitution. However, as shown in the case of Cambodia, when governments enact policies and laws that conflate human trafficking and prostitution, they are likely to violate human rights of sex workers, compromise efforts to prevent sexual transmission of HIV, and waste resources that could otherwise be used to locate and assist trafficked persons and minors.

Implementation of the following recommendations is essential to promoting and protecting sex workers' human rights and to effectively combating HIV/AIDS and human trafficking:

To the U.S. Congress

- **Pass legislation to remove the anti-prostitution pledge requirement.**
- If it is not possible to pass legislation to remove the anti-prostitution pledge language, **pass legislation to limit its impact.**

- **Assert Congress' oversight role** by monitoring implementation of the pledge and investigating the impact of the pledge on public health, human trafficking, and human rights.

To the U.S. Administration

- **Instruct the Department of Justice** to cease its appeal of the litigation brought by OSI and others challenging the anti-prostitution pledge under PEPFAR.
- **Issue clear guidance** that public health and anti-trafficking best practices are not excluded from U.S. funding, and instead are encouraged.
- **Notify recipients of U.S. foreign assistance** and their affiliates that sex workers are able to claim the benefits to which all citizens are entitled, such as identification or voter cards, national health insurance, and housing and banking rights.
- **Promote the inclusion of sex worker groups** in the design, implementation, and evaluation of national HIV prevention programs.
- **Ensure that all scientific and program evidence is regularly reviewed** by experienced researchers and program managers, and is shared with U.S. missions and embassies overseas.

To Governments

- **Abolish or revise laws that seek** to eliminate human trafficking by criminalizing the sex industry as a whole.
- **Focus law enforcement efforts** less on emptying the streets of sex workers and more on prosecuting actual traffickers.
- **Focus efforts on identifying actual trafficked persons** instead of trying to rescue all sex workers from prostitution.
- **Train law enforcement to identify trafficking victims.**
- **Monitor for and strictly condemn corruption.**
- **Create and implement non-discrimination laws for sex workers and their children.**

To Donors

- **Focus funding on filling gaps left by the U.S. anti-prostitution pledge requirement.**
- **Increase funding** to support sex worker collectives and NGOs that advocate rights-based approaches to protecting trafficking victims and HIV/AIDS.
- **Treat sex workers as partners** to combat trafficking, child prostitution and HIV/AIDS.
- **Support and allow street outreach to sex workers.**
- **Make regular contact with organizations and health clinics that serve potential trafficking victims.**

To Non-governmental Organizations

- **Learn about and draw lessons from sex worker-run programs** that are highly effective and promote rights.
- **Develop methods to collaborate with sex worker collectives**, which are part of the solution to addressing HIV/AIDS, trafficking, and child prostitution.

- ***Cease categorizing all sex workers as victims*** and refuse to assist governments that pick up adult sex workers who are not trafficked.
- Conduct systematic research, with replicable methodology, to ***collect accurate data on trafficking victims*** in the sex industry.
- ***Tailor vocational training to meet the articulated needs of specific communities and cultures so that skills learned will actually provide a living.***

Media

- ***Report accurately on trafficking issues*** and educate the public on the realities of trafficking in the sex industry so that the public understands that not all sex workers are trafficking victims and not all trafficking victims are in the sex sector.
- ***Frame coverage of human trafficking objectively without using inflammatory language that distorts the issue.***

PART I: HUMAN RIGHTS FOR ALL: THE KEY TO EFFECTIVE U.S. FOREIGN POLICY

Human Rights, HIV and AIDS, and the Sex Sector: A Brief Overview

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“...In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change. I call on all countries to live up to their commitments to enact or enforce legislation outlawing discrimination against people living with HIV and members of vulnerable groups...In countries without laws to protect sex workers, drug users, and men who have sex with men, only a fraction of the population has access to prevention. Conversely, in countries with legal protection and the protection of human rights for these people, many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment, and fewer deaths. Not only is it unethical not to protect these groups: it makes no sense from a public health perspective. It hurts us all.”

—Ban Ki-moon, Secretary-General of the United Nations, Plenary Address to the International AIDS Conference, Mexico City, 2008²

Fighting HIV/AIDS with Human Rights

Human rights are universal and apply to all individuals in every sector of society. Denying human rights to any one person perpetrates an injustice that has ramifications far beyond the local level. Indeed, it cripples globally-supported attempts to stem the spread of a plague that has no regard for gender, age, race, marital status, sexual orientation, immigration status, or religion. HIV/AIDS policies and programs at the global, national, and local levels must support universal access to prevention, treatment, and care in order to effectively address the pandemic. This requires a staunch adherence to basic human rights, without judgment or hesitation. Policies cannot, for any reason, bar any individual or group from accessing necessary health services—it is both immoral and automatically handicaps the HIV/AIDS prevention effort.

This principle has also been articulated at the global level: At the United Nations High Level meeting on HIV/AIDS in 2006, world leaders reaffirmed that “the full realization of all human

² The full text of the speech can be accessed at http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=297.

rights and fundamental freedoms for all is an essential element in the global response to the HIV/AIDS pandemic.”³

As stated in the Universal Declaration of Human Rights, “all human beings are born free and equal in dignity and rights,” and that encompasses:

- Right to life, liberty, and security of person—the basis for individual bodily autonomy
- Right to make informed choices about their lives free from coercion, violence
- Right to not be held in slavery or to be trafficked
- Right to highest standard of health, privacy
- Freedom from violence and arbitrary arrest⁴

In addition to the United Nations affirmation and reaffirmation of the universality of human rights, the world’s major religions and traditions also teach that all persons are deserving of dignity and freedom from coercion. Yet despite these pronouncements of justice, both secular and religious, denying what has been promised at the global level is a regular and accepted practice.

The Sex Sector and HIV/AIDS

Globally, the vast majority of HIV infections—some 80 percent—are sexually transmitted, making sex workers among the groups most vulnerable to infection.

Sexual transmission is by far the most common way to contract HIV. Globally, the vast majority of HIV infections—some 80 percent—are sexually transmitted, making sex workers among the groups most vulnerable to infection. As a result, ensuring access to HIV and AIDS prevention, treatment, and care among communities of female, male, and transgender sex workers is critical to the overall strategy for ending HIV transmissions.⁵

The Sex Sector

The sex sector is a diverse community. It is not restricted to a certain sex, gender, or age group. Each sex worker enters the sector for different reasons and self-identifies differently: some call themselves prostitutes, sex workers, or even whores.⁶ Designing effective HIV/AIDS policies and programs based on human rights depends on understanding the depth and breadth of the entire community. For example:

³ United Nations, *Political Declaration on HIV/AIDS*, Resolution 60/262 adopted by the General Assembly (June 2, 2006). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/503/32/PDF/N0550332.pdf?OpenElement>.

⁴ United Nations, *Universal Declaration of Human Rights*, 1948. <http://www.un.org/en/documents/udhr/>.

⁵ UNAIDS, “Sex Workers and Clients,” <http://www.unaids.org/en/PolicyAndPractice/KeyPopulations/SexWorkers/> (accessed June 16, 2009).

⁶ Meena Saraswathi Seshu, “Sex Work and HIV/AIDS: The Violence of Stigmatization,” *UNAIDS Reference Group in HIV/AIDS and Human Rights, Supporting Document* (2003).

- The sex sector includes women, men, and transgender adults, as well as young adults (“young adults” is defined as 18 to 24 years of age and does NOT include children).
- Women in the sex sector are often wives and mothers.
- Sex work itself may be formal and organized.
- Sex work may be also informal, such as independent or self-employed sex workers.
- Sex work may be legal, criminalized, or tolerated.

People enter the sex sector for a range of reasons. For some, sex work is a profession of choice. For others, it may be a decision made based on certain life circumstances, such as:

- Poverty and indebtedness
- Low levels of education
- Lack of access to other employment opportunities
- Family abuse
- Drug use or addiction
- Gender inequality
- Rape and other violations
- War and post-conflict situations⁷

Conflating sex trafficking and prostitution results in ineffective anti-trafficking efforts and human rights violations.

Each of these reasons represents a breach of different human rights, and while every effort should be made to assist all individuals who do not want to work in the sex sector, respect and assistance should also be given to those who choose—without force or coercion—to work in the sex sector.

Consequences of Laws that Stigmatize Sex Work

Laws, policies, and attitudes that criminalize sex workers perpetrate human rights violations and actually work against creating safe and healthy communities. As illustrated in this publication, when sex work is illegal, sex workers face societal and legal barriers in accessing safe housing, other forms of employment, birth certificates for their children, and health care services, including HIV/AIDS prevention, treatment, and care. Criminalizing sex work also puts sex workers at an increased risk of violence, be it perpetrated by clients, brothel madams, or even law enforcement officers, and makes it challenging to pursue protection.

For example, in Cambodia, police frequently target parks and other soliciting areas in an effort to empty the streets of all sex workers. As described in Sara Bradford’s article, Cambodia’s recently-passed law criminalizing prostitution along with human trafficking provides no guidance on how the police are to enforce it, resulting in a violent anti-prostitution campaign rather than a concerted effort to arrest and prosecute traffickers.

Children often bear the collateral damage of anti-sex worker laws. The repercussions of such laws go beyond the sex worker—their children experience the same stigma, discrimination, and

⁷ UNAIDS. *UNAIDS Guidance Note on HIV and Sex Work*, 2009.

institutional exclusion directed at their parents, and it is not uncommon for them to drop out of school as a result.

Sex Work vs. Trafficking

Sex work is not the same as trafficking in persons for the purpose of sex and should not be conflated as such. Conflating human trafficking and into the sex sector with prostitution results in ineffective anti-trafficking efforts and human rights violations. Anti-trafficking efforts based on an anti-prostitution ideology often target the victims and not the perpetrators—the traffickers themselves. They lead to violence, as evidenced by the raids in Cambodia, and misguided trafficking interventions.

According to the UNAIDS Reference Group on HIV and Human Rights, an advisory body to UNAIDS:

“The blurring of trafficking and sex work and/or treating all sex workers as ‘victims’ can lead to support for coercive efforts to control or reduce sex work, which rarely produce beneficial and lasting outcomes and have even been associated with abuse of sex workers and their families. Mandatory medical treatment or procedures, forced rehabilitation, or programmes implemented by police or based upon detention of sex workers are all examples of coercive programming. All such strategies either represent, or are prone to, human rights abuses and corruption.

In particular, sex workers should not be subjected to the violence and related human rights violations that all-too-frequently accompany ‘raid and rescue operations,’ whether these are directed by state agents or non-state actors.”⁸

To end trafficking and effectively address HIV/AIDS, trafficking and sex work have to be treated differently. And in both cases, human rights must be paramount.

Conclusion

Human rights are critical to any global, national, or local effort addressing HIV/AIDS and human trafficking. The U.S. invests significant financial assistance in national and global efforts to stem the HIV/AIDS epidemic and end human trafficking. In order for this funding to be most effective, U.S. foreign policies and programs must use human rights as a foundation. Stemming global health epidemics and creating a healthy worldwide population depends on it.

⁸ UNAIDS Reference Group on HIV and Human Rights, “Recommendations regarding the ‘UNAIDS Guidance Note on HIV and Sex Work (April 2007)’” accessed at http://data.unaids.org/pub/BaseDocument/2008/20080215_rghr_statement_sexworkguidance_en.pdf.

Human Trafficking and the Sex Sector: New Partnerships for Change

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Scope of the Problem

The U.S. has undertaken a commitment to combat both HIV/AIDS and human trafficking. Millions have been spent around the world to provide care, support, and services, as well as to prosecute traffickers. This is primarily a humanitarian response to the millions of people who are living with and dying from HIV/AIDS, and the hundreds of thousands of people who are being held by traffickers in forced labor in homes, brothels, factories, farms, and streets worldwide.

According to UNAIDS, in 2007 approximately 33 million people were living with HIV/AIDS, half of whom were women, and the numbers are increasing.⁹ In many countries, the rate of infection is higher among sex workers than the general population.¹⁰ Consequently, health care resources should include a strong focus on this population in order to achieve success. Unfortunately, this is not the case. In fact, less effort and funding reaches sex workers than the general population.¹¹ Many women in the sex sector are victims of trafficking.

According to the International Labour Organization, in 2005 approximately 12.3 million people were held in forced labor, of which 2.45 million had been trafficked into forced labor.¹² Of those, approximately 1.4 million people were trafficked into the sex sector, the majority of them women and girls.¹³ Logically, non-trafficked adults in the sex sector could be extremely helpful in locating trafficked women and minors. However, anti-trafficking NGOs do not work with adult sex workers to combat trafficking and child prostitution; even worse, many anti-trafficking efforts actually stigmatize, marginalize, and even target these women.

The actual number of adults in sex work is unknown, but a 2006 report on the “female sex worker prevalence rate” of girls and women between ages 15 and 49 found the following:

- Sub-Saharan Africa: 0.4 percent to 4.3 percent

⁹ UNAIDS, *Summary of the 2008 Report on the Global AIDS Epidemic*, pp. 5, 7.

http://data.unaids.org/pub/GlobalReport/2008/JC1511_GR08_ExecutiveSummary_en.pdf

¹⁰ In all regions except for sub-Saharan Africa. See note 8, 9.

¹¹ UNAIDS, *Guidance Note on HIV and Sex Work* (New York: UNAIDS, 2009).

http://data.unaids.org/pub/BaseDocument/2009/jc1696_guidance_note_hiv_and_sexwork_en.pdf

¹² International Labour Organization, “A Global Alliance against Forced Labor: Report of the Director-General,” (Geneva: ILO) 93rd Session, 2005, Report I (B), pp. 12-15. <http://www.ilo.org/public/english/standards/re/m/ilc/ilc93/pdf/rep-i-b.pdf>.

¹³ The ILO uses the term ‘sexual exploitation’ and does not explicitly define the term. However, it speaks of “coercive sexual exploitation” and “forced commercial sexual exploitation” and so considers this form to constitute forced labor. See note 11, 7, 15.

- Asia: 0.2 percent to 2.6 percent
- Former Russian Federation: 0.1 percent to 1.5 percent
- Eastern Europe: 0.4 percent to 1.4 percent
- Western Europe: 0.1 percent to 1.4 percent
- Latin America: 0.2 percent to 2 percent (Belize: 7.4 percent)¹⁴

Despite the authors' efforts to ensure accuracy, the numbers are probably underestimates as the population is a hidden one. Nonetheless, the number of females between 15 and 49 in some form of sex work is substantial, certainly in the millions. The estimates in major cities alone are shocking: an estimated 14,108 women in Mumbai, India; 32,448 in Jakarta, Indonesia; and 11,249 in Niamey, Niger.¹⁵

Even though sex work, trafficking and HIV/AIDs are inextricably linked, policies and programs aimed at combating them always operate independently.

Because sex workers have a high HIV/AIDS prevalence rate worldwide, the above numbers mean that hundreds of thousands, if not millions, of women in the sex sector are infected. The rate of infection among trafficked women and girls is certainly as high as or higher than non-trafficked sex workers given their inability to have any control over their bodies.

Even though sex work, trafficking, and HIV/AIDs are inextricably linked, policies and programs aimed at combating them always operate independently despite the fact that anti-trafficking programs can have a tremendous impact upon the work being carried out by health care providers. For example, a typical concern of health care providers is the harm caused by ill-conceived mass raids of brothels in which all women, not just trafficked women and minors, are taken out and detained. These raids typically result in health care workers having less or no access to sex workers in brothels.

For this reason, it is important for the government and civil society to engage in greater cooperation and information sharing to ensure that they (1) 'do no harm' to sex workers as a result of anti-trafficking efforts, and (2) protect the rights of children and trafficked women and support people who want to exit from prostitution. It is counterproductive and ultimately harmful to the persons who are intended to benefit from these programs for governments and agencies to work at counter purposes.

Only a few governments (e.g., Mali and Brazil) and NGOs (e.g., the Global Alliance Against Trafficking in Women) view sex workers as partners to combat trafficking, child prostitution, and HIV/AIDS. Most governments and NGOs do not collaborate with sex workers or sex worker

¹⁴ Estimates of the number of female sex workers in different regions of the world, J. Vandepitte, R. Lyerla, G. Dallabetta, F. Crabbe, M. Alary and A. Buve, *British Medical Journal*, vol. 82, Suppl. 3, (2006), pp. iii18 – iii25, pp.iii20-iii21. http://sti.bmj.com/content/82/suppl_3/iii18.abstract.

¹⁵ See note 13, p. iii20.

collectives. In fact, most are hostile to all women in prostitution and treat them as obstacles rather than as potential partners. A challenge to such negative thinking and counterproductive practices is contained in the reports on sex worker collectives in Mali, India, and Brazil. Their impressive accomplishments demonstrate a more productive, and rights-protective way forward.

U.S. Law and Policy

From 2000 to 2008, the U.S. government developed a set of anti-prostitution policies and Congress passed a number of anti-prostitution provisions that directly undermine U.S. efforts to prevent trafficking and HIV/AIDS and have caused harm to women and their families. The focus of these policies is directed at stopping women from selling sex to earn a living. In 2003, Congress passed a trafficking law that states that funds may not “be used to promote, support, or advocate the legalization or practice of prostitution” and also that an organization may not use other funds to “promote, support, or advocate the legalization or practice of prostitution.”¹⁶

The Bush administration interpreted this to mean that all grantees were *required* to adopt a policy against prostitution. This was not required by the law and the Obama administration’s State Department Office to Monitor and Combat Trafficking in Persons (TIP Office) no longer requires grantees to adopt a pledge.¹⁷

However, grantees receiving funding for HIV/AIDS work *must* adopt a policy. The President’s Emergency Plan for AIDS Relief (PEPFAR) includes a somewhat similar anti-prostitution provision stating that U.S. funds may not “be used to promote, support, or advocate the legalization or practice of prostitution,” and that organizations receiving U.S. funding *must adopt* a policy opposing prostitution.¹⁸ Zoe Hudson’s paper discusses a lawsuit challenging this restriction under PEPFAR.

The thinking underlying U.S. policy during the Bush presidency is laid out in a U.S. government ‘fact’ sheet titled, *The Link between Prostitution and Sex Trafficking*.¹⁹ The sheet claims a unique link between prostitution and trafficking that does not exist between trafficking and, for example, domestic work or farm work. Academics and activists challenged the logic and evidence cited in support, pointing out that the paper does not contain any credible evidence but instead “asserts as matters of proven fact a number of statements, which, given the state of

¹⁶ Trafficking Victims Protection Reauthorization Act of 2003, Public Law 28-103. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ193.108.pdf.

¹⁷ *Funding Opportunity Announcement, G/TIP FY 2010 International Programs to Combat Trafficking in Persons*, (Nov. 2, 2009). <http://www.state.gov/g/tip/rls/other/2009/131238.htm>. Grantees must simply state that they have “no policy on prostitution and will remain neutral during the term of th[e] grant.”

¹⁸ The United States Leadership against HIV/AIDS, Tuberculosis, and Malaria Act, which authorizes the President’s Emergency Plan for AIDS Relief (PEPFAR), Global AIDS Act, 22 U.S.C. sec. 7631(f) and (e). <http://www.govtrack.us/congress/billtext.xpd?bill=h108-1298>.

¹⁹ U.S. Department of State Bureau of Public Affairs, “The Link between Prostitution and Sex Trafficking,” (Nov. 24, 2004). <http://2001-2009.state.gov/r/pa/ei/rls/38790.htm>.

information on both trafficking and prostitution worldwide, are unsupported or unproven by valid research methods and data.”²⁰ In response, the TIP Office simply stated, without evidence, that *“It is obvious to us, as stated in the fact sheet, that prostitution “fuels” the increase in sex trafficking. Where prostitution thrives, so does sex trafficking!”*²¹

Harms Caused by Anti-prostitution Campaigns

Many of the harms caused by anti-prostitution campaigns are evident in Sara Bradford’s piece on the crackdown on women in the sex sector in Cambodia—incarceration, rape, and other violence, and lack of health care and basic hygiene.

By no means are these harms limited to the developing world. For example, in the U.S., adults in the sex sector are unable to openly collaborate and engage in actions to improve their situations and access to rights. In Sweden, the government did not consult with sex workers before adopting a law criminalizing clients, but relied instead on the views of women’s organizations that have no connections with sex worker organizations or their representatives.²²

Many NGOs that receive U.S. government funding are also unlikely to consult with sex workers out of fear of losing funding. Many of them have purged their websites and documents of words such as “sex worker” and “harm reduction,” which were seen as conveying support for prostitution during the Bush administration. Researchers who were interested in understanding, for example, the impact of different legal regimes on the incidence and type of trafficking, health, and rights have not been funded, and so there exists practically no hard evidence today on these important questions.

Brazil rejected US\$40 million in PEPFAR funding rather than be forced to stop working with sex workers.

Some groups providing services lost funding. According to a Bangladeshi sex worker collective, when two of their donors signed the U.S. anti-prostitution pledge in 2005, the collective lost funding and closed 17 drop in centers. Consequently, women no longer had a safe space and the collective’s condom sales dropped by more than 50 percent (from 73,000 a month to 30,000).²³

As Gabriela Leite points out in her article, Brazil rejected US\$40 million in PEPFAR funding rather than be forced to stop working with sex workers. An official explained: “Sex workers are part of

²⁰ Letter to Ambassador John Miller, Director, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State (April 21, 2005). <http://www.genderhealth.org/pubs/LtrMillerTrafficking.pdf>.

²¹ Emphasis added. Email response from Ambassador Miller (May 27, 2005) (on file with author).

²² Sex workers Critique of Swedish Prostitution Policy, Petra Östergren. http://www.petraostergren.com/pages.aspx?r_id=40716.

²³ Anna-Louise Crago, *Our Lives Matter: Sex Workers Unite for Health and Rights*, (New York: Open Society Institute, 2008). pp. 17-21. http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/ourlivesmatter_20080724.

implementing our AIDS policy and deciding how to promote it ... they are our partners. How could we ask prostitutes to take a position against themselves?"²⁴

The anti-prostitution campaign has also reduced condom use among sex workers and clients, because they know the police see condoms as evidence of prostitution.²⁵ In India, sex workers fleeing raids have moved to areas where there are fewer or no support services, significantly decreasing their access to government HIV/AIDS prevention, treatment, and care programs.²⁶

Crackdowns may also lead to increased trafficking. In 2004, the South Korean government closed brothels and left women with no alternative source of income. Current reports say that now sex workers cannot get out of prostitution and are migrating to work abroad, putting them at risk of being trafficked. There are also reports of prostitution increasing indoors and sex workers committing suicide.²⁷

Moving Forward: Supporting Programs that Empower Adults in the Sex Sector

The incredible stories about sex worker programs in Mali, India, and Brazil thus serve as inspirations and guides for a way forward. They demonstrate that women in the sex sector have a tremendous capacity to bring about change, not only in their own lives and the lives of their children, but also in their communities.

The only way to bring about real, lasting change for sex workers and their families is to work with the women directly, in a non-judgmental manner. The success detailed in the stories about sex worker collectives in Mali, Brazil, and India demonstrates what is possible once moral judgments are no longer part of the equation. HIV/AIDS rates decrease, children of sex workers are educated, women start alternative income-generating programs, child prostitution is reduced, trafficked women are rescued, and fewer sex workers are subjected to violence.

²⁴ Esther Kaplan, "Just Say Nao," *The Nation* (May 12, 2005). <http://www.thenation.com/article/just-say-n%C3%A3o>.

²⁵ See note 23, p. 11.

²⁶ Global Alliance Against Traffic in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures of Human Rights around the World*, GAATW, 2007, p. 123.

²⁷ Sex Business Goes Underground, Korea times (Sept. 30, 2008) http://www.koreatimes.co.kr/www/news/nation/2008/09/116_31935.html; Korean Sex Workers Look for Greener Pastures, *The Chosun Ilbo* (2008); Overseas Sex Traders to Be Stripped of Passports, *Korea Times* (Sept. 19, 2007) http://www.koreatimes.co.kr/www/news/nation/2007/09/117_10538.html.

With Friends Like These: Ongoing Legal Challenges to the Anti-Prostitution Loyalty Oath Requirement in PEPFAR under the Obama Administration

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Background

A growing body of research finds that sex workers' high risk of HIV infection is due in part to their marginalized and illegal status. Criminalizing sex work thwarts workers access to health care services and government benefits, and makes them vulnerable to police abuse and exploitation. Non-governmental organizations (NGOs) report that almost half of countries surveyed have laws that impede delivery of HIV/AIDS services to sex workers.²⁸ Scarce resources exacerbate the poor attention to their health needs. UNAIDS estimates that less than one percent of the global funding on HIV/AIDS prevention is spent on HIV and sex work.²⁹

Despite strong evidence that addressing discrimination, violence and structural barriers is a critical element of any successful effort to combat HIV infection among sex workers, the United States government puts restrictions on its implementing partners that compromise prevention programs. These restrictions also violate fundamental free speech protections. Included in the global AIDS law is the "anti-prostitution pledge requirement," as it is commonly known, which forces care and service providers to limit or deny care for sex workers as a condition of getting U.S. funding. Implementers of U.S. government-funded programs are forced to adopt a policy position in keeping with the views of the U.S. government, even if they would prefer to remain neutral or take another stance in order to carry out their life-saving work.

Numerous organizations have spoken out against the pledge, including InterAction, the largest U.S.-based alliance of 160 development and humanitarian NGOs, and the Global Health Council. Charitable organizations, including International Rescue Committee, Save the Children, and CARE, have also criticized the pledge requirement, charging that it contributes "to the stigmatizing of populations that are at risk, infected, or affected by HIV/AIDS and greatly undermines the success of AIDS prevention, testing, and care efforts."³⁰

Some humanitarian and development groups, including InterAction, the Global Health Council, Pathfinder International, and the Alliance for Open Society International have gone further by challenging the requirement in court. They argue that it undermines urgently needed HIV prevention programs and violates the free speech guarantees of the U.S. Constitution. This

²⁸ Report on the Global AIDS Epidemic, Joint United Nations Programme on HIV/AIDS (UNAIDS), 2008, p. 84.

²⁹ UNAIDS Guidance Note on HIV and Sex Work, Joint United Nations Programme on HIV/AIDS (UNAIDS), 2009. http://data.unaids.org/pub/BaseDocument/2009/jc1696_guidance_note_hiv_and_sexwork_en.pdf.

³⁰ Memorandum from CARE, Save the Children, EngenderHealth et al on "Bush Ties Money for AIDS Work to Policy Pledge," *Wall Street Journal* (Feb. 28, 2005) (on file with author).

article provides background on the litigation, discusses why the pledge requirement is harmful, and makes recommendations for how the Obama administration can move towards human rights-based, comprehensive health policies.

Taking the Pledge

The United States government is the single largest funder of care, treatment, and prevention programs for HIV/AIDS. In 2009, it spent almost US\$6 billion as part of the President's Emergency Plan for AIDS Relief (PEPFAR). PEPFAR, which operates in more than 100 countries, has received deserved praise for its efforts to provide treatment, but has consistently come up short on prevention. A recent evaluation of the program found no impact on HIV prevalence in sub-Saharan Africa.³¹

PEPFAR was launched under the Bush administration and included a number of provisions to assuage conservative lawmakers who were wary of prevention programs not grounded in abstinence. There are two restrictions in PEPFAR related to sex work: first, no U.S. funds may be used to promote the legalization or practice of prostitution. There is an important safeguard included, namely that nothing in the requirement should prevent the delivery of health services. Second, any organization that receives U.S. money—whether directly or through a sub-contract—must have a policy “opposing prostitution,” what is commonly referred to as the “anti-prostitution loyalty oath.” The provision is enormously problematic in its application. Because the oath requires an organization-wide policy, its restrictions apply to all of the organization's other funding, not just the U.S. funding.

First and foremost, because the oath requires the adoption of an organization-wide policy, its restrictions apply to all the organization's funding, U.S. or not. In other words, the U.S. government isn't just telling grantees how to spend U.S. money. It's telling grantees how to spend all their money. For example, in 2006 USAID launched an inquiry about CARE's privately funded programs serving sex workers. The inquiry stemmed from a letter of Rep. Mark Souder (R-IN) alleging that CARE's privately-funded tuberculosis prevention work with a sex worker organization violated the pledge requirement.³²

The requirement also forces groups to adopt the U.S. government's viewpoint. There are many groups—among them health providers and researchers—who have no position on prostitution, but the pledge requirement forces them to adopt one. Some groups work in coalition where a variety of views are represented. A larger concern is that the pledge muzzles debate at a time when civil society and governments are grappling with the merits of different legal and regulatory approaches to sex work.

³¹ Eran Bendavid and Jayanta Bhattacharya, “The President's Emergency Plan for AIDS Relief in Africa: An Evaluation of Outcomes,” *Annals of Internal Medicine*, vol. 150, issue 10, (May 19, 2009) <http://www.annals.org/cgi/content/full/0000605-200905190-00117v1>.

³² See Declaration of Helene Gayle (Feb. 6, 2008) http://brennan.3cdn.net/89fe478a4452a10b44_lbm6bthqi.pdf.

While interventions like condom distribution and testing for sexually transmitted infections are almost certainly acceptable, the U.S. offers no guidance as to what does or does not violate the pledge. As a result, whether a group opposes prostitution often is a matter of opinion. In 2005, when asked if an organization’s policy was adequate, USAID’s acting general counsel replied, “We do not think that it is appropriate for USAID to make prospective determinations for private organizations about whether or not their policy statements comply with the statutory requirement.” However, he went on to warn that “recipients of all USAID awards are subject to audits by the USAID inspector general,” and would be monitored for compliance.³³

That same year, Sen. Tom Coburn (R-OK) took issue with a successful overseas condom distribution program claiming that the government was subsidizing “prostitutes’ games and parties.”³⁴ Rep. Christopher Smith (R-NJ) asked President George W. Bush to investigate a program in Nigeria where USAID funds “facilitate the formation of two sex worker associations to defend and advocate for sex worker rights” and a South Africa program that conducted joint trainings with a sex worker advocacy organization.³⁵

A collection of U.S.-based service providers put together a list of activities to illustrate the diversity of initiatives on sex work and HIV/AIDS. They include:

- Operating a “safe house” where meetings, counseling, and health services are provided for sex workers
- Researching the pros and cons of various legal regimes and their impact on HIV transmission among sex workers
- Reducing criminal penalties
- Helping sex workers form collectives and unions

To date, the U.S. government refuses to provide any official commentary on whether these programs are allowable. In its only written guidance on what is permissible, the government has said that “advocating for the legalization of the institution of prostitution or organizing or unionizing prostituted people for the purpose of advocating for the legalization of prostitution” are impermissible. But, the government was careful to say that these are “[e]xamples of activities inconsistent with a policy opposing prostitution and sex trafficking” and that other activities could also be off-limits.³⁶

The United Nations approach, however, appears to be at odds with the U.S. requirement. The UN has acknowledged that criminalizing sex work contributes to the spread of HIV. The UNAIDS International Guidelines on HIV/AIDS and Human Rights states: “With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing,

³³ See Letter from Arnold Haiman General Counsel, USAID, to Mr. Aryeh Neier, AOSI (Aug. 2, 2005).

³⁴ See Letter from Senator Tom Coburn (R-OK) to President George W. Bush (May 19, 2005).

³⁵ See Letter from Congressman Christopher Smith to President George W. Bush (June 7, 2005).

³⁶ Regulation on the Organizational Integrity of Entities That Are Implementing Programs and Activities Under the Leadership Act, 73 FR pp. 78,997, 78,997-98 (Dec. 24, 2008).

then legally regulating occupational health and safety to protect sex workers and their clients.”³⁷ The UNAIDS Guidance Note on Sex Work and HIV/AIDS recommends three pillars in reference to sex work: (1) assure universal access to comprehensive HIV prevention, treatment, care, and support; (2) build supportive environments, strengthen partnerships, and expand choices; and (3) reduce vulnerability and address structural issues.³⁸

The Impact of the Pledge

The pledge has been met with widespread opposition, in large part because it needlessly introduces politics into what is a public health matter. Programs should be guided by the evidence; not political demands. Sex workers around the world face extremely high rates of HIV infection, and in some regions sex work remains the principal driver of the epidemic. In Mali, Senegal, Burkina Faso, Guyana, and parts of India and Russia, upwards of one in five sex workers are living with HIV.³⁹ This need not be the case when best practices exist regarding dramatically reducing risk and rates of infection among sex workers and their clients, in large part by ensuring access to non-discriminatory health and social services that did not stigmatize sex workers.

Programs should be guided by the evidence; not political demands.

Because the pledge requirement undermines effective health practices, some groups chose not to sign the pledge and lost U.S. funding. Among them:

- The BBC World Service Trust lost U.S. funding in 2006 when it refused to comply with the pledge requirement. BBC had signed a US\$4 million contract with USAID for an HIV/AIDS program in Tanzania. The campaign included media programs that non-judgmentally portrayed sex workers. BBC chose to suspend the program, saying there was “no common ground.”
- The Brazilian government, which has cut new HIV infections in half since 1990, refused US\$40 million in U.S. HIV/AIDS funding in 2005 rather than sign the pledge. The government decided “to remain faithful to the established principles of the scientific method and not allow theological beliefs and dogma to interfere,” according to Pedro Chequer, co-founder and former director of Brazil’s AIDS program. Chequer also submitted an affidavit in support of the plaintiffs in the lawsuit brought by Pathfinder International and the Alliance for Open Society International against the U.S. government.

³⁷ UNAIDS, International Guidelines on HIV/AIDS and Human Rights, 2006, 30. http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf

³⁸ Joint United Nations Programme on HIV/AIDS (UNAIDS), *UNAIDS Guidance Note on HIV and Sex Work* (Geneva: UNAIDS) March 2009 p. 7.

³⁹ Joint United Nations Programme on HIV/AIDS (UNAIDS), *Report on the Global AIDS Epidemic*, (Geneva: UNAIDS) 2008 pp. 43-50.

- Womyn’s Agenda for Change, a public health NGO in Cambodia, lost US\$93,000 in USAID funding after it refused to discontinue an HIV prevention effort that created a network of more than 5,000 sex workers.
- DKT International, a U.S.-based nonprofit, refused to sign the pledge and lost funding for a condom-distribution program in Vietnam that is estimated to have prevented more than 85,000 cases of HIV. DKT has filed its own lawsuit challenging the pledge.

However, the majority of organizations has developed a written policy and is trying to work within the bounds of the policy. Very few groups have made their policies public, so it is hard to say how they have interpreted the pledge requirement. It is impossible to do a quantitative study on the pledge’s impact, but we can make some observations based on conversations with groups around the world.

First, it seems clear that there has been a severe impact on providing services to sex workers. The oath’s ambiguous parameters result in limited health programs—focusing on condom distribution and treatment of sexually transmitted infections (STIs)—and avoid questions of human rights, discrimination, and legal status. In some cases, groups avoid engaging with sex workers altogether, and focus instead on other populations. The pledge has also disrupted HIV prevention partnerships. Organizations that collaborate to provide more comprehensive services have been forced to split, compromising sex workers’ access to care.

Of particular concern is the possibility that successful human rights-based HIV prevention programs that address the root causes of the spread of HIV could be jeopardized. A human rights-based approach, which has been endorsed by UNAIDS, World Health Organization, and other leading HIV/AIDS activists, includes advocating for legal reform and addressing police violence and other instances of marginalization and discrimination. The approach also advocates for the right to unionize—examples from around the world have repeatedly demonstrated that when sex workers form collectives or unions, it strengthens their ability to address their own needs, in addition to lobbying for their health and rights. The pledge puts this approach at risk because of fear of losing financial support.

Finally, the pledge compromises research and public education. In a lawsuit challenging the pledge, CARE’s president, Helene Gayle, notes, “out of caution and uncertainty, CARE has restricted its media and public communications to raise awareness of its work in India and Bangladesh, and has often declined to share what it has learned regarding HIV prevention strategies at conferences both in the United States, including New York, and abroad.”⁴⁰ The pledge has led numerous groups to shy from public discussion and debate.

⁴⁰ See Declaration of Helene Gayle, see note 31.

Legal Challenges to the Pledge Requirement

Under the Bush administration, the pledge was not enforced against U.S. NGOs for the first two years after it was adopted because the Department of Justice (DOJ) warned that it was constitutionally suspect.⁴¹ DOJ also advised Congress that a similar provision of the Trafficking Victims Protection Act “raises serious First Amendment concerns and may not withstand judicial scrutiny.”⁴² In what many suspect was a political maneuver, however, they reversed that opinion and began to enforce the pledge against U.S. NGOs in 2005.⁴³ Two lawsuits were brought against the government, challenging the requirement on First Amendment grounds.

The first case was brought by DKT International, and was initially successful; a federal district court ruled that the pledge requirement was unconstitutional. On appeal, the court determined that the provision would be constitutional if it allowed NGOs to set up subsidiaries that could use their private funds to speak free and clear of the pledge requirement.⁴⁴ At the time, the government did not provide any such avenue of free speech. DKT has chosen not to appeal the case any further.

The second case, initially brought by the Alliance for Open Society International and Pathfinder and later joined by the Global Health Council and InterAction, is still in court.⁴⁵ The U.S. district court hearing this case has twice ruled that the pledge is unconstitutional because it violates the First Amendment. A preliminary injunction issued by the court prohibits USAID and HHS from enforcing the pledge requirement against the plaintiff organizations and protects U.S.-based members of the Global Health Council and InterAction.⁴⁶ This provides protection to the majority—if not nearly all—of U.S.-based NGOs implementing PEPFAR. However, groups must still enforce the pledge against foreign NGOs.

In July 2007, in an attempt to prevail on appeal, USAID and HHS issued the first PEPFAR guidelines on the pledge requirement. They are largely unworkable. The guidelines still require NGOs to adopt the government’s viewpoint in order to be eligible for funds. They purport to provide a separate avenue for groups to spend private funds to engage in free speech. But the

⁴¹ See Letter from Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, to Hon. Alex M. Azar II, General Counsel, HHS (Sep. 20, 2004) (stating that “earlier this year” OLC “gave its tentative advice” that the pledge requirement “could, under the Constitution, be applied only to foreign organizations acting overseas”). <http://www.scribd.com/doc/30047566/DOJ-Ltr-Prostitution-Trafficking-Levin>.

⁴² Letter from William E. Moschella, Assistant Attorney General, DOJ Office of Legislative Affairs, to Hon. F. James Sensenbrenner, Jr. (Sep. 24, 2003), p. 8. <http://www.scribd.com/doc/30047565/DOJ-OLA-Memo-Sensenbrenner> The Trafficking Victims Protection Act (“TVPA”) requires funding recipients to “[state] in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution.” 22 U.S.C.A. § 7110(g)(2). This TVPA provision has not yet been challenged in court.

⁴³ See note 39.

⁴⁴ DKT International, Inc. v. USAID, 477 F.3d 758 (D.C. Cir. 2007).

⁴⁵ For updated information, see http://www.brennancenter.org/content/resource/aosi_v_usaid/.

⁴⁶ Alliance for Open Society Int’l, Inc. v. USAID, 570 F.Supp.2d 533 (S.D.N.Y. 2008). The only exception is that the government may enforce the pledge requirement against DKT International, which was the plaintiff in the D.C. Circuit case. The lawsuit does not challenge a second provision that prohibits U.S. funds from being spent on activities that “promote or advocate the legalization or practice of prostitution and sex trafficking.” 22 U.S.C. § 7631(e).

guidelines require groups to create a wholly separate entity that receives no federal funds, and maintains separate facilities, staff, management, equipment, and board members.⁴⁷ It is a prohibitively expensive and burdensome proposal. Moreover, the guidelines fail to clear up any of the widespread confusion regarding which privately-funded speech and activities are prohibited.

The scheme proposed by the guidelines is far harsher than other separation requirements in effect. Faith-based organizations, for example, are only required to separate government funded activities from proselytizing in “time or place”.⁴⁸ The Bush administration argued in other arenas—but not in this one—that this level of separation is sufficient to ensure that the government neither funds nor endorses a grantee’s message.⁴⁹

In its final month in office, the Bush administration tried to lock in the government’s position by publishing the guidelines, in slightly modified form, as a final HHS regulation.⁵⁰ In an apparent effort to tie the hands of the next administration, they made the final regulation effective on the morning of President Barack Obama’s inauguration without providing any explanation for compressing the usual timeframe requirements.⁵¹

Fortunately, the district court judge ruled that even with the new guidelines, the pledge requirement continues to violate the First Amendment.⁵² HHS and USAID have appealed this decision to the U.S. Court of Appeals for the Second Circuit.

Groups were initially hopeful that the Obama administration would withdraw the appeal and declare the pledge requirement unconstitutional. On April 13th, 2010, HHS finalized a new regulation that largely mirrors the Bush administration rules.⁵³ Numerous organizations submitted comments expressing concerns, including 21 leading health, humanitarian, and development organizations. U.S. Representatives Waxman (D-CA) and Lee (D-CA), and leading physicians and scientists also protested.⁵⁴ The regulation fails to address constitutional concerns,

⁴⁷ USAID’s guidelines were issued in the form of a policy directive, Acquisition & Assistance Policy Directive 05-04 Amend. 1, available at http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd05_04_amendment1.pdf-4. HHS issued the guidelines in the form of a proposed regulation subject to the notice and comment process. Office of Global Health Affairs, Regulation on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities, Notice of Proposed Rulemaking, 73 Fed. Reg. 20,900 (Apr. 17, 2008). HHS’ final regulation, which is even more stringent than the proposed regulation, is published at 73 Fed. Reg. 78997.

⁴⁸ See 22 § C.F.R. 205.1(b) (USAID); 45 C.F.R. § 87.1(c) (HHS).

⁴⁹ See Executive Order No. 13279; White House Office of Faith-Based & Community Initiatives, Guidance to Faith-Based and Community Organizations on Partnering With the Federal Government (2002), available at http://www.whitehouse.gov/government/fbci/guidance_document_01-06.pdf.

⁵⁰ 73 Fed. Reg. 78997 (Dec. 24, 2008).

⁵¹ USAID has implemented the guidance via an Acquisition and Assistance Policy Directive, which was not subject to the notice and comment process. USAID, Acquisition & Assistance Policy Directive 05-04, Amend. 1.

⁵² Alliance for Open Society Int’l, Inc. v. USAID, 570 F.Supp.2d 533 (S.D.N.Y. 2008). The only exception is that the government may enforce the pledge requirement against DKT International, which was the plaintiff in the D.C. Circuit case.

⁵³ Organizational Integrity of Entities Implementing Leadership Act Programs and Activities, 75 Fed. Reg. 18,760 (April 13, 2010) (to be codified at 45 C.F.R. pt. 89).

⁵⁴ Letter from Carol Dukes Hamilton, MD and Kenneth H. Mayer, MD, Co-chairs, Scientific Advisory Committee, Infectious Diseases Society of America and Michael S. Saag, MD, Chairman of the Board, HIV Medicine Association to Kathleen Sebelius, Secretary, U.S. Department of Health and Human Services (December 23, 2009) and Letter from Rep. Henry Waxman

does not provide an adequate avenue to express free speech rights, and fails to clarify which activities are prohibited. The government’s opening brief in its restored appeal of the District Court’s last decision is due on May 11, 2010.

Moving Forward

At one time in parts of Bangladesh, brothel-based sex workers were not allowed to wear shoes in public. They were segregated and forced to keep to themselves, even conducting their own burials when local clergy refused. By organizing collectives, sex workers in Bangladesh and elsewhere have been able to achieve modest gains—from winning the right to wear shoes, to opening safe houses, to obtaining medical care—and, in the process, have reduced the spread of HIV.⁵⁵ Similar dramatic improvements in health have been experienced in many countries, reducing HIV prevalence among sex workers. The pledge requirement, however, threatens continued progress.

“[o]ur first priority should be to...ensure that best practices—not ideology—drive funding for HIV/AIDS programs.”
—President Barack Obama

President Obama has repeatedly spoken out about the need to embrace science over ideology. During the 2008 presidential campaign, he said “[o]ur first priority should be to...ensure that best practices—not ideology—drive funding for HIV/AIDS programs.”⁵⁶ In his early days as president he changed rules to enable more stem cell research and spoke out in favor of syringe exchange programs. His administration’s support for the pledge requirement is inconsistent with his repeated commitment to promote science and rule of law.

Ideally, Congress would amend the law to remove the pledge altogether. Congress, however, has shown little appetite for taking this on in the near term. In the absence of congressional action, there are important steps that the Obama administration can take to provide relief to NGOs and improve HIV prevention programs around the world.

First, the Obama administration should revert to the Bush administration’s initial determination that applying the pledge to U.S.-based NGOs violates the Constitution and cease to enforce it at least against these groups. They could do this by reversing position in the litigation and directing the agencies to stop enforcement.

and Rep. Barbara Lee to Kathleen Sebelius (December 22, 2009) and Letter from 21 health, humanitarian, and development organizations to Kathleen Sebelius (December 23, 2009) (these letters and others can be found at http://www.brennancenter.org/content/resource/aosi_v_usaid/).

⁵⁵ For examples, see Anna-Louise Crago “Our Lives Matter: Sex Workers Unite for Health and Rights” (New York: Open Society Institute, 2008).

http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/ourlivesmatter_20080724.

⁵⁶ “Strengthening Our Common Security by Investing in Our Common Humanity,”

http://www.barackobama.com/pdf/issues/Fact_Sheet_Foreign_Policy_Democratization_and_Development_FINAL.pdf.

Second, the Administration should revise regulations that apply to foreign NGOs. The lawsuit does not address claims by foreign groups so no matter what happens in court, foreign NGOs will still be subject to the requirement. The existing regulations, however, should be modified to provide greater flexibility and clarity to foreign NGOs. The regulations should limit the anti-prostitution pledge policy to federally-funded programs and impose separation rules no more stringent than those applied to groups implementing faith-based initiatives under the Bush administration's regulations. This model should be sufficient to ensure that the government is not perceived to endorse an NGO's privately funded speech regarding prostitution.

Part II: Women Sex Workers Facing Challenges and Finding Solutions

The Impact of Anti-trafficking and Anti-prostitution Campaigns on Sex Workers in Cambodia

Sara Bradford, Human Rights Consultant



Detainees at Koh Kor, June 2008 (Photo by: Korsang)

Maylin earns her living as a sex worker on the streets of Cambodia. She wasn't looking to be "rescued" from prostitution when she was arrested in June 2009 by police near Wat Phnom. Taken first to a police station, Maylin thought she would go to jail, but instead she was handed over to an NGO. *"They took me and three others to their center. I told them I wasn't trafficked and I wanted to go, but they kept me at their center for seven hours after I told them this, and only released me when another NGO intervened."*⁵⁷

⁵⁷ Women's Network for Unity, *Case Study Interview* (2008). For more on WNU, see <http://wnu.womynsagenda.org>.

What Maylin did not understand that day was how her “rescue” and the Cambodian police crackdown on sex work were shaped by powerful political forces beyond Cambodia’s border. While these forces may seek to eliminate the scourge of human trafficking, in many instances, they have helped generate policies that instead create greater misery. Cambodia is a case study of how the conflation of human trafficking with all prostitution brings real harm to adult women in sex work and their children, and does little to end human trafficking.

Background

“Cambodia’s Law on the Suppression of Human Trafficking and Sexual Exploitation is based on a U.S. model of anti-trafficking legislation that seeks to eliminate human trafficking by criminalizing the sex industry as a whole.” —Bith Kimhong, Director, Cambodian Interior Ministry Anti-Trafficking Department⁵⁸

Maylin was arrested under a new Cambodian law that has drastically changed the way sex workers are treated by the government. In February 2008, the Kingdom of Cambodia passed the Law on the Suppression of Human Trafficking and Sexual Exploitation. Eight of its 52 articles refer to the direct criminalization of adult prostitution, or aspects of adult prostitution.⁵⁹

This law did not arise as a result of an internal demand by Cambodian citizens. Rather, the U.S. government exerted its influence to persuade the Cambodian government to pass an anti-trafficking law, which, instead of reducing trafficking, simply gave more legal cover to conduct raids and sweeps against women in the sex sector. These raids have perpetrated numerous human rights violations.

“Cambodia’s Law on the Suppression of Human Trafficking and Sexual Exploitation is based on a U.S. model of anti-trafficking legislation that seeks to eliminate human trafficking by criminalizing the sex industry as a whole.” —Bith Kimhong, Director, Cambodian Interior Ministry Anti-Trafficking Department

Each year, the U.S. Department of State issues a Trafficking in Persons Report (TIP), which ranks governments on actions they have taken to address human trafficking. Tier 1 includes those countries that fully comply with the U.S. government’s anti-trafficking criteria. Tier 2 is for countries that do not fully comply, but are making an effort, and Tier 3 is for countries that are not making any significant effort. Tier 3 countries can be subject to sanctions on U.S. assistance and international loans.

⁵⁸ Phnom Penh Post, *Sex Workers Rally Against Anti-trafficking Law* (June 4, 2008) <http://swannet.org/en/node/1029>.

⁵⁹ Cambodian Law on the Suppression of Human Trafficking and Sexual Exploitation, 2008. art. pp. 23, 24, 25, 26, 27, 30, 31, 32.

In 2007, the U.S. government placed Cambodia on its “Tier 2 Watch List,” the list for countries in danger of slipping to Tier 3 if they fail to take action.⁶⁰ Faced with a potential loss of millions of dollars in certain types of U.S. aid (as well as loss of credibility), Cambodia quickly passed the new law. When the U.S. issued its 2008 TIP report a few months later, Cambodia was off the watch list.⁶¹

The Danger of Conflating Prostitution and Trafficking

“The raids on brothels and streetwalkers proved a commitment by the government to end sex trafficking.” —Bith Kimhong, Director, Cambodian Interior Ministry Anti-Trafficking Department⁶²

Although the law does not explicitly state that all sex workers are trafficked persons, it does confuse the issue because trafficking and prostitution are included in the same law. So, the government raids brothels and sweeps sex workers off the streets purportedly to stop trafficking. Ultimately, it is a mass campaign to crack down on all prostitution. Women in the sex sector have objected, but the government is not listening. So far, the government has focused less on catching traffickers and more on the much easier task of emptying the streets of sex workers, in an often violent and abusive police campaign.

Not only was the law passed without any consultations with experts in the affected community, but it was also promulgated without guidance on how it should be enforced. As a result, the focus has not been where it should be—on people who have actually been trafficked and traffickers. While there is unquestionably human trafficking in Cambodia, it is not as vast a problem as some reports suggest.

The exact number of persons trafficked into the sex sector is unknown, yet some unsubstantiated reports estimate numbers that are quite high—up to 100,000.⁶³ A number of organizations working with trafficking victims consider everyone selling sex to be a victim of trafficking. They reason that no woman would ever choose sex work as a profession, and so it does not matter whether she “volunteered” to sell sex or was forced to do it. Consequently, these groups lump trafficked persons and adult sex workers together to claim 100,000 people trafficked into the sex sector. It is no surprise then that the government raids all sites and “rescues” all women from prostitution, even those who do not want to be rescued.

⁶⁰ <http://www.state.gov/g/tip/rls/tiprpt/2007/index.htm>.

⁶¹ <http://www.state.gov/g/tip/rls/tiprpt/2008/index.htm>.

⁶² “New Sex Law Brings Problems,” *The Straits Times*, Dec. 26, 2008, http://www.straitstimes.com/Breaking%2BNews/SE%2BAsia/Story/ST1Story_318576.html.

⁶³ B. Perrin, S. Majumdar, N. Gafuik, and S. Andrews, *The Future of Southeast Asia: Challenges of Child Sex Slavery and Trafficking in Cambodia*, (2001). www.khmerinstitute.org/docs/futureofsea1.pdf.

A much lower number is cited in a USAID “Quick Facts” sheet, which states, without citing sources that “current estimates suggest that up to 20,000 sex workers live in Cambodia,” and “60 percent have been forced to work as prostitutes.”⁶⁴

However, in a 2003 report, Professor Tom Steinfatt conducted research to take an actual count of the number of sex workers and trafficked persons. He employed a systematic, replicable methodology and found a much lower number of sex workers and many fewer of them who had been trafficked. He estimates there were 18,256 sex workers in the country between 2002 and 2003 and only 1,074 of them had been trafficked.⁶⁵

Raids, Rescues, and NGO Responses

“On the night of July 19 [2009], 12 adult sex workers were arrested by police... They were locked in a room at an NGO center, according to three of the women later interviewed by LICADHO. They were allowed to leave the room at meal times, but were not permitted to leave the NGO compound. The majority of the women was not released for three days...and only after the NGO was informed by LICADHO and other organizations that it had no right to detain them.” —Media Statement from Cambodian League for the Promotion and Defense of Human Rights (LICADHO)⁶⁶

Raids have always been conducted and typically increase before large international meetings or similar events. The reason for such sweeps is sometimes purportedly to prevent the spread of HIV/AIDS: *“We don’t want to see the boat racers bring diseases such as HIV/AIDS back to their wives. We want to protect the men in case they get caught up in the festivities and forget about health and safety.”*⁶⁷

Raids and arrests have increased steadily and consistently since the new anti-trafficking/anti-prostitution law was passed. The police have closed brothels and bars and arrested all the women found working inside. They also targeted the more vulnerable women working on the streets and raided parks and soliciting areas on a nightly basis.⁶⁸

Due to the intensified raids of street-based sex workers, a number of women have moved to a brothel setting. While there have been raids on brothels, bars and other entertainment venues, these have been more sporadic than the raids on the streets.

NGOs also are involved in “raids and rescues.” They work with and sometimes accompany police during such operations. The police sent women thought to be trafficking victims to “transitional

⁶⁴ USAID/Cambodia, “Good Governance: Quick Facts” (Aug. 16, 2006)

http://www.usaid.gov/kh/democracy_and_governance/quick_facts.htm.

⁶⁵ Measuring the Number of Trafficked Women and Children in Cambodia: A Direct Observation Field Study, Part III of a Series, T. Steinfatt (2003), pp. 11, 15. <http://www.slate.com/Features/pdf/Trfciiif.pdf>.

⁶⁶ Punishing the Poor: More Arrests of Street People, LICADHO (July 26, 2009), <http://www.licadho-cambodia.org/press/files/212LICADHOPRPunishingPoorArrests09.pdf>.

⁶⁷ Sok Penhvuith, Deputy Governor, Daun Pehn, quoted in *Phnom Penh Post* (Oct. 30, 2009).

⁶⁸ Associated Press, “Cambodian Prostitutes Protest Police Crackdown,” *Sopheng Cheang* (June 4, 2008). http://www.usatoday.com/news/world/2008-06-04-622462536_x.htm.

living centers (TLCs)” run by the NGOs. The objective of the TLCs is to convince the women to leave sex work. The TLCs have decent living conditions, but they are often hesitant to release people and sometimes completely refuse to release them for days at a time, though the reason why is unclear.

“Police arrest us in the hope that the brothel madams will pay, but if we don’t have anyone to pay for our release, we will be sent to one of the non-governmental organizations (NGOs). It’s o.k. to live at the NGOs, but then our families have nothing to eat.”⁶⁹

The NGO-run TLCs offer an array of services, such as English lessons, vocational training, therapy, and shelter. The vocational training is typically sewing, which does not provide the women with an income to support themselves or their dependents. The average sex worker earns US\$143 per month,⁷⁰ whereas the average garment worker earns only about US\$50 per month.⁷¹ A recent article in the Phnom Penh Post stated that 20 percent of women who leave the garment industry take up jobs in the entertainment industry.⁷² So it comes as no surprise that when non-trafficked sex workers are released from the NGO-run TLCs, they usually return to work in the sex sector.

Raids and Condoms

“Police arrest us in hope that the brothel madams will pay, but if we don’t have anyone to pay our release, we will be sent to one of the non-governmental organizations (NGOs). It’s o.k. to live at the NGOs, but then our families have nothing to eat.”
—Cambodian Sex Worker

“The enforcement of the anti-trafficking laws harms 100 percent condom use in brothels.” —Tia Phalla, Deputy Director, Cambodian National AIDS Authority.⁷³

The raids and rescues have also had a serious impact on public health because police assume that condom possession is evidence of prostitution.⁷⁴ As a result, many women have stopped carrying condoms, many roadside vendors have stopped selling them, and NGOs struggle to distribute them for fear of being arrested. This has led to a decrease in condom use among clients for an extended period of time, and new opportunities for police corruption and bribes.

⁶⁹ Radio Free Australia, Interview with Cambodia Sex Worker (2008) <http://rationalitate.blogspot.com/2009/01/us-trade-policy-pushes-cambodian-girls.html>.

⁷⁰ Survey of Entertainment Workers in Cambodia, Dr. Tia Phalla, Cambodia Alliance for Combating HIV/AIDS (CACHA) (2008).

⁷¹ Factory-Level Value Chain Analysis of Cambodia’s Garment Industry, USAID (2008) http://www.usaid.gov/kh/documents/Cambodia_ValueChain_Garment_Industry_2008.pdf.

⁷² From Garment Factory to Beer Garden, *Phnom Penh Post* (Jan. 9, 2009).

⁷³ Cambodia’s Condom Campaign at Risk, Faces Fresh HIV Epidemic, *Medindia*, (Sept. 11, 2008).

<http://www.medindia.net/news/Cambodias-Condom-Campaign-at-Risk-Faces-Fresh-HIV-Epidemic-41674-1.htm>

⁷⁴ Condoms Feared Criminal in Sex Crackdown, *Voice of America* in Khmer (Sept. 2, 2008).

“The enforcement of the anti-trafficking laws harms 100 percent condom use in brothels.” —Tia Phalla, Deputy Director, Cambodian National AIDS Authority

It has also become increasingly difficult for NGOs to do street outreach to sex workers because of police harassment. One NGO employee was arrested while doing outreach in 2008 because she was carrying condoms. She was let out a short time later when her NGO paid a bribe to the police. This arrest is a worrisome example of the random nature of the law’s enforcement, as well as the new opportunities for police corruption and bribes.

The majority of entertainment venues also temporarily banned condoms from their premises in an attempt to avoid raids, closure, and being labeled as places of prostitution. While prostitution is still taking place in these sites, it is now happening in an environment where women and their clients, and therefore the general population, are put at a much higher risk for contracting or transmitting HIV.

Bith Kim Hong, the Head of the Anti-Trafficking Task Force for Cambodia, is quoted as supporting the raids as a means to stopping the spread of HIV: *“NGOs that work with HIV/AIDS think differently from the police. Stopping [brothels] from existing is better than having brothels ... when there are no brothels HIV/AIDS cannot be spread.”*⁷⁵

Between 1998 and 2006, Cambodia had been successful in reducing the prevalence rate of HIV infection among sex workers from 45.8 percent in 1998 to 12.7 percent in 2006.⁷⁶ The effects of the criminalization of condom possession in the prevalence rate remain to be seen.

Arrests, “Rehabilitation” Centers, and Violence

*“I was raped by six police men when I was arrested. I only had five condoms and I told the last police officer I was HIV positive and had no more condoms, so he did not use a condom and raped me anyway.” —Reaksmey, a sex worker arrested in a 2008 raid.*⁷⁷

Abuse, corruption, and human rights violations stemming from the new law’s enforcement have been widely ignored, denied, and unaddressed by the Cambodian government.⁷⁸

⁷⁵ Brothel Busts Drive Sex Workers Underground, Phnom Penh Post (May 13, 2008).

⁷⁶ Cambodia: Human Trafficking Crackdown also Hits HIV Prevention. Plus News (Oct. 21, 2008) www.irinnews.org/Report.aspx?ReportId=81036.

⁷⁷ Caught Between the Tiger and the Crocodile (2008) www.youtube.com/apnsw.

⁷⁸ Spokesman for the Ministry of Foreign Affairs and International Cooperation (March 16, 2009), Press Conference.



*Windows boarded shut at Prey Speu Ministry of Social Affairs
“voluntary” rehabilitation center. (Photo by: LICADHO)*

Sex workers, beggars, and homeless people rounded up in raids are taken to government-run “rehabilitation” centers.⁷⁹ They are never charged with a crime, so they are not sent to prison,⁸⁰ or even given the option to appear in front of a judge, contrary to their right to defense given in the Cambodian constitution⁸¹ and the International Covenant on Civil and Political Rights.⁸² They are sent directly to so-called “rehabilitation” centers run by the Ministry of Social Affairs, for an undetermined amount of time—generally three months.

If the women had been charged with prostitution, the law states that the punishment is six to 10 days in prison and/or a fine of US\$0.75 to US\$2.50.⁸³ But, because the women are not charged with a crime, the government holds most women longer. The government has not offered any legal authority for holding the women or for keeping them longer than the 10-day limit or for sending them, without a court hearing, to the rehabilitation centers.

⁷⁹ Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking up Homeless, Beggars and Sex Workers, Cambodian League for the Promotion and Defense of Human Rights (LICADHO) (July 2, 2008) <http://www.licadho-cambodia.org/articles/20080702/79/index.html>.

⁸⁰ In Cambodia, prisons only incarcerate people who have been through a court process. In contrast, Ministry of Social Affairs re-education centers detains people without any due process

⁸¹ Constitution of Cambodia ch. III art. pp. 38-9

⁸² International Covenant on Civil and Political Rights, art. 9, p. 3. Cambodia Accession (May 26, 1992).

⁸³ Cambodian Law on the Suppression of Human Trafficking and Sexual Exploitation, ch. IV art. 24.

*“I have been held [at Prey Speu] for one month. We are free to leave and the gate is open, but I don’t know how to get back to Phnom Penh and I don’t have money for transportation. Also, I am afraid to return because the police said they will beat me if they see me on the street again.”*⁸⁴ —Sopheap, held at the notorious government detention center Prey Speu, 20 kilometers from Phnom Penh

As Sopheap’s experience reveals and human rights organizations confirm, threats of violence are used as a technique to make people afraid of leaving and to ensure that the women remain in detention, while maintaining the appearance of freedom.⁸⁵

Despite the claims that the “rehabilitation” centers are helping women, they do not offer meaningful education or training in any way, and appear to be nothing more than illegal detention centers. People who have escaped or been released from the centers report numerous human rights violations in police custody or in the centers, including:

- **Rape:** Women have reported being raped once or repeatedly by one or multiple police officers or guards at the detention centers.⁸⁶ Most of the rapes took place immediately after arrest by police officers while the women were still at the district police station.
- **Beatings:** The majority of women report having been physically beaten with fists, feet, pistols, and sticks and shocked with electric cattle prods by either police officers or guards at detention centers.⁸⁷ The government, without a formal investigation, has avidly denied these accusations.
- **Corruption:** Police frequently take bribes (generally US\$30 to US\$300, depending on the offense charged) in exchange for release at the time of arrest. Such bribes are often paid by family members of the arrested women or in some cases brothel madams,

“I have been held [at Prey Speu] for one month. We are free to leave and the gate is open, but I don’t know how to get to Phnom Penh and I don’t have money for transportation. Also, I am afraid to return because the police said they will beat me if they see me on the street again.” —Sopheap, Cambodian Sex Worker

⁸⁴ Sopheap, interviewed while staying at Prey Speu (July 23, 2009).

⁸⁵ Punishing the Poor: More Arrests of Street People, LICADHO (July 26, 2009) <http://www.licadho-cambodia.org/press/files/212LICADHOPRPunishingPoorArrests09.pdf>.

⁸⁶ Cambodia to Investigate Alleged Police Abuse of Sex Workers, (June 4, 2008). http://www.monstersandcritics.com/news/health/news/article_1409233.php/Cambodia_to_investigate_alleged_police_abuse_of_sex_workers.

⁸⁷ Anti-trafficking Drive Marred by Claim of Gang Rape, Robbery, Sovan, Nguon and Cat Barton, *Phnom Penh Post*, (June 13-26, 2008).

thus forcing the women to take on a debt that has to be repaid. The women have also reported numerous cases of police stealing anything of value, mainly cell phones and jewelry, from women when they are arrested.⁸⁸

- **Deaths:** In 2008, a local human rights organization sent the government a report about the deaths of three people (not sex workers) at the Prey Speu detention center.⁸⁹ The government did not conduct an investigation and some of the guards allegedly involved in the deaths are still employed there.
- **Denial of medical care:** People who have pre-existing health problems, become sick, or need medical attention due to physical abuse while in custody have been denied medical care. Guards reportedly have cited the lack of funds as the reason. The failure to treat medical conditions has led to at least one known death within a detention center.⁹⁰
- **Denial of ARVs for HIV positive detainees:** HIV positive persons report that they are denied access to their anti-retroviral medication, some for periods as long as 90 days.⁹¹ This leads to an increased chance of opportunistic infection, difficulty readjusting to ARVs upon release from detention, and a rapid decline in health during detention.
- **Detention of children as young as six months old:** Many women are arrested with their children, who are detained as well. Women report that children from the age of six months to 10 years old have been detained.
- **Contaminated food and water (where food and water are available):** Women who were detained report that the only drinking water available within the centers is the same water used communally to shower, which stands in a bucket within the holding room. They have also reported having to drink water on occasion obtained from a pond in which raw sewage is dumped daily.⁹²
- **Complete absence of hygiene/sanitation:** Most detention facilities do not have toilets or showers. People are forced to use a bucket in the middle of their shared room for human waste.
- **Overcrowding:** Some centers have been filled to 200 percent capacity for months at a time.

Human Rights Violations Ignored

“[Cambodian] authorities continue to use the criminal justice system to silence critics. Human rights defenders, journalists, trade unionists, and opposition party members

⁸⁸ Brothel Busts Drive Sex Workers Underground, see note 73.

⁸⁹ “Punishing the Poor: More Arrests of Street People,” LICADHO, press release (July 26, 2009) <http://www.licadho-cambodia.org/pressrelease.php?perm=212>.

⁹⁰ LICADHO Annual Activity Report 2008. <http://www.licadho-cambodia.org/reports/files/125LICADHAnnualActivityReportJanDec08publicEng.pdf>.

⁹¹ Caught Between the Tiger and the Crocodile : The Campaign to Suppress Human Trafficking and Sexual Exploitation in Cambodia, C. Overs (2009) p. 20. <http://apnswdollhouse.files.wordpress.com/2009/03/caught-between-the-tiger-and-the-crocodile.pdf>. This report contains extensive information about the impact of the current raids and arrests on the health and lives of persons in the sex sector.

⁹² Women’s Network for Unity (2008) Case Study Interview.

face intimidation, violence, spurious legal action, imprisonment, and even death.”
 —Human Rights Watch, *World Report 2009: Cambodia*⁹³

Women have tried to lodge complaints against the police officers who abused them but the police ask for photographic evidence or witnesses to the incidents. The women, of course, have no photographs and witnesses are afraid to come forward. So, it has been impossible to file a complaint based on the women’s testimony alone, which ensures impunity for the police and officials.

The Cambodian government has dismissed as false the many NGO reports documenting human right violations. The United Nations Special Rapporteur on the Right to Health submitted a formal complaint to the Cambodian government in December 2008, along with a request for a country visit. The government has not yet responded, and as a result, the Rapporteur has not been able to visit Cambodia to conduct further investigations.⁹⁴

Foreign governments and international aid organizations have been largely silent or caught in their own red tape when it comes to taking definitive actions to improving the situation in Cambodia. The lack of international outcry has been increasingly frustrating to smaller, local human rights groups and to those whose rights have been directly violated.

Sex Worker-organized Activism

The Women’s Network for Unity (WNU), a local sex worker rights organization, with the support of the Asian Pacific Network of Sex Workers (APNSW), has supported a range of advocacy events to raise local and international awareness, including:

- A “Day of Action,” which gathered approximately 200 sex workers to protest the Suppression of Human Trafficking and Sexual Exploitation Law.⁹⁵
- A 2008 presentation to the UN High Level Meeting in New York on HIV/AIDS by a former Cambodian sex worker and current WNU employee documenting human rights violations and the increased HIV risk resulting from the pledge.
- A 2008 rally protesting the USAID-funded MTV Exit Concert in Phnom Penh after MTV refused to include their voices in the Exit Campaign, citing the anti-prostitution pledge as a reason.
- A traditional Buddhist ceremony with sex workers to pray for their safety and for the souls of the police who abused them.⁹⁶

⁹³ Human rights Watch World Report 2009, p. 230, <http://www.hrw.org/world-report-2009>.

⁹⁴ The government did respond to U.S. State Department allegations that Cambodia committed many of the human rights violations contained in case studies written by former detainees. 2008 Human Rights Report: Cambodia US State Department. www.state.gov/g/drl/rls/hrrpt/2008/eap/119036.htm. Cambodia vehemently denied the allegations, saying, “There is simply never ‘extra-judicial killing’ by security forces in Cambodia as mentioned in the report. This is only a vulgar lie.” Spokesperson, Ministry of Foreign Affairs and International Cooperation (March 16, 2009) Press Conference.

⁹⁵ Cambodian Prostitutes Protest Police Crackdown, Sopheng Cheang (July 7, 2008) http://www.usatoday.com/news/world/2008-06-04-622462536_x.htm.

- WNU and APNSW engaged in ongoing meetings with UN agencies and Cambodian authorities to advocate for the repeal or amendment of the law. They have tirelessly advocated in the local and international press for repeal of the law and recognition of their human rights.



WNU Day of Action, June 4, 2008 (Photo by: WNU)

In March 2008, WNU, APNSW, and a group of local sex workers met with the delegation of UNFPA-UNAIDS High Level Mission to Cambodia and voiced their experiences, concerns, and proposals for the amendment of the law. Unfortunately, in their final recommendations to High Excellency Sok An, deputy prime minister of Cambodia, the UN agencies did not recommend amending the law. They only recommended that *“ministerial sub decrees to specify and clarify the intent, interpretation, and implementation of articles of sexual exploitation in the Law on Suppression of Human Trafficking and Sexual Exploitation such as articles 24, 25, 30, 31, and 32.”*⁹⁷

While this does show intent on behalf of the UN to improve the way the law has been implemented, it is not the strong response mandated by its own International Guidelines on HIV/AIDS and Human Rights, which states that,

⁹⁶ Cambodian Sex Workers Gather at Buddhist Temple to Protest Against Crackdown, Associated Press (June 16, 2008). <http://www.buddhistchannel.tv/index.php?id=53,6643,0,0,1,0>.

⁹⁷ UNFPA-UNAIDS High Level Mission to Cambodia, Recommendations to H.E. Sok An Deputy Prime Minister and Minister in Charge of the Office of the Council of Ministers, Royal Government of Cambodia (April 7, 2009).

“Criminal law prohibiting sex acts (including...commercial sexual encounters) between consenting adults in private should be reviewed with the aim of repeal”⁹⁸ and

“[w]ith regard to adult sex work that involves no victimization should be reviewed with the aim of decriminalizing, the legally regulating occupational health and safety conditions to protect sex workers and their clients...”⁹⁹

As UNAIDS was involved in formulating these recommendations, UNAIDS should have included these mandates in the delegation’s recommendations to the Cambodian government.

As a result of the localized media attention and NGO and sex worker advocacy about the abuses during the sweeps and in the rehabilitation centers, one of the centers, the Koh Kor Center, has been closed and sex workers are no longer being sent to Prey Speu.

Conclusion and Recommendations

The police have used the Law on the Suppression of Human Trafficking and Sexual Exploitation to arbitrarily arrest and detain women and their children in the name of ending trafficking. These actions have had little or no impact on human trafficking. The human rights implications resulting from such misdirected campaigns have yet to reach their consequential depth, one of which could be an increase in HIV prevalence rates and stigma.

The human rights crisis in Cambodia has become increasingly acknowledged by the international community, yet changes on the ground have been few and far between. Until organizations can work together to deliver a clear and consistent message, the opportunity for change will be minimal unless the international community puts pressure on the government.

APNSW urges the Cambodian government to:

- Direct that an independent investigation be conducted on allegations of torture, cruel, inhuman or degrading treatment or punishment, arbitrary detention and other human rights abuses against persons who were detained in connection with the law on the Suppression of Human Trafficking and Sexual Exploitation, and subsequently prosecute and punish, to the fullest extent of the law, any government officials or others who are found guilty.
- Make a clear statement on the need for all officials to understand the difference between adults and minors who are trafficked into prostitution and adults who are working voluntarily in prostitution.
- Recognize and protect the human rights of women in the sex sector, including the right to livelihood.

⁹⁸ HIV/AIDS and Human Rights: International Guidelines, Office of the High Commissioner on Human Rights and UNAIDS (1998), Guideline 4, art 29 B, http://data.unaids.org/publications/irc-pub02/jc520-humanrights_en.pdf.

⁹⁹ See note 96, Guideline 4, art 29 C.

- Decriminalize sex work by removing articles of the Law on the Suppression of Human Trafficking and Sexual Exploitation which criminalize prostitution or aspects of prostitution. This includes articles: 23 to 27 and 30 to 32.
- Change the anti-prostitution policies to include effective, targeted, and rights-based programming to prevent trafficking and HIV.
- Direct the Ministry of Social Affairs to make their funding sources and expenditures public, in the interest of being transparent and ensuring funding only for rights-affirmative projects.
- Immediately stop the arbitrary arrest and arbitrary detention of sex workers.

APNSW urges the United Nations to take the following actions:

- The United Nations Working Group on Arbitrary Detention should conduct a formal investigation into the treatment of women who have been detained without due process and not in accordance with international human rights standards.
- The United Nations bodies that provide financial or technical support to the Ministry of Social Affairs “re-education centers,” or NGOs where sex workers have been detained, must immediately end such support without condition or exception.

The United States Department of State’s Office to Monitor and Combat Trafficking in Persons should take the following actions:

- Provide funding to conduct an independent, thorough investigation and take legal action (including criminal prosecution) against perpetrators of torture; cruel, inhuman, or degrading treatment or punishment; arbitrary detention; and other human rights abuses against those in police detention and Social Affairs centers who were detained on the premise of violating the Law on the Suppression of Human Trafficking and Sexual Exploitation.
- Retain Cambodia on the Tier 2 watch list as, in line with the Trafficking Office’s interim assessment in February of 2010, Cambodia has not followed the guidance in the assessment and has failed to provide evidence of increasing efforts to combat trafficking in persons since the previous year.
- Review all anti-trafficking and police training funding and programs (whether funded through the Trafficking Office or other U.S. agencies) to ensure that all grantees agree to, and in fact do uphold, international human rights standards and are not involved in unlawfully detaining sex workers or forcing them to undergo compulsory rehabilitation or vocational training.

Sanghamitra: A Journey towards Social and Economic Empowerment in India

Dr. Shilpa Merchant, Former Regional Director, Populations Services International, India

Meena has ambitions of enrolling her two-year-old daughter in a boarding school—the only hope of children of female sex workers to make it in the world. Meena knew the harsh reality of bringing up a child in these surroundings. Most children turn into delinquents; girls are often sent away to stay with relatives or grandparents lest their mothers be arrested for trafficking minors. She has to rely on the neighbor to look after Asha when she takes in a customer, but knows that this arrangement shall be short-lived. Steep rents force women like Meena to keep shifting homes.

Background

The Indian city of Mumbai is home to a vast population of approximately 18 million people teeming with a diverse range of ethnicities, socioeconomic classes, sexual predilections, consumer preferences, disposable incomes, and levels of education. There is a palpable dichotomy in the standards of living between the rich and the poor. Sixty percent of people in Mumbai live in slum areas (27 percent live below the poverty line). On the other hand, Mumbai is one of the richest cities in India. It is the epicenter of foreign trade (40 percent of foreign trade in India happens in Mumbai), and is responsible for 33 percent of the income tax revenue in India.¹⁰⁰

Mumbai also has the dubious distinction of being the epicenter for the Indian HIV epidemic. As of 2006, 37 percent of the female sex workers in Mumbai were HIV positive,¹⁰¹ which is almost four times the prevalence rate among the general population. Moreover, female sex workers typically have three to five clients each day. Disproportionate power balances between genders make the negotiation of condom use more difficult, especially with non-commercial partners (boyfriends and husbands), most of whom engage in sexual encounters with several women. Given these statistics, HIV prevention is extremely urgent, both to save the lives of these women and to prevent transmission to others.

The women in the sex sector come from the impoverished rural areas in India, Nepal, and Bangladesh and many are lured by false promises of stardom in Mumbai's burgeoning film industry. Some are indentured by their families to intermediaries who later "sell" or deliver them to the brothels in the red light districts in Mumbai. Upon arrival, lack of social support and job

¹⁰⁰ NACP III- Project Implementation Plan of Maharashtra.

¹⁰¹ National; AIDS Control Organization (NACO) Sentinel Surveillance Data, 2006. www.nacoonline.org.

skills combined with illiteracy (as high as 80 percent)¹⁰² make it difficult for them to escape the sex trade. There has been a significant increase in the percentage of women who have recently entered the profession in Mumbai. In 2004, 25 percent of women working in the sex sector had entered in the past few years, while just two years later, 39 percent had recently entered.¹⁰³ For these women, the first few years of sex work are known to be the most risky in terms of acquiring HIV infection.

The women have little power and are abused at every level of interaction. Thus, they unswervingly focus on having a sustainable income and on protecting the welfare of their children. They relegate their own wellbeing to the bottom in their hierarchy of priorities. Many women do not have access to mainstream health services because of cost, inconvenient operating hours, preference for treatment from unqualified health practitioners or non-allopathic doctors, and the prevalence of judgmental attitudes and prejudice among health care providers.

Organizing and Mobilizing

Population Services International (PSI) has worked with sex workers and their clients in Mumbai since 1991. PSI has an established presence in three large brothel areas in greater Mumbai: namely Kamathipura, Mumbai's oldest and largest brothel district with more than 5,000 female sex workers from all over India; Bhiwandi, a town of migrant workers and more than 1,000 female sex workers; and Vashi, a satellite town on the outskirts of Mumbai.



Sanghamitra meeting (Photo by: Sanghamitra)

PSI realized that the best method for improving the health, lives, and working conditions of these women is to empower them through collective action. PSI's on-the-ground presence in Kamathipura facilitated the planning and implementation of Sanghamitra, a community-led collective that maintains a focus on social marketing of condoms and services, as well as behavior change communication strategies.

¹⁰² Analysis of Sex workers Information and Monitoring system (SWIMS) reported in Behavior Change Impact survey (BCIS), Population Services International, 2006.

¹⁰³ Behavior Change Impact survey (BCIS), Population Services International, 2006.

Since its creation in November 2006, Sanghamitra has become a vibrant independent community-based organization with more than 3,000 members who are supported by PSI through training and advocacy. Sanghamitra unites sex workers with the fundamental objectives of decreasing their vulnerability, unifying their efforts to espouse safe sexual behavior, and abating the proliferation of HIV/AIDS as well as sexually-transmitted infections. It helps them vocalize their issues, aiding their fight for their rights.

About Sanghamitra

Sanghamitra's objectives are established by the women themselves. The main objectives are to:

- Unite and affect change within themselves and in society at large;
- Combat the transmission of HIV and sexually-transmitted diseases; and
- Promote healthy sexual behavior, particularly condom usage.

Sanghamitra is uniquely structured to adapt to the dynamics of Mumbai's red light district. It has an 18-member elected executive body, including secretaries for anti-trafficking and civil rights. The election is an exemplary process of democracy. The members' low literacy levels necessitate the identification of candidates by the color of their saris, verbal introductions and presentations of their intentions for the organization. The final poll through secret ballot with closed polling booths ensures fairness with observers to certify the color of each ballot.

The members of Sanghamitra are all female sex workers or former sex workers who now operate small brothels. Many of the members had themselves been victims of trafficking when they were quite young. The members realized that, in order to achieve their objectives, it is necessary to engage with all actors in the community—sex workers, former sex workers, and brothel madams—and to insure that as many actors in the brothels are members. So, they engage in outreach to help women realize the importance of being united in voicing concerns and opinions about issues that are directly related to them. The involvement of former and current sex workers underscores the importance of community participation.



Nominating members for office (Photos by: Sanghamitra)

The brothel madams, who may have been trafficked into prostitution and are not much different from the women who work in her brothel, are the only families that the sex workers may have in Mumbai. Sanghamitra recognized early on the need for creating an enabling environment between the sex workers and the brothel madams and so strengthening their relationship to increase dialogue and improve conditions is one of the objectives of Sanghamitra. This work helps women access health care and other support services.

In a short span of time, the women of Sanghamitra have proven that community-based organizations are the true catalysts of change within the community. Women from various ethnicities belonging to various states in India, Nepal and Bangladesh had to unite and ultimately to believe that they are all equals was a difficult task to achieve. The path to being change agents has been fraught with difficulties. Female sex workers lived in an environment of distrust and functioned in tandem with the presence of mafia and other illegal activities. The environment of suspicion about outsiders made it imperative to build trust within their community as well as with each community stakeholder.

Collectively, they have implemented many programs and activities that meet their most-urgent needs, including:

Establishing a Bank

The women of Sanghamitra found it impossible to open up a bank account and so they kept their money with them at all times. Consequently, they risked being robbed as everyone knew they did not use banks. This gave the women little incentive to save and so they often spent everything they earned and so, when they were ill or their children needed something, they often had to borrow money at usurious rates.



Sangini Bank (Photos by: Sanghamitra)

Sanghamitra members responded by opening their own bank—the Sangini Mahila Sewa Cooperative Society. The bank is now well established within Kamathipura and has over 3,000 account holders. The bank has helped women establish their own savings accounts and offers

micro credit loans. Women are encouraged to open bank accounts for their children and for their own future. These savings also provide a sense of security, and reduce the financial burden so that the female sex worker does not have to resort to unprotected sex or high-interest loans.

The bank offers employment within the community as it hires the adult children of sex workers and retired sex workers. The staff visits every one of the 3,000 plus account holders each day to collect deposits, no matter how small. In this way, the bank is ensuring that all account holders are continually adding to their savings. The bank is also starting to develop income-generating projects to support the bank's operational costs.

Protecting Health

Condom use: Sanghamitra advocates condom usage by talking to the brothel madams and the sex workers and it encourages brothel madams to increase condom availability. Brothel madams are encouraged to become condom depots—making condoms available around the clock for anyone in her time of need. Sanghamitra especially promotes the use of female condoms, as it empowers women to become decision-makers. It allows the woman the freedom to protect herself, especially in situations where she cannot negotiate condom use—with husbands, permanent partners, or lovers.

The use of condoms has helped bring down the HIV rate among sex workers from 31 percent in 2007 to 25 percent in 2008.¹⁰⁴ Sanghamitra has helped champion the cause of condom unity, the use of female condoms, and increased the awareness of STIs and HIV/AIDS. Anecdotal evidence also suggests that economic empowerment of women and increased availability and accessibility of condoms has facilitated high compliance rates with customers. Among condom users, 54 percent of the women reported refusing to have sex if their husband or partner does not want to use a condom.¹⁰⁵ Sanghamitra continues to work on improving the use of female or male condoms to ensure total condom unity.

Supporting women living with HIV: Sanghamitra has built a strong care and support network for women who are HIV positive to help eradicate the dual stigma of sex work and HIV. Members are trained in home-based care of HIV positive women, in order to address these issues within the community. These trainings have encouraged the community to take responsibility for their peers.

Providing access to better health care facilities: Sanghamitra has a specially constituted health committee that ensures referral of patients to public health care facilities. Sanghamitra members volunteer for door-to-door visits as well as to look after patients in hospitals. The establishment of a wellness clinic caters to the basic health needs of the women and their children. Regular health camps, immunization camps, special events that help promote maternal

¹⁰⁴ Analysis of PSI's Saadhan Wellness Clinic data from 2007- 2008.

¹⁰⁵ Behavior Change Impact Survey, Population Services International, 2006.

and child health, and camps to ensure good reproductive health, are some of the activities that are regularly conducted to reach out to different segments of the sex worker population.

In recognition of their work on health issues, particularly HIV/AIDS, in 2008, it was one of 25 organizations awarded the UNAIDS Red Ribbon Award. UNAIDS recognized its outstanding community initiative in showing leadership in reducing the spread and impact of HIV/AIDS.¹⁰⁶ Sanghamitra was also the only Indian community-based organization to receive a UNAIDS Special Recognition Award celebrating extraordinary creativity, courage and leadership in responding to the health care needs of the community and especially HIV/AIDS and achieving tangible results with limited resources.

Helping Children

Education: Sanghamitra helps support the education of the children of sex workers. In a small yet significant way, Sanghamitra tries to ensure that all children in the area above six years of age are admitted to residential schools outside of the red light areas, so that they are raised free from social stigmas and adverse influences associated with growing up in the red light district. About 75 percent of the children are in day and residential schools. Sanghamitra assures this by networking with organizations that offer boarding facilities for children.

Sanghamitra also actively engages parents to ensure the safety of their children by encouraging them to look for appropriate vocational avenues once the children graduate from school. The Sangini bank, a microfinance unit of Sanghamitra, employs children of female sex workers as a step into reintegrating them into society.

Childcare center: The women of Sanghamitra have not only made headway in accomplishing the objectives that they have set for the organization but have also begun establishing a center for children. The need arose from the fact that the young are often left in care of other peers or witness their mothers soliciting clients. The particular paucity of care centers for children younger than three years has spurred Sanghamitra to decide to use all of the UNAIDS award money to establish a center.

Assisting Trafficked Women and Minors Leave Forced Prostitution

The parents of 14-year-old Rubina were going to force her to marry a man in his fifties. Rubina met a young man named Raju who promised her a job in Mumbai, the land of her dreams. Raju ardently pursued her and so one winter Raju brought Rubina to Mumbai and left her with a brothel madam telling Rubina that she was his aunt.

¹⁰⁶ UNAIDS announces winners of Red Ribbon Award 2008, http://data.unaids.org/pub/Agenda/2008/20080611_red_ribbon_winners_en.pdf. The award was co-sponsored by the UN Development Programme and supported by the XVII International AIDS Conference, the Canadian International Development Agency, Irish Aid, and the Norwegian Ministry of Foreign Affairs.

The brothel madam was reluctant to house Rubina because she did not want to traffic in girls. As a Sanghamitra member, she already knew that this was against her philosophy and so she immediately got in touch with Sanghamitra members residing in the area.

Sanghamitra quickly swung into action by taking the young girl to the police station. Rubina was grateful that she was in a secure place and had escaped a gruesome fate. The police housed her in a transit accommodation until her family was notified and also offered to counsel her family so that she would not be forced into an unwanted marriage.

Sanghamitra strongly espouses an anti-trafficking and anti-child prostitution stance. The district committees provide a platform for the women to unite against the presence of minors and solicitation on the streets, and to address the issue of trafficking and forced prostitution, whether the women involved are minors or not. Sanghamitra has been recognized by the police for their work in rescuing women forced into sex work.

Improving Women's Access to Public Services and Basic Rights

Rights: Sanghamitra supports the rights of members to the same services and rights as other members of society. They address issues such as access to public health services and public distribution systems, and cleanliness of the area, through activism and outreach. Its members liaise with key public service departments like the public distribution service or rationing office, and the Mumbai Municipal corporation offices for cleanliness health issues and/or birth or death registration certificates. They also meet with local politicians and civil society members for issue-based discussions. These efforts have led to significant changes in their community and made it easy for their children's births to be registered, for them to access hospitals and other services, and to bury members of their community.

Legal advocacy: Sanghamitra facilitates meetings between sex workers and the police to sensitize the police to their issues. Sanghamitra members have educated female sex workers about their legal rights through interactive sessions with the police departments as well as legal aid/rights organizations like the Lawyers Collective.



Meeting with police (Photo by: Sanghamitra)

Improving Women's Working Conditions and Offering a Safe Space

Work condition: Sanghamitra mediates a dialogue between sex workers and the brothel madams on the importance of maintaining a healthy and positive relationship. Unification of the women helps eliminate violence from pimps, gharwalis (brothel madams), and managers.

Drop-in center: Sanghamitra also runs a drop-in center that allows women to relax, watch TV, or learn a skill. Warm meals are offered to women when they have no money for food. The center also provides respite for women who just seek solitude or have no place to call their own.



Drop-in Center (Photo by: Sanghamitra)

Conclusions

Sanghamitra's rights-based approach has demonstrated to be one of the most effective ways of promoting salient health messages on HIV prevention among female sex workers. By ensuring access to their basic reproductive, legal, social, and economic rights, Sanghamitra believes that the ultimate goal in changing society and making it one free of human trafficking will ultimately be achieved. The model can be replicated in other places by women who see a need to unite and fight for their rights in order to build respect and ownership in their community.

It is a fact that once you touch the minds of people, the fire to change things happens from within, and once it begins, no force can come in its way. This epitomizes Sanghamitra's work. Sanghamitra has grown from a fledging community-based organization to a force that is slowly yet steadily transforming the lives of the female sex workers in Mumbai. Joanna Macy the activist aptly said *"Before water turns to ice, it looks just the same as before. Then a few crystals form, and the whole system undergoes cataclysmic change."* Sanghamitra is that change.

DANAYA SO: Bringing Hope to Sex Workers and their Families in Mali

Sylvia Mollet Sangaré, DANAYA SO

“I was forced to marry my uncle, who was living in the countryside. But I never lived in a village before. My husband forced me to work hard day and night. I complained and he hit me so hard that he broke my arm. With my broken arm, I was still forced to work. When I was down, I refused to work in the field. My husband sent me back to my parents. They threw me out on the streets with no help. One day I decided to go to another town. I chose the Malian town Sikasso, even if I knew nothing about it. Once in Sikasso, I took on sex work to support myself.”—DANAYA SO member

Background

DANAYA SO, a democratically-organized sex workers’ association in Mali, was created in 1992 by a sex worker, in partnership with two social workers, specifically to address the economic and social conditions of sex workers. Since its inception, DANAYA SO has since grown into a national organization in five towns with a membership of approximately 3,000 sex workers. Its success also led to the formation of LAKANA SO in 1997, an organization that addresses the needs of sex workers’ children.¹⁰⁷

Sex Work in Mali: A Snapshot

“When my husband died, I went back to live with my parents. Then my father and my mother died. I was 18 and I had two children and additionally had to take care of my brothers and my sisters, who soon had to drop out of school because of our economic situation. No one gave us any food. I came to Koutiala with my children and I started working in brothels. But my children were afraid to be alone at home. I wanted to leave the brothel, but no one rented me a room in town because I wasn’t married, I wasn’t stable. When I found a room, I was going out at night.

If neighborhood women came to see me, their husbands threatened them and said: ‘Why do you talk to that woman? She’s not married, she goes to brothels and she’ll have you go there too.’ For this reason, no one came close to me; I was alone with my children. I went to Bamako and worked as a domestic worker for four months, but they didn’t pay me. I took my children and came back to Koutiala to do sex work. I’m working so hard, my children are growing up. I’m ashamed and afraid that my children will find out what I am doing, so I hide it from them.

¹⁰⁷ www.danayaso.org and www.lakanaso.org.

I took care of my brothers and sisters, paid for the room, the school for the children, the food. Sometimes, the children saw men coming in and out the house. I'm the oldest of my sisters and brothers, so they couldn't say anything. But they know what I am doing.—DANAYA SO member

"My husband had eight children with me. He divorced me for no reason. I did everything to change his mind to stay with me and my children, but he refused. I have no one now to help me bring food to the children. My parents can't help us. That's why I'm doing sex work."
—DANAYA SO member

Participation in sex work in Mali is a direct result of the social and economic conditions that prevent women from supporting their children through other forms of work. Sex work, while legal and regulated in Mali, is a profession of circumstance, and therefore preventable.

Poverty is only half of the equation—social conditions significantly exacerbate already-difficult economic challenges. Malian women are often illiterate. According to UNICEF, the adult literacy rate is 23 percent and the total fertility rate is 5.5.¹⁰⁸ Most women have few if any employment opportunities, and are often the sole source of income for many children. Malian social norms require women to get married and have children. It is rare to see a woman who does not have several children and it is her absolute priority to

take care of them. Many women who have children before marriage are left behind by migrating husbands or are divorced or widowed. They cannot get married. With no schooling, trade skills, or resources to start a business, sex work can become the only option.

"My husband had eight children with me. He divorced me for no reason. I did everything to change his mind to stay with me and my children, but he refused. I have no one now to help me bring food to the children. My parents can't help us. That's why I'm doing sex work."—DANAYA SO member

Sex work is mainly an urban phenomenon in Mali; however, it is migrating to rural areas. It takes place clandestinely on the streets or in brothels. In all cases, sex work is a strategy women in dire circumstances use to generate income.

Brothels

A typical Malian brothel employs anywhere from five to 20 women, in addition to a manager. Women are required to pay rent per night, which is more expensive than the average rent in the surrounding area. Brothel madams and managers are mostly men—Maliens, Chinese, or nationals of neighboring Anglophone countries. Women in brothels are highly mobile. They

¹⁰⁸ UNICEF statistics for Mali, http://www.unicef.org/infobycountry/mali_statistics.html#56.

often stay only a few months in the same town and women from neighboring countries often return for visits to their countries to see their families.

The majority of the women in brothels come from villages where they had been working as domestic workers and were forced to leave due to pregnancy or rape. Some decided to earn more money in sex work. Women also come from Nigeria, Ghana, Senegal, Ivory Coast, Guinea, and other West African (ECOWAS) countries because there is no visa required for travel within ECOWAS countries. They can earn money and no one back home is aware of their work.

Only a minority of women are in sex work by force. DANAYA SO estimates that presently around 200 to 300 trafficked Nigerian women are working in brothels.¹⁰⁹ They are lured from home with the promise of an all-expense paid passage to Europe, but traffickers confiscate their passports and hold them for one to two years until they have paid off the cost of the journey. Corruption prevents the Malian police from arresting traffickers. DANAYA SO reports cases to the police, but does not intervene further because of the risks that this would cause for its team members.



A Brothel in Bamako (Photo by: DANAYA SO)

“Clandestines”

“My husband left for Europe to make money. But I am without his news since ten years. His parents came to take away his chairs, his plates and cups, even the parts of his car. They asked me: ‘Is there anything left?’”—DANAYA SO member

¹⁰⁹ As this publication was going to press, the BBC reported claims made by a Nigerian official that 20,000 to 40,000 Nigerian women and girls have been trafficked into Mali. DANAYA SO is not aware of any evidence to support this claim. Given the breadth and depth of DANAYA SO’s presence through many areas of Mali, it is unlikely that trafficking of such a magnitude could occur without the organization’s knowledge.—Ed.

While organized brothels are common in Mali, the majority of Malian sex workers work in secret. They are ordinary women living in poor neighborhoods and are not distinguishable from other women in the area. Most of the women are illiterate, lack job skills, and have children from different fathers. Some of them also sell fruits or other products in the street.

DANAYA SO and LAKANA SO: The Power of Collaboration

Malian society and government do not provide services for sex workers and their children so the women organized themselves into a collective, DANAYA SO. The collective seeks to stop the marginalization of sex workers by removing the difficulties women have in accessing health care (such as HIV/AIDS prevention and treatment programs) and social services; reduce dangers from police raids; fight housing discrimination; and facilitate participation in social events and religious practice. DANAYA SO meets the immediate and long-term needs of sex workers and their families by providing medical care, financial planning, banking, credit, education, and children's services to its members.

DANAYA SO is open only to women in sex work who are age 18 or older and includes women who abandon sex work but still require the association's assistance.

In 1997, DANAYA SO created LAKANA SO, an organization that addresses the health and education of its members' children. LAKANA SO assists with education enrollment and fees, vaccinations, HIV/AIDS and health education, and legal documentation.

Management and Operation

DANAYA SO is organized in a democratic structure. It is managed by a national committee (elected at local assemblies) and a coordinator, as well as local assemblies at each of the five sites. The national committee members—all literate sex workers—meet monthly to organize activities. The approximately 30 committee and assembly members meet annually for strategic and annual planning workshops. All of DANAYA SO's work is based on peer education and voluntary participation.

Originally, the coordinators of DANAYA SO were women with university degrees who organized to support the sex workers. However, since 2008, sex workers have taken full leadership, and now coordinate all the work in the five project sites. DANAYA SO's programming focuses on four areas: 1) health; 2) income generation; 3) capacity building; and 4) legal protection.

DANAYA SO's current vision, which is intended to carry them through 2012, states that DANAYA SO will strive to ensure that sex workers:

- Are well-received in the health centers;
- Are no longer infected with HIV;
- Manage their business initiatives professionally, and their business initiatives contribute to their financial autonomy;
- Are accepted by their families, religious institutions, and society;

- Are respected by the police force; and
- Know their rights and are competent and able to claim them.

Financial Autonomy

Financial autonomy for DANAYA SO is an important goal. Some autonomy has been achieved through the generosity of a Swiss donor who financed the construction of buildings in each of the five DANAYA SO sites. DANAYA SO rents out space in each building for income. In Bamako, the tenant is a pharmacy that also provides discounted drugs to DANAYA SO members.

DANAYA SO is now seeking partnerships with the private sector at mine sites, specifically with gold mine companies. The association wants to implement new projects at the sites, since sex workers migrate to these gold mines. The companies are interested in this collaboration since they have to set up health projects for the workers and surrounding environment and know that a sex worker organization like DANAYA SO is better informed and skilled than others to intervene in this context.

Operating a Bank

In response to the need expressed by all the members, DANAYA SO created its own credit and savings banks in each of the five project sites. They are managed by the project teams, along with an annually-elected credit and monitoring committee.

Members who join the bank contribute monthly and have access to credit ranging from US\$100 to US\$1,000 to set up a small individual business. Thus far, funded projects include street restaurants, fruit or clothes selling, and tailoring. Some of the women have been able to quit sex work altogether because their business provides enough income; others complement sex work with this new income.

Capacity Building and Vocational Training



Vocational Training (Photos by: DANAYA SO)

DANAYA SO regularly offers skills trainings to improve its own operations. It continually enhances members' skills in areas such as fundraising, human resources, bank and health insurance management, educational theater, and other projects.

DANAYA SO has also contracted several professional organizations to conduct vocational training for its members. DANAYA SO pays for the training and monitors the evolution of its trainees. For example, it has organized a three-year course to teach tailoring, a highly marketable skill in Mali. After completing the course, the women are eligible for a loan from DANAYA SO and are offered a two-year position in the organization's studio, where they can start working.

The majority of the women who participate in the training are either very young or over the age of thirty, when their client base starts decreasing. Brothel workers are rarely able to participate because they work through the night to pay their rent. Participation would mean a loss of income.

To date, DANAYA SO has trained more than 150 women. In addition, LAKANA SO has provided almost 1,700 vocational training sessions with young people so they will be able to establish themselves as tailors, carpenters, and mechanics.

Health Care



DANAYA SO members (Photo by: DANAYA SO)

“A sex worker like Fatoumata can go on for years until effects of an HIV infection start showing. When it starts to show, all men will avoid her. She’ll no longer be making money. All the money she made will go for the treatment.”—DANAYA SO member

In order to address the health problems faced by Fatoumata and other sex workers without access to medical care, DANAYA SO has organized medical consultations, signed agreements with specialized services such as health centers, and created its own health insurance program.

Medical consultations: When DANAYA SO started visiting the brothels in Bamako in 1994, most of the women took daily antibiotics, believing that this would prevent sexually transmitted infections. They did not visit doctors because they were afraid of gossip about them by people they would meet in the health center and were ashamed to answer the doctors' questions. In 1995, only 25 percent of the women saw a doctor for health problems.

Within a few years, the situation completely changed thanks to the health activities of DANAYA SO. DANAYA SO offers free medical consultations by doctors for members. Today all members have access to doctors at DANAYA SO's five centers (and in brothels in Bamako) or at contracted health centers that treat DANAYA SO members at no cost.

Practically all DANAYA SO members now see a doctor when they are sick. The women in the brothels go for monthly medical consultations using the DANAYA SO health insurance. As a result, most of them do not buy medication in the street anymore.

Medical testing is voluntary, which has led to the women's increased trust of medical professionals. This strategy has proven successful and is encouraged by the Ministry of Health.

LAKANA SO's health efforts with children have provided more than 7,600 free medical consultations, and monitored the health of and provided vaccinations for more than 280 children from birth to age five.

Health insurance: DANAYA SO also offers health insurance to members and their children. For a monthly fee, the plan covers 75 percent of medication and 50 percent of laboratory exams. However, if members need medical treatment, surgery or hospital care, they have to pay all expenses on their own. Women with AIDS can get free antiretroviral drugs, but have to pay on their own for the treatment of opportunistic diseases related to AIDS.

Public health education: DANAYA SO organizes discussion groups, peer education, and radio, film and theater projects to educate its members about HIV/AIDS, drug abuse, the dangers of self-medication and unattended abortions, and the health consequences of female circumcision, which still occurs at a rate of 95 percent among Malian girls.

The information and education sessions on health for the members, accompanied with the sale of condoms, contributed to the significant amelioration of the health situation of sex workers. Women can also take much better care of their children's health now because of the health interventions of DANAYA SO.

LAKANA SO educates the mothers about nutrition, children's diseases and other health risks, vaccination, and risks of self-medication. It assists children of sex workers infected with HIV and

has assumed responsibility of children orphaned by HIV/AIDS. So far, LAKANA SO has facilitated 7,690 medical consultations and, at present, 280 children from birth to five years of age are receiving free medical consultations.

HIV/AIDS education: Through peer educators, DANAYA SO educates its members on HIV/AIDS prevention, transmission, and treatment. It also facilitates access to antiretroviral (ARV) medication and teaches proper condom use. In Mali, gender dynamics do not always allow women to dictate that their partner use a condom; however, condom use among sex workers is significantly higher than that of other groups of women.

“If someone has AIDS, we should comfort her, take care of her, and give her all she needs. Like this, she can survive a bit longer, instead of criticizing her and whispering in her back –that kills her right away.”



DANAYO SO Street Theatre on Health
(Photo by: DANAYO SO)

In 1992, the percentage of HIV positive sex workers in brothels in Mali was 74 percent and by 1999 it had dramatically dropped to 30 percent.¹¹⁰ In the five towns where DANAYA SO intervenes in brothels, the collective has significantly contributed to this success through dissemination of information, safe sex education and condom distribution. DANAYA SO educated women, who were ashamed to buy condoms only a few years ago, on the need to always use condoms with clients and to refuse unprotected sex. The collective has succeeded in diminishing transmission of HIV/AIDS and other sexually transmitted infections and therefore saved lives and improved the health of many sex workers, clients and their families.

In addition, DANAYA SO monitors AIDS-testing protocols to assure they adhere to ethical standards.

Educating potential clients: An important and successful activity of DANAYA SO has been the training of more than 11,000 men in HIV/AIDS prevention. The government and other institutions have asked DANAYA SO to train many groups, including law enforcement, the military, truck drivers, and teachers. Local authorities asked DANAYA SO to conduct HIV/AIDS prevention programs in refugee camps during the civil war in Ivory Coast. DANAYA SO also conducts impromptu training sessions in street theater format for groups of men on the street.

Literacy and Education

Since the majority of DANAYA SO members are illiterate, they are vulnerable to exploitation and have few employment options. To alleviate this problem, DANAYA SO collaborates with

¹¹⁰ HIV/AIDS Profile: Mali, International Programs Center, Population Division, U.S. Census Bureau, HIV/AIDS surveillance Data Base (June 2000) <http://7bn.net/ipc/hiv/mali.pdf>.

neighborhood literacy training projects. Every year, 450 women learn to read and write in these courses. The activity is very popular among the sex workers because they can learn to calculate their expenses, and think about setting up small-scale businesses. They can also supervise and support their children's education.



Educating members' children (Photo by: DANAYA SO)

Before LAKANA SO, most children of sex workers did not attend school. LAKANA SO helps mothers enroll their children in school and professional training programs, pays half or all of each child's school fees, and monitors the progress of the children. Children who are too old (over 10) to enroll in school have access to literacy programs, sometimes together with their mothers. LAKANA SO has educated and monitored the situation of 3,571 children since the start of the program.

As a result of the work of LAKANA SO, all members' children are now in school or professional training and highly unlikely to enter prostitution. Most children accompanied by LAKANA SO turn to other professions and succeed in finding their place in the society.

Ending Child Prostitution

Girls from non-sex worker families continue to be coerced into prostitution by families that push their daughters to help support the family. To address this problem, LAKANA SO recently started working with youth in prostitution under the age of 18, with the objective of finding alternative income-generating activities for the girls.

As soon as members are aware of the presence of a minor, they immediately try to find a way to remove the child from the situation. If the family is available and is not responsible for the prostitution of the child, LAKANA SO contacts the closest available kin. If the child is young, e.g., 12, she/he almost always returns home. However, if the child is older, e.g., 16, it is more difficult to convince the child to return home or to stay in a home for children. The older children typically remain in prostitution.

Protection from Abuse

“What can the police do if men make trouble? Some say: ‘You deserve it; why don’t you get married?’ and others: ‘Men are ignorant, why do you follow them?’ Some cops help you get your money back from your client, but others insult the sex workers.”

Malian authorities officially recognize brothels and the police visit them regularly. All women in the brothels are required to register at the police station and go for monthly medical consultations. The monthly consultations are organized by DANAYA SO or health centers and the information is entered into a health booklet provided by DANAYA SO. As a result of an agreement entered into between DANAYA SO and the police, women with health booklets are no longer subjected to arrest. The police respect the agreement with very few exceptions.

The police often mistreat sex workers. Mali’s public health policy dictates that sex workers have monthly medical check-ups, which is commonly used by police as justification to raid brothels and target sex workers. During raids, sex workers are subjected to rape and robbery. DANAYA SO intervenes and has also taken action to end police harassment.

To stop the raids, DANAYA SO has signed agreements with local police stations that exempt sex workers from raids if their medical consultation booklets are up to date. The health booklet, a DANAYA SO initiative explained above, has effectively stopped 95 percent of police raids.

DANAYA SO members also accompany women to the police to file a report in cases of rape, physical abuse, theft, and refusal to pay. In most cases the interventions are successful because DANAYA SO has shown the police that they do valuable work to enhance the health situation of women and that they can act as an effective mediator in such disputes with clients. The police often fine the man for the abuse. The fine is paid to the victim. However, if the client rapes the sex worker, he simply leaves some money and uses that as evidence that the sex was consensual. So, DANAYA SO has not yet been successful in overcoming the myth that sex workers cannot be raped.

Registration of Childbirth

“How can a woman like me in a brothel have the birth certificate of her child? How can the child go to school without birth certificate? My children who are five and ten years old and don’t have birth certificate. Then, I can’t even talk about sending them to school. The boy will become a tramp and my daughter another sex worker.”

Prior to LAKANA SO, most children of sex workers did not have birth certificates and, until recently, single mothers had to indicate in the birth certificates that the father is “unidentified.” The children with these birth certificates were mocked by their classmates and isolated. They could not escape the situation because the evidence was on their official papers.

Because of LAKANA SO's actions, single women can now get birth certificates without mentioning a father's name. So far, LAKANA SO facilitated process of obtaining birth certificates for 2,427 children.

Moreover, the team helps locate fathers to get at least financial support for the child. In the best cases, the child is officially recognized and gets emotional support. Sometimes young mothers wish to return to their villages with their children and LAKANA SO accompanies them to facilitate the first contacts with the parents and traditional authorities (village chiefs).

Collaborations

At the beginning, authorities were skeptical about organized sex workers, but after more than 10 years, the government has come to appreciate their work. In fact, DANAYA SO is now a valuable partner of the Health Ministry.

DANAYA SO and LAKANA SO also participate in public events. DANAYA SO is a member of the Malian network of women's associations and both organizations regularly meet with religious and traditional leaders. DANAYA SO also coordinates the French African Network of Sex Work Projects, an association of 11 members, including West African countries and the Democratic Republic of the Congo. It is also a member of the International Network of Sex Work Projects (NSWP).

Future Challenges

In the future, DANAYA SO wants to expand, specifically near Mali's lucrative gold mines, where the presence of mining camps is creating a need for both organizations' services. LAKANA SO aims to focus on ending child prostitution, as well as the needs of their own children.

The Impact of Collaboration: Sex Workers and Governments in Brazil

Gabriela Leite¹¹¹

Davida and Brazilian Network of Prostitutes

White wedding dresses are symbolic for many women, but this dress is different. Sewn out of sheets from motels famous for renting by the hour in Rio de Janeiro, its matching veil is a crown of perfectly round condoms with a lace trail. But perhaps what most sets it apart is who is wearing it —Jane Eloy is an HIV positive sex worker, mother of three, and member of Davida, the oldest of 30 sex worker associations that form part of the Brazilian National Network of Prostitutes. She modeled the wedding dress for the first time at the Sao Paulo Biennial for a cheering crowd of artists, activists, and onlookers. It was the first time she had ever worn a wedding dress and she cried as photographers snapped photographs and interviewed her about her experience as a Daspu model.



Jane Eloy at the Daspu Fashion Show, October 2006.
(Photo by: Juan Guerra)

It was October, 2006 and Daspu—or “of the whores”—a clothing line started by Davida in 2005 had recently made international and national news for its provocative designs and powerful message advocating for the rights of sex workers. Daspu’s ability to garner public support, reduce stigma, and celebrate the empowerment of sex workers can perhaps best be expressed in Jane’s own words, *“The proudest moment of my life was being on the runway as a model in the Daspu fashion show, watching people embrace our cause and showing my face as a prostitute.”*

Twenty years ago, the possibility of someone like Jane modeling in one of the most exclusive spaces of the Brazilian art world in the name of promoting sex worker rights was unthinkable. Sex workers in Brazil faced violence from police and were treated as vectors of sexually transmitted infections by the general population and many health professionals. No formal organization of sex workers existed. Today, the Brazilian National Network of Prostitutes not only has made headlines for its innovative projects such as Daspu that link prevention with art and culture, but has also made its way into the country’s political system: the organization’s

¹¹¹ Translated by Laura Murray.

leader, Gabriela Leite who founded Davida in 1992, is a Green Party candidate for the Rio de Janeiro congressional district.

In what follows, we will share our challenges and successes in nearly twenty years of activism as sex workers, mothers, partners, and activists. Through a discussion of our local and national actions in health, education, culture, and communications that confront the prejudice, discrimination, and stigma that surround sex workers' lives, we will share how we have gained a prominent voice in the Brazilian Ministry of Health and are gaining a voice in the Ministry of Culture.

Organizing for Our Rights

The mission of Davida - Prostitution, Civil Rights, Health - is to create opportunities for strengthening the citizenship of prostitutes, through the organization of sex workers, the defense and promotion of rights, and the mobilization and monitoring of public policy. The general objectives of the organization are to:

- Place sex workers at the forefront of social, political, and health debates about prostitution;
- Promote public policies for sex workers and monitor public policy;
- Obtain legal recognition of the profession;
- Promote the organization of prostitutes, assisting in the formation of associations and training their leaders;
- Reduce the vulnerabilities of sex workers, especially in the areas of legal rights, health, and safety;
- Renounce and confront the stigma, prejudice, and discrimination that affects prostitutes;
- Guarantee and disseminate social benefits for sex workers;
- Attain better working conditions and quality of life for sex workers.



National Brazilian Prostitute Network Meeting, Rio de Janeiro, 2008.
(Photo by: Flavio Lenz)

In the national environment, Davida coordinates the Brazilian Network of Prostitutes; assists in the formation of new organizations; advocates for public policies in the area of prostitution and health; consults public and private entities nationally and internationally; and produces, distributes, and promotes videos, publications and manuals on STD and HIV prevention. On a regional and local level, Davida trains organizations that want to work with sex workers and promotes educational actions and citizenship formation with sex workers. These actions include direct interventions in prostitution areas, trainings and encounters, distribution of condoms, and theater presentations.

Today my family is proud of me. They try to be closer to me, but I still have some resentment, a lot of bitterness for what they did, abandoning me and leaving me all alone, and I am showing them that I can do a lot more things than they imagined. Even help them. —Jane Eloy, Brazilian Sex Worker

Standing up to Violence

The history of the sex worker movement in Brazil began in the late 1980s when sex workers began organizing against rampant police violence. The first national event to address violence against sex workers was in 1987, at the first Brazilian Meeting of Prostitutes in Rio de Janeiro. Violence was an important topic in the subsequent national meetings of sex workers and a key issue of the sex worker associations that began to form in the early 1990s. These sex worker organizations acted locally by organizing meetings and working in cooperation with public authorities and other civil society organizations to combat police violence.

Today my family is proud of me. They try to be closer to me, but I still have some resentment, a lot of bitterness for what they did, abandoning me and leaving me alone, and I am showing them that I can do a lot more things than they imagined. Even help them. —Jane Eloy, Brazilian Sex Worker

Unfortunately, violence against sex workers continues to be rampant, and Davida works hard to ensure that the cases get the media and public attention they deserve. For example, in June 2007, three male university students nearly beat to death a domestic worker in Rio de Janeiro waiting for the bus and explained to the police that they “thought she was a prostitute” as an excuse. Davida’s passionate response called attention to other cases of violence and an extensive interview was published with Gabriela Leite in *Globo.com*, the country’s largest internet media source.

Earning Our Civil Rights

The sale of sex for money is not illegal in Brazil, yet up until 2002, prostitution was not recognized as an occupation. At this time, Davida was invited along with other organizations of prostitutes to share defining aspects of the profession with the Brazilian Ministry of Work and Employment. The aspects were later included in the “sex worker” category of the Brazilian Classification System of Occupations, making prostitution an official occupation in Brazil. One year later, Congressman Fernando Gabeira proposed a law to the National Congress that recognizes prostitution as a profession and formalizes the work relations in the sector.

Even though it is an occupation, our right to work is often not respected. Sex workers are frequently driven from their homes and work areas in efforts to “revitalize” urban areas. To confront this, Davida started a pilot project related to the revitalization of historic areas. Funded through the Diaconal Lutheran Foundation, *Prostitute Citizens: Information and Public Mobilization to Guarantee the Right to Work, AIDS Prevention and Permanence in Historic Areas*, seeks to link prevention actions and public policies to guarantee the permanence of sex workers in areas being “revitalized.” Davida does this through pioneer lobbying with public officials and by promoting the participation of sex workers on local historical preservation committees.

Combating Stigma through Cultural Activism

Despite all of our advances, sex workers continue to suffer from discrimination. Stigma can be seen as much in the violence committed against sex workers as in the way many women feel they must hide their profession from their partners, family, and children. Standing up for our rights with pride is one of the most effective ways we have found to combat stigma, and we do this through cultural and social actions such as music, fashion, and art.



Brazilian Prostitute Network Meeting, Rio de Janeiro, 2008. (Photo by: Flavio Lenz)

Davida’s cultural and social activities are an opportunity for sex workers to showcase their talents in the community and raise their self-esteem. Connecting prevention with art and culture

has been a key component to increasing women's empowerment as citizens and self-esteem, which have been denigrated by prejudice, stigma, and the double moral standard. Improved self-esteem specifically results in taking better care of one's health and interest in education and culture, fundamental elements of citizenship. Below are examples of our cultural and social activities, which are all focused on promoting the social inclusion of sex workers.

Cabaret Davida

In an environment created to look like a cabaret, a play shows a night in the life of a sex worker who is involved with older (and fearful) clients and other younger clients (born in the condom generation). Forty minutes of play transform fun situations and dialogue related to AIDS into knowledge. At the end of the humorous and informative show, actors and members of Davida distribute condoms and prevention manuals to the public.

Bloco Prazeres Davida

Created by prostitutes and supporters, the Carnival bloco had its first show in 2006 at the Praça Tiradentes, an area of prostitution in the historic center of Rio de Janeiro. The samba was written especially for Davida's bloco and attracted a small crowd, excited by the diversity of people and space for celebration.



After Bloco Prazeres (Photo by: Davida)

Mulheres Seresteiras [Serenading Women]

The cultural event brings together sex workers and lovers of sex and music for a few hours of fun, integration, and community revitalization, all connected to information about STD and HIV prevention and the correct way to use condoms. The activity, performed in prostitution zones and theatres, was created by Davida to transform culture and health into ideal partners for the Brazilian public.

Daspu Fashion Label

Daspu has mobilized Brazilian society around the concept of "fashion without shame." The fashion collections are designed by professional designers in collaboration with sex workers around prostitution related themes. Past collection themes have included "battle" (as when women work, they say they are going to 'battle'), art inspired by prostitution, "on the road," and activism with humorous messages linked to sexuality, prevention and human rights. Prostitutes

and activists model each collection on the catwalk in shows organized by Davida and other organizations, and give interviews.

With the slogan, “Fashion for Change,” there have been a total of 29 fashion shows in Rio, Sao Paulo, Brasilia, Belo Horizonte, and Salvador, and at the International AIDS Conferences in Toronto and Mexico City. A Daspu fashion show also was featured on TV Globo’s soap opera, *Caminho das Indias*. Davida has various partnerships to sell the products, as well as a virtual store online www.daspu.com.br. The clothing line is completely sustainable and all proceeds from sales go to supporting Davida’s social, cultural, and HIV prevention activities.



Daspu Fashion Show. Brazilian National AIDS Conference. Belo Horizonte, Brazil, 2006. (Photo by: Violeta Berlanda)

In addition to drawing extensive media attention to our fight, and reducing the stigma towards sex workers, Daspu has perhaps most importantly increased the self-esteem of the Daspu models. Jane Elroy for example, was nearly dying of AIDS when she began modeling with Daspu in 2005. A moment that completely changed her life was when she saw her picture alongside that of model Giselle Bundchen in the fashion section of the *Globo* newspaper. Shocked, inspired, and proud, she decided to confide in Davida that she was HIV positive and ask for help, becoming the first sex worker activist in Brazil to ever reveal her HIV status publicly.

Confronting HIV and AIDS

HIV and AIDS have been important issues for sex worker activists in Brazil since the epidemic emerged in Brazil in the mid 1980s. Similar to other countries, sex workers were initially treated as vectors of HIV. Yet this quickly changed when the Brazilian National AIDS Program began working closely with the sex worker movement through a perspective that links the concepts of citizenship, solidarity and rights with prevention. The history of the partnership began in 1989, when Gabriela Leite was invited by the Ministry of Health to participate in a meeting to think about public policies for prostitutes on sexually transmitted infections (STIs) and AIDS. At that time, the prostitutes’ movement was a political force, but there was no formal prostitutes’ organization. Gabriela informed the government’s technical officers that prostitutes would no

longer consent to being treated only as transmitters of disease and insisted that, as conscious citizens, they could help construct policies to confront the HIV epidemic.



Sticker from the Maria Without Shame campaign.

Translated: "Without shame, girl. You have a profession."

As a result of the meetings, Davida established a nationwide project to work for STI and HIV prevention, care, and treatment in prostitution areas in Brazil. A federal HIV prevention campaign, Maria Sem Vergonha [Maria Without Shame] was launched in partnership with Davida in five regions throughout Brazil. The project trained 245 peer educators and included a radio spot, stickers, an agenda of rights, and an orientation manual for NGOs that work with prostitutes.

One of our most important early achievements was the formation of the Sex Worker Steering Committee that is a part of the Brazilian Ministry of Health's National STD and AIDS Program in 1995. As a result, any official initiative or research project for the sex worker population in Brazil is evaluated in this committee prior to implementation. Davida also participates in the Social Movement Accompaniment Committee (CAMS) of the National AIDS Program, a committee where topics related to HIV prevention and treatment, including medications, patents, and bilateral and multilateral agreements, are debated and analyzed.

Over 15 years, the project goal has been successfully met and Davida has demonstrated the social and political potential of prostitutes. The program's expertise in peer education has been replicated by other social movements and the project is considered a model by the Ministry of Health. The project raised the visibility of Davida throughout Brazil and effectively improved the quality of life of prostitutes (see results in text box on next page).

We are currently involved in the implementation of another national level project for 2007-2010 with the goal of implementing strategies to reduce the individual, social and political vulnerabilities in prostitution. To reach this goal, we have set the following objectives:

- Strengthen actions that promote the integration and social inclusion of prostitutes;
- Focus on socio-cultural methodologies for activities;
- Train other associations of prostitutes in sustainability;
- Train the regional leaders of the Brazilian Prostitute Network in advocacy;
- Strengthen the use of condoms in loving relationships;
- Train the members of the Brazilian Prostitute Network in condom social marketing;
- Conduct regional research about the violation of human rights of sex workers with the goal of holding a convention in the Organization of American States.

Selected Impacts of the Project *Prostitutes and Sexual Health*

Indicators from the research study, “Evaluation of the Effectiveness of the Prevention Actions Directed at Prostitutes in Brazil”, conducted by the University of Brasilia and the National AIDS Program:

- **9.3 percent** of the prostitutes reported a STI, in comparison with **38 percent** at the beginning of the project;
- **93.8 percent** of the prostitutes sought treatment for an STI, compared to **2.3 percent** at the beginning of the project;
- **93.4 percent** of the prostitutes correctly related the means of HIV transmission in contrast with **4.8 percent** at the beginning of the project;
- **73.8 percent** of the prostitutes in the intervention group, as compared to **40.3 percent** in the group without an intervention, referred to using condoms with clients [difference between two groups is statistically significant].

Raising Awareness

“Before, sex workers only made it to the newspaper pages when they were involved in crimes – today, we have our own way of communicating.” —Vania, sex worker featured on the cover of Davida’s newspaper, *Beijo da Rua*

Beijo da Rua [Kiss from the Street] Newspaper and Website

Launched in 1988, *Beijo da rua* covers the day to day life of prostitutes and the organized social movement of prostitutes. Health, citizenship, legislation, and other important themes are covered in the newspaper. It is distributed free to prostitutes in 17 states and available at www.beijodarua.com.br.

Having our own newspaper and space to communicate not only with one another, but also with larger society in our own voice has been a crucial component of our fight. Prior to the activism of the National Network of Prostitutes, sex workers were either invisible in the media, or always represented as criminals, victims, and vagrants. Now we can present ourselves as protagonists by telling our own story and publishing our own images.

Davida Research Group

One of Davida’s first direct involvements in a research project was in 2002 when the organization supported and assisted the first national research project about the quality of life of sex workers, conducted by the Universidade Nacional de Brasilia, at the request of the

“Before, sex workers only make it to the newspaper pages when they were involved in crimes—today, we have our own way of communicating.” —Vania, sex worker featured on the cover of Davida’s newspaper, *Beijo da Rua*

National AIDS Program and accompanied by the Brazilian Network of Prostitutes. The results constitute a valuable qualitative and quantitative archive about the group, which allowed us to define new strategies.

In July 2009, Davida established a research group comprised of academics from various social sciences. The group seeks to expand and democratize knowledge about prostitution in Brazil. Its objectives include the production of knowledge about sexuality, prostitution, and human rights in Brazil within an international environment; support for academic research about prostitution, trafficking, sex tourism, migration, and sexual exploitation in Brazil; and the promotion of highly relevant research for the social movement of prostitutes with the goal of improving their quality of life.

The research group's activities include a report with solid data about prostitution and trafficking in Brazil; establishment of an ethical policy for studying prostitution in Brazil; research on the relationship between urban space and prostitution from a historical and socio-cultural perspective, including historical research about the main places of prostitution in Brazil; monitoring of research projects about prostitution in Brazil; organization of seminars about prostitution in Brazil; and participation in conferences about sexuality and prostitution in Brazil and internationally.

“As Meninas da Daspu” [The Girls of Daspu]

This 2007 book is an inaugural project of Davida's Research Group. It brings together the life histories of nine prostitutes that were collected and contextualized by an historian who used an oral history methodology to reveal these women's perceptions about their activism and personal and professional lives.

Historical Archive of Davida

Prostitution, health, education, gender, and social movements are the main themes of the historical archive. The objective is to organize and distribute information, as well as to preserve Davida's history. The library also has an archive of 3,000 volumes, covering AIDS, health, education, sexuality, citizenship, prostitution, social movements, and other subjects. Prostitutes, researchers, journalists, and students are the main clients of the library and historical archive.

U.S. Prostitution Politics and Brazil

In 2005, the Brazilian government chose not to accept US\$40 million in HIV prevention funding from USAID when it refused to adopt the U.S. anti-prostitution pledge requirement. This action and the U.S. anti-prostitution policy have created a continuing controversy in Brazil.

“Having prostitutes as part of the global fight against AIDS is one more step towards overcoming stigma that also affects women. It demonstrates that we are all equal,

even if we have different profiles.”—Gabriela Leite at the launch of Brazil’s Plan to Confront the Feminization of the Epidemic in 2007

When governments place the responsibility for the transmission of AIDS on a certain group, such as prostitutes, they end up using a perverse and absurd logic that the only way to prevent transmission is to stop prostitution and abstain from sex outside of marriage. In reality, unprotected sex is responsible for the transmission of the HIV virus, not sexual services. In fact, today there is a large increase in infection among married women, who declare themselves monogamous. This fact demonstrates a primary reason why many HIV prevention programs all over the world fail—the inability of individuals, whether married or not, to use condoms and to assume responsibility for reducing the risk of infection. Safe sex programs such as those operated by Davida are a more effective means to change behavior in the direction of prevention and control of the epidemic than anti-prostitution campaigns.

“Having prostitutes as part of the global fight against AIDS is one more step towards overcoming stigma that also affects women. It demonstrates that we are all equal, even if we have different profiles.” — Gabriela Leite, Davida and Brazilian Network of Prostitutes

In Brazil, the goal of the social movement against AIDS, which prostitutes have joined, is to promote individual responsibility and autonomy to confront one’s own vulnerabilities. This is very different than the U.S. policy of (A) abstinence (B) be faithful and (C) condoms, “if necessary.” The ABC policy brings back an antiquated and reactionary notion of certain ‘risk’ groups, or rather, ‘suspect’ groups of people who are unable to control themselves and remain abstinent and faithful. This view holds that they are the only persons who should be allowed to protect themselves with a condom. The other ‘good’ people should avoid getting to this point, first, through abstinence and, second, by maintaining faithful sexual relations with a safe individual, as if this individual existed.

Conclusion

We, the members of Davida, have achieved a lot for ourselves and our families in the last 20 years, but we still have a lot to do and realize. We have a strong partnership with the Ministry of Health and are developing a new relationship with the Ministry of Culture. We want to take our advocacy policies to all of the Ministries, showing that, in practice, prostitutes are citizens who, like other Brazilians, are fighting to improve their quality of life and place in society. We also want to continue talking with the United States so that one day—who knows?—the anti-prostitution pledge will cease to exist and Davida and the Brazilian and U.S. governments can collaborate on HIV/AIDS programs.

Part III: Recommendations

As illustrated in the examples from India, Mali, and Brazil, innovative and human-rights-based interventions can make a difference when it comes to preventing HIV, human trafficking, and child prostitution. However, as shown in the case of Cambodia, when policies and laws conflate human trafficking and prostitution, human rights are violated and efforts to prevent sexual transmission of HIV and to locate and assist trafficked persons are compromised. Therefore, in addition to the recommendations contained in the articles above, we propose the following:

To the U.S. Government

Current ideology and policy restrictions that have tainted U.S. anti-HIV/AIDS and anti-trafficking efforts do not facilitate or maximize the impact of U.S. foreign assistance. Unless the U.S. changes its policies and approach to programs that address sex workers—whether it is HIV/AIDS or human trafficking—it will fall short of achieving its own foreign policy goals, in addition to global development goals.

Based on this report’s case studies from Cambodia, India, Mali, and Brazil, and policy analysis, the U.S. government should do the following:

U.S. Congress

- **Pass legislation to remove the anti-prostitution pledge requirement** from the Global AIDS Act of 2003, as preserved in the 2008 reauthorization law and the Trafficking Victims Protection Reauthorization Act of 2003.
- If it is not possible to pass legislation to remove the anti-prostitution pledge language, **pass legislation to limit its impact** in order to ensure that groups working on behalf of and/or with sex workers on human trafficking, health, and rights are not excluded from HIV prevention or anti-trafficking funding.
- **Assert congressional oversight role** by monitoring implementation of the pledge and investigating the impact of the pledge on public health, human trafficking, and human rights. Congress should consult with and engage civil society in these monitoring efforts.

U.S. Administration

- **Instruct the Department of Justice** (a) to issue a tentative letter ruling, along the lines of the Bush administration’s initial determination, that applying the anti-prostitution pledge to U.S.-based NGOs violates the Constitution and (b) to cease enforcement of the prostitution pledge to U.S.-based NGOs.
- **Instruct the Department of Justice** to cease its appeal of the litigation brought by OSI and others challenging the anti-prostitution pledge under PEPFAR.
- **Issue clear guidance** that public health and anti-trafficking best practices such as collaborations with sex worker groups to implement empowerment programs and drop-in centers, and other support services like banking and legal assistance, are not excluded from

U.S. funding, and are in fact encouraged as proven models of effective outreach with sex workers.

- **Notify recipients of U.S. foreign assistance** and their affiliates that sex workers are able to claim the benefits to which all citizens are entitled, such as identification or voter cards, national health insurance, and housing and banking rights.
- **Ensure transparency in policy making, consistency with U.S. and international human rights law, and the promotion of best practices** in public health, by routine consultations with a broad range of experts in the HIV/AIDS field before any agency or office issues program directives interpreting global U.S. HIV/AIDS laws.
- **Promote the inclusion of sex worker groups** in the design, implementation, and evaluation of national HIV prevention programs to ensure such programs fully and effectively address the prevention needs of sex workers and their clients, partners, and children.
- **Ensure that all scientific and program evidence is regularly reviewed** by experienced researchers and program managers, and is shared with U.S. missions and embassies overseas.

To Governments

To ensure that laws and law enforcement officials are part of the solution and not an impediment to the protection of human rights and effective responses, governments should ensure the following:

- **Abolish or revise laws that** seek to eliminate human trafficking by criminalizing the sex industry as a whole. Most anti-trafficking legislation takes a criminal-based approach to combating human trafficking, yet all prostitutes are labeled trafficking victims and are criminalized for their work in the sex industry.
- **Focus law enforcement efforts** less on emptying the streets of sex workers, through often violent and abusive police campaigns, and more on prosecuting actual traffickers.
- **Focus efforts on identifying actual trafficked persons** instead of trying to rescue all sex workers from prostitution.
- **Train law enforcement to identify trafficking victims.** Often raids are made in a sweeping manner, resulting in the detention of non-trafficked sex workers who, as a result, are taken away from their only source of income.
- **Monitor for and strictly condemn corruption.** Governments should create systematic complaint procedures and investigate alleged police corruption and human rights violations. A zero-tolerance policy, including prosecution, should be implemented when abuse or corruption is discovered.
- **Create and implement non-discrimination laws for sex workers and their children** so that they are not denied essential health care and other services. The health care of sex workers is a public health matter that should not be politicized.

To Donors

Donor choices have a tremendous impact on the lives of people. Donors also have a responsibility to ensure that their grants are being used in a manner that promotes rights and the agency of the target population. So, in addition to the funding-related recommendations contained in the recommendations to the U.S. government, donors should:

- ***Focus funding on filling gaps left by the U.S. anti-prostitution pledge requirement.*** Programs that support sex workers need the support of private funding so that sex workers are not further marginalized by U.S. funded organizations, who often limit the services they provide to sex workers in order to continue to receive U.S. funding.
- ***Increase funding*** to support sex worker collectives and NGOs that advocate rights-based approaches to protecting trafficking victims and HIV/AIDS.
- ***Treat sex workers as partners*** to combat trafficking, child prostitution, and HIV/AIDS. Most governments do not collaborate with sex worker collectives and instead view them as obstacles, rather than as potential partners. Sex workers engaged in the industry are, very likely, in the best position to identify sex trafficking victims.
- ***Support and allow street outreach to sex workers.*** In some countries, it has become difficult for NGOs to do street outreach because of police harassment. Street outreach is crucial to ensure that sex workers have access to condoms and are educated on how to prevent the spread of HIV/AIDS and other sexually transmitted diseases or infections.
- ***Make regular contact with organizations and health clinics that serve potential trafficking victims,*** such as NGOs serving domestic violence and sexual assault victims. Governments should provide training to these groups so that actual trafficking victims are identified and assured that their rights are protected and their traffickers prosecuted.

To Non-governmental Organizations

In order to develop effective programs and practices that do no harm, non-governmental organizations (NGOs) working with issues affecting the lives of people in the sex sector must do more to understand and work in partnership with sex workers. As a starting point, they should:

- ***Learn about and draw lessons from sex worker-run programs*** that are highly effective and promote rights.
- ***Develop methods to collaborate with sex worker collectives,*** which are part of the solution to addressing HIV/AIDS, trafficking, and child prostitution.
- ***Cease categorizing all sex workers as victims*** and refuse to assist governments that pick up adult sex workers who are not trafficked.
- ***Conduct systematic research,*** with replicable methodology, to collect accurate data on trafficking victims in the sex industry.

- **Tailor vocational training to meet the articulated needs** of specific communities and cultures so that skills learned will actually provide a living. Long-term support for fundamental skills-building and education are important to ensure self sufficiency and avoid trafficking.

To the Media

Given the ability of all forms of media to mold public reactions to important, but little understood issues, such as sex work, it is incumbent on the media to ensure that they are not responsible for spreading myths and misinformation. Journalists should endeavor to:

- **Report accurately** on trafficking issues and educate the public on the realities of trafficking in the sex industry, so that the public understands that although human trafficking is a major human rights and criminal abuse, not all sex workers are trafficking victims and not all trafficking victims are in the sex sector.
- **Frame coverage of human trafficking objectively** without using inflammatory language that distorts the issue. Information should not be conflated, so that distinct terms such as slavery, prostitution, and trafficking are not used interchangeably.

About the Center for Health and Gender Equity (CHANGE)

The Center for Health and Gender Equity (CHANGE) is a U.S.-based non-governmental organization whose mission is to ensure that U.S. foreign policies and programs promote women’s and girls’ sexual and reproductive health within a human rights framework. CHANGE believes that every individual has the right to basic information, technologies, and services needed to enjoy a healthy and safe sexual and reproductive life free from coercion and preventable illness. CHANGE envisions a world where sexual and reproductive health and rights are universally recognized and sexual and reproductive health care is accessible and available to all. For more information, visit www.genderhealth.org.

About the Center for Human Rights and Humanitarian Law at American University Washington College of Law

The Program on Human Trafficking and Forced Labor is housed within the Center for Human Rights and Humanitarian Law. The Program is dedicated to the promotion of a human rights-based approach to all laws, policies, programs and activities of state and non-state actors whose work intersects with situations of human trafficking and forced labor. The Center for Human Rights and Humanitarian Law seeks to create a bridge between the worlds of academics and activists. It works with practitioners, NGO activists and law students to promote, enhance and support the promotion and protection of human rights around the world. Since its creation, the Center has been an incubator for a variety of successful projects. For more information, visit www.wcl.american.edu/humright/center/ or <http://rightswork.org/>.

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Please cite as:

Center for Health and Gender Equity (CHANGE) and Center for Human Rights and Humanitarian Law at American University Washington College of Law, editors. *Human Trafficking, HIV/AIDS, and the Sex Sector: Human Rights for All*. Washington, D.C.: Center for Gender Health and Equity (CHANGE) and Center for Human Rights and Humanitarian Law at American University Washington College of Law, 2010.