

# PROHIBITING SEX WORK PROJECTS, RESTRICTING WOMEN'S RIGHTS: The International Impact of the 2003 U.S. Global AIDS Act

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In his State of the Union address on January 28, 2003, U.S. President George W. Bush asked Congress to commit \$15 billion to “turn the tide against AIDS in the most afflicted nations of Africa and the Caribbean.” Thus began the rapid process to draft and enact new legislation, eventually named the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act (known as the “Global AIDS Act”), an act that became law in May of 2003.<sup>1</sup> Bush’s announcement in support of global HIV funding surprised many and appeared to open new possibilities for both treatment and prevention initiatives. It seemed a remarkable achievement that HIV/AIDS concerns should be recognized by this conservative administration, especially at a time when fears about terrorism dominated the agenda.

Yet, the euphoria engendered by the pronouncement gave way to disappointment over the actual funds made available, and it also became clear that a commitment to increase the amount of U.S. global AIDS funding did not mean significant advances in terms of strategies to prevent and treat HIV/AIDS.<sup>2</sup> The final legislation includes provisions that undermine key aspects of prevention—specifically, assailing the efficacy of condoms—while promoting “abstinence until marriage” education and curtailing support for sex work projects.

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This commentary traces the development of this legislation and describes how it ultimately both restricts the ways successful programs operate and undermines best practices. An in-depth review of one of the restrictions—the prohibition of funding programs that “promote the legalization or practice of prostitution”—reveals the links between the new global AIDS funding structure and the imposition of beliefs about gender and sexuality that jeopardize women’s health and rights. In essence, this conservative agenda asserts that women can be protected from illness and violence by adherence to a life script in which sexual activity is experienced only within appropriate marriage, with the ultimate goal of motherhood. Most advocates would immediately recognize such notions as incompatible with contemporary conceptualizations of women’s human rights. Yet, as will be discussed in greater detail later, the connection between curtailing sex work projects and the subversion of women’s rights was not apparent in progressive deliberations during the drafting of the legislation. In part, this is because deep divisions within feminism over the meaning of sex work gave some credence to the idea that ending prostitution is consistent with women’s health promotion. These sentiments were reinforced because the restriction on sex work projects is, in fact, an expansion of misguided attempts to end “trafficking in women” by abolishing prostitution. Additionally, internal debates amongst HIV/AIDS activists over strategies to inspire U.S. governmental action intersected with these processes, complicating wrangles over gender and health. These discussions, addressed in the next section, provide essential background to the creation of the Global AIDS Act.

### **Creating Legislation**

The AIDS advocacy community in the U.S. has long lobbied the government for more substantial financial commitments to HIV/AIDS prevention, treatment, care, and impact mitigation. The United States Congress has contributed funds for global AIDS programs since 1986, supporting a limited range of prevention activities.<sup>3</sup> As effective treatments were developed in the 1990s, a significant por-

tion of AIDS advocacy became devoted to improving access to treatment and to facilitating the availability of anti-retroviral treatments to get “drugs into bodies” as rapidly as possible.<sup>4</sup> However, efforts to spur increases in the global funding arena to provide money for treatment were repeatedly rebuffed or sold short in Congress. After many years of disheartening defeats, treatment activists embarked in 2002 on an effort to communicate their message to religious organizations and coalitions, some of whom in turn were able to advise President Bush that caring for HIV-positive persons would augment his “compassionate conservative” response to global issues.<sup>5</sup> Several different campaigns organized by religious groups and secular AIDS activists emphasized the plight of children in Africa, AIDS orphans and other “innocent victims” of the epidemic, consciously building support amongst conservatives who had previously found the issue of HIV/AIDS out of their political comfort zone.<sup>6</sup> President Bush’s pledge in his State of the Union address to “treat at least 2 million people with life-extending drugs” indicates that the importance of treatment initiatives had been made clear to him.

It might seem a reasonable political strategy to deploy conservative rhetoric for a progressive purpose, in this case to access financial sources previously unavailable to global AIDS efforts. However, once processes were set in motion to draft legislation and release funds, coalitions across the political spectrum found themselves in the position to jointly affirm or dismantle AIDS programming approaches. In order for the general commitments in the State of the Union address to become an actuality, Authorization Bills for global AIDS funding had to be drafted, debated, and passed through both the House and the Senate of the U.S. Congress before being signed into law by the President. However, an Authorization Bill simply sets the ceiling for the amount of money to be spent. An additional Appropriations Bill must be drafted and passed in both the House and Senate to set the final levels of money allocated. At any point in the process bills can be amended—sometimes changing the intent of the original—and the ways in which funding can be used may be further limited. Thus, initial lofty statements

for any kind of new program may have little to do with the actual final outcome once a myriad of details have been worked out through political compromises.<sup>7</sup>

### **Activist Responses to the Global AIDS Act**

Even before the first version of the Authorization Bill emerged, some organizations, notably those working with gender and health, observed that conservative forces were using HIV/AIDS funding as a way to curtail reproductive rights. In February of 2003, the Bush Administration, bolstered by conservative religious groups, attempted to include aspects of the "Mexico City Policy," also known as the Global Gag Rule, to limit access to global HIV monies by organizations with integrated HIV and reproductive health programs that in any way supported the provision of abortion services.<sup>8</sup> Organizations, primarily from reproductive health and rights networks and not necessarily from the world of HIV/AIDS, quickly coordinated their opposition, sending letters to President Bush and preparing their memberships for a long fight. Significantly, the first submitted version of the Bill did not include any limitations with respect to family planning programs. Even though reproductive rights organizations collectively breathed a sigh of relief, this early skirmish portended an ongoing struggle over the uses of HIV funding and approaches to gender, sexuality, and rights throughout the Act.

Debate over abortion services ceased in the Congress, but members of the House Pro-Life Caucus continued to amend the House Bill in ways that forwarded extreme conservative views on sexuality and gender.<sup>9</sup> These amendments included prioritizing "abstinence until marriage" education as a part of HIV prevention; providing a "conscience clause" that allowed "faith-based groups" to choose not to distribute condoms at all and still be eligible for HIV prevention funding; analyzing the "impact that condom use has had on the spread of Human Papilloma Virus (HPV); and prohibiting organizations that do not have a policy "explicitly opposing prostitution and sex trafficking" from receiving any funding made available under the law.<sup>10</sup> Taken together, these amendments shape an approach that under-

mines condom availability and reduces confidence in their utility while simultaneously facilitating the funding of religiously based organizations whose only prevention message is that marriage effectively reduces HIV risk.

Members of the HIV/AIDS community responded by lobbying against the amendments that mandate abstinence-until-marriage education and the “conscience clause” on condom distribution. This required a strategic framing of Uganda’s “success story” in reducing rates of HIV infection—a story that was interpreted and deployed by conservatives as proving that abstinence education caused a dramatic reduction in HIV prevalence.<sup>11</sup> Advocates responded to this claim by publicizing a number of policy, research, and scholarly resources that clearly demonstrated that Uganda’s program was, in fact, a comprehensive approach that included condom distribution; indeed, it was successful because of the cumulative effects of these approaches, not because of any single aspect.<sup>12</sup> Much of the rhetorical attack on the efficacy of condoms had begun some time before the drafting of the global AIDS bill. Beginning in 1999, conservatives in Congress, led by Republican Tom Coburn, orchestrated a campaign to discredit condom use and the notion of safer sex by arguing that condoms “do not prevent most STDs.”<sup>13</sup> Under the Bush Administration, this campaign, unsupported by any scientific evidence or any change in public opinion about the efficacy of condom use, intensified and led, for example, to changes in the ways condom use is presented on the Center for Disease Control’s (CDC) website.<sup>14</sup> Despite having scientific evidence in their favor, the HIV/AIDS community found themselves on the defensive in 2003, attempting to *rehabilitate* condom use as an effective part of HIV/AIDS prevention. The final authorization bill, regrettably, maintained all three explicitly anti-condom amendments, indicating how far the ground has shifted in terms of what can be reasonably expected in terms of U.S. funding for HIV-prevention best practice.<sup>15</sup>

### **Funding Limitations for Sex Work Projects**

Limitations on funding to groups working with sex workers remained unchallenged throughout the appropria-

tion process, offering a stark contrast to the vigorous efforts of advocacy groups around the Global Gag Rule, condoms, and abstinence. The final version of the Global AIDS Act states, no funds . . . may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. U.S. funded HIV/AIDS initiatives have never before been explicitly limited in terms of what they could do or say about sex work. To the contrary, organizations have employed sex workers to promote adoption of safer-sex behavior among their peers and have engaged in policy discussions and law reform as part of efforts to create "enabling environments" to protect health among communities of sex workers. While it is not yet clear exactly how much of this work the U.S. Global AIDS Act will limit, it is certain that grantees' approaches to sex work will be affected even in places where prostitution is legal. Conversely, vigorous campaigning to abolish sex work, including direct advocacy for substantial abolitionist law reform, is permitted without any restraint. The limitation on sex work projects is, therefore, analogous to the Global Gag Rule on reproductive rights that prohibits grantees' speech and political activities in support of legal abortion yet permits *anti-abortion* advocacy.<sup>16</sup>

Further parallels reveal that the limitation on sex work projects was inspired by the same forces that rallied the unsuccessful attempt to include the Global Gag Rule in the Act. Firstly, extremist conservative groups have recently stated that HIV programs, especially prevention initiatives, are a "funding engine for the international pro-abortion movement" and for "pro-prostitution policy statements."<sup>17,18</sup> Conservative policy-makers, therefore, consider both sex-work projects and family-planning programs that receive HIV funding of any kind as threats that will be closely monitored and attacked again in the future. Secondly, sex-work projects and reproductive-health programs often work in similar ways to end vulnerability and gender inequality. Access to condoms and other forms of family planning, combined with actions to end gender-based violence and discrimination due to actual or perceived sexual activity, are common to both areas of work. However, these activities are precisely those that conserva-

tives oppose, as they seek to revitalize concepts of women's value being intertwined with their sexual purity.

Given these connections, why was the Global Gag Rule more widely understood as a threat to successful HIV/AIDS programming than the limitation on sex-work projects? This may be due to the fact that the human rights implications of the Global Gag Rule issues are clear to both progressives and conservatives alike. The debate, for instance, over the "right to life" versus reproductive rights in the case of abortion and other family-planning services is well known to most people working in HIV/AIDS. Further, reproductive rights advocates have been proactive in translating this awareness into action when they encounter attempts to expand the Global Gag Rule into new areas. It is reported that one of the reasons that the Bush Administration did not insist that the Global Gag Rule be included in this round of global AIDS funding was to avoid a deadlock that would have sunk the original bill.<sup>19</sup> On the other hand, relatively few AIDS activists, even those working with women's issues, fully understand the controversies associated with prostitution. This gap provided an opportunity for conservatives to implant archaic ideas about women into the Global AIDS Act through the controversial notion of "sex trafficking." The problematic conflation of prostitution and trafficking inherent in this term has its source in controversies about women, migration, and sexuality in the arena of anti-trafficking policy, far removed from the world of HIV/AIDS.

Efforts to define trafficking as a violation of women's dignity date back to the late 1880s. These early actions, known as campaigns against White Slavery, equated all prostitution with the "traffic in women" and sought to protect "innocent" women from violations to their morality and sexual purity. Since the 1980s, feminists have worked to clarify the nature of the abuse within a human rights framework (and not a sexual purity framework) and have separated into two distinct lobby groups over the issue. One group (abolitionists) equates trafficking with prostitution and concludes that ending trafficking is synonymous with abolishing sex work.<sup>20</sup> In this formulation, prostitution is it-

self a form of violence against women, a manifestation of sexual abuse on a par with rape. The other tendency defines trafficking more broadly to include recruiting, transporting, or obtaining by any means, persons for forced labor, slavery, peonage, and servitude within any industry. Even though abolitionist critics charge that the broad approach to trafficking in persons is pro-prostitution, most groups in this tendency would be better described as harm reductionist, seeking to improve safety and conditions for sex workers as they would for any other set of migrant workers. Both sides are concerned with ending violence against women, but abolitionists, in their vehemence that all prostitution is trafficking, hark this effort back to its roots in sexual purity and resurrect remedies to keep women safe by avoiding “inappropriate” forms of sexual behavior.

Trafficking has been codified in U.S. legislation—the Victims of Trafficking and Violence Prevention Act (Trafficking Victims Protection Act, TVPA)—in a way that manages to embody elements of both of these tendencies via multiple definitions.<sup>21</sup> The hybrid nature of the TVPA is due to its provenance in proposals by progressives, Democrat Paul Wellstone, and conservatives, Republicans Chris Smith and Sam Brownback. However, even though the broader definition of trafficking is operationally more important in the TVPA, the conflation of prostitution and trafficking brings “sex trafficking” to the fore. Echoing abolitionist-feminist approaches, organizations that support sex workers are targeted as part of the problem. For example, recent policy covering U.S. global funding for anti-trafficking initiatives routed through the U.S. Agency for International Development (USAID) states that “[o]rganizations advocating prostitution as an employment choice or which advocate or support the legalization of prostitution are not appropriate partners for USAID anti-trafficking grants or contracts.”<sup>22</sup> Anti-trafficking policy of this kind is the source for the limitations placed on global AIDS funding: Republican Congressman Chris Smith was instrumental in crafting conservative elements of the TVPA and proposed the original amendment that became the restriction on sex work projects in the Global AIDS Act.



Given that conservative Republicans control both Houses of Congress, defending harm reduction or a non-abolitionist perspective on prostitution in Congress at this time is almost certainly a political impossibility. Yet, we may ask why, in the context of efforts to bring life-saving treatments to millions of people with HIV/AIDS, defending such an approach to prostitution is important at all. The significance of working effectively with people who engage in sexual activities for remuneration is difficult to understand when the idea of “prostitution” has been presented in skewed and unrepresentative ways. To conservatives, prostitution is in and of itself “degrading to women and children,” and eradicating prostitution is of equal importance with ending rape and sexual assault.<sup>23</sup> For many HIV activists, especially those concerned with bringing treatments to large numbers of people, sex workers are a fringe group in the global fight against AIDS, whose interests can not take priority over the larger needs and objectives of HIV advocacy. Many women’s organizations, including those working with reproductive right issues, hover somewhere between these two positions.

The reality is, however, that sex workers do not constitute a small, discrete group of women who are unambiguously sexually exploited. Rather, millions of people exchange sex to support themselves, their families, and their communities. Although people who identify as sex workers and work in brothels or red-light zones are those most commonly associated with prostitution, many others engage in an informal exchange of sex for basic goods on an intermittent basis.<sup>24</sup> Programs that successfully prevent HIV transmission among these populations, and provide health care and treatment support, are those that build trust while ameliorating stigma and discrimination. Frequently this means supporting sex workers’ demands for their rights as workers and citizens, including fair treatment by the police and ethical regulation of health and safety in the sex industry. It is folly to suggest that successful programs could possibly maintain their relationship with sex workers if they advocated for their continued criminalization, arrest, and prosecution.

At this point, it is not entirely clear how the limitations placed on programs working with sex workers will function

in practice. Initially, organizations seeking U.S. funding will be asked to sign a statement indicating their opposition “to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women.”<sup>25</sup> Service providers operating from a perspective of sex-worker rights will quite clearly be unwilling to subscribe to this policy. Other groups may fear that any statement or pamphlet that appears affirming and therefore attractive to sex workers will jeopardize their funding contracts. Those organizations with experience building trust with sex workers will face difficult choices, aware that some “faith-based” organizations, including evangelical Christian groups with no track record with communities of sex workers, are eager to comply with the restrictions and will increasingly win contracts and funding.

## **Conclusions**

In the course of creating a new U.S. global commitment to HIV/AIDS, as noted earlier, a number of limitations to funding were introduced which jeopardize effective HIV programming. Limitations on the use of HIV funds by sex-work projects have been included, expanding the purview of policy originally developed to limit funds disbursed by USAID for anti-trafficking initiatives. The mixed outcome of this process should give pause to activists and provide warnings for future endeavors. In the early days of the epidemic, AIDS activists steadfastly refused to buy into older concepts of victimhood and danger inherent in health discourse, challenging images of infected persons as either objects of pity (the “AIDS victim”) or fear (the “AIDS predator”). This once firm stance is gradually eroding, and, as U.S.-based organizations increasingly use notions of the AIDS epidemic as a “security threat” or as a plague on innocent victims, progressive and effective elements in HIV/AIDS programming in regards to gender, sexuality, and rights are imperiled.<sup>26</sup>

Reproductive rights and HIV/AIDS advocates may not consider limitations on programs for sex workers to be of immediate concern, especially in this conservative environment where so many issues continue to be raised that need to be addressed. However, there are a number of reasons

why activists should be troubled by these specific limitations. The conservative logic that underpins limitations on funding sex-work projects is the same logic that motivates attacks on reproductive rights. In this formulation, women who do not adhere to a narrowly construed definition of “acceptable” femininity—a definition based on sexual restraint, purity, and reproductive heterosexual monogamy—are not deemed worthy of life-saving services. Another cause for concern for reproductive rights groups exists within the HIV/AIDS community itself. In some discussions among different factions of AIDS activists, limitations on reproductive rights, like limitations on sex-work projects, were discussed as an acceptable trade-off in order to preserve AIDS funding. It may well be because of the independent networks of reproductive-health organizations that the Global Gag Rule was not applied to the next five years of funding. Unfortunately, the projects that work effectively with sex workers do not have the same safety net.

The implementation of new policies limiting funding to sex work projects jeopardizes the health of millions of people who engage in commercial sex to secure their livelihood. Even though proponents of these policies attempt to justify them as efforts to “help” or “save” prostitutes, they are elements of efforts to further criminalize sex workers and silence organizations who promote their rights. In order to prevent disastrous consequences for the health and rights of sex workers, the limitation on HIV-prevention activities with sex workers should be removed in future re-authorization bills.

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## References

1. The finalized legislation, HR 1298, was signed by President George W. Bush, May 27, 2003.
2. The total amount allocated for 2004 was \$2.4 billion, falling short of the \$3 billion promised in the State of the Union speech. Significantly, President Bush had requested even less, only \$1.9 billion, for 2004.
3. It is important to note that even though U.S. global AIDS policy has historically emphasized prevention of HIV over treatment, these actions have not been guided by a coherent approach. Prevention activities have been poorly resourced and have failed to address the needs of most vulnerable populations.
4. S. Epstein, "Activism, Drug Regulation, and the Politics of Therapeutic Evaluation of the AIDS Era: A Case Study of ddC and the 'Surrogate Markers' Debate," *Social Studies of Science* 27 (1997): pp. 691-726.
5. Months before the 2003 State of the Union address, concerted efforts were made by coalitions of treatment activists and religious groups to "push a bold agenda ... before the [President's] scheduled trip to Africa." Personal communication with Paul Davis of Health GAP, May 4, 2004. This is not to imply that treatment activists cynically forged ties with extreme right-wing Christian groups. Rather it is better characterized as the development of connections with politically strategic religious groups as part of a broader campaign to draw attention to the affordability of treatment initiatives. Similar actions were taken by other groups such as DATA (Debt AIDS Trade Africa), which organized a highly publicized tour of the "heartland" of the U.S. by rock star Bono of U2 aiming to inspire American churches and individual Christians to pressure for greater Presidential commitment to AIDS treatment in Africa. C. Falsini, "Bono's American Prayer," *Christianity Today*, March 2003. Available at: [www.christianitytoday.com/ct/2003/003/2.38.html](http://www.christianitytoday.com/ct/2003/003/2.38.html)
6. For example, campaigns by evangelical relief groups such as World Vision and Reverend Franklin Graham's Samaritans Purse effectively influenced conservative members of Congress. H. Boonstra, "US AIDS Policy: Priority on Treatment, Conservatives Approach to Prevention," *The Guttmacher Report on Public Policy*, 6/3 (2003). See also the kind of rhetoric used by Bono and DATA to draw attention in the media. C. Falsini (see note 5).
7. The U.S. Congressional system operates as a bicameral system, where the President may propose legislation but both Houses of Congress must independently negotiate and then come to mutual agreement in order for a bill to become law. At the same time, the President does not always come from the same party that controls both houses, although in this situation President Bush and the Republicans control both the House and the Senate.
8. This policy denies U.S. funding to organizations that provide abortions, refer women to abortion services, or advocate for changes in laws regulating abortion, even when those activities are supported by separate funds.
9. B. Cusack, "White House Derails AIDS Funding Bill; Rep Hyde to Revive Assistance Legislation," *The Hill*, April 1, 2003.

10. The term “faith-based organization” has not been clearly defined and, in theory, encompasses any charitable group with spiritually inspired programming. In practice, the Bush Administration’s practice in relation to “faith-based organizations” supports the “religious political agenda of one faith, evangelical Christian[ity].” CHANGE, *Debunking the Myths in the U.S. Global AIDS Strategy: An Evidence Based Analysis* (CHANGE, 2004), p. 16.
11. The final version of HR 1298 incorrectly notes that Uganda’s HIV-prevalence rate fell because of the following simple abstinence education message: “Stop having multiple partners. Be faithful. Teenagers, wait until you are married before you begin sex.”
12. For example, J. Parkhurst, “The Ugandan Success Story? Evidence and Claims of HIV-1 Prevention,” *Lancet* 360 (2002): pp. 78-80.
13. H. Boonstra, “Public Health Advocates Say Campaign to Disparage Condoms Threatens STD Prevention Efforts,” *The Guttmacher Report on Public Policy* 6/1 (2003).
14. The site now warns readers that “condoms cannot guarantee absolute protection against any STD.” A. Clymer, “US Revises Sex Information and a Fight Goes On,” *New York Times*, 12/27/02.
15. This unfortunate outcome was mitigated somewhat through ongoing activism during the appropriations process for 2004, but provisions mandating that at least 33% of prevention funds must be used to support abstinence-until-marriage programs remained in the bill.
16. S. Cohen, “Global Gag Rule: Exporting Antiabortion Ideology at the Expense of American Values,” *The Guttmacher Report on Public Policy* 4/3 (2001).
17. Catholic Family and Human Rights Institute, “Abortionists Seek to Hijack New Bush AIDS Budget,” *Friday Fax* 6/8 (2003).
18. Population Research Institute, “USAID-Funded FHI Exploits Women,” *Population Research Institute Email Newsletter* 5/3 (2003).
19. A. Cohen, “Global Gag Rule Revisited: HIV/AIDS Initiative Out, Family Planning Still In,” *The Guttmacher Report on Public Policy* 6/4 (2003).
20. See the publications of the Coalition Against Trafficking in Women. For example, J. Raymond et al. *A Comparative Study of Women Trafficking in the Migration Process* (Coalition Against Trafficking in Women, 2002).
21. The Trafficking Victims Protection Act contains multiple definitions of trafficking; two are referred to in this commentary. The Act defines sex trafficking as “the recruitment, harboring, transporting, provision or obtaining of a person for the purpose of a commercial sex act.” This definition is not operational in the Act. Service provision and assistance for victims are governed by another term “severe forms of trafficking” defined as “a) sex trafficking in which a commercial act is induced by force, fraud, or coercion or in which the person induced to perform that act has not reached 18 years of age; or b) the recruitment, harboring, transportation, providing or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.”

22. USAID, *Trafficking in Persons: The USAID Response* (Washington DC: USAID, 2003).
23. See section 101 of *United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act*. See also J. Raymond, "Profiles and Consequences of Sexual Exploitation" in J. Raymond (see note 21), pp. 54-74.
24. CHANGE, *Working with Women in Prostitution: A Critical Dimension of HIV Prevention* (CHANGE, 2003).
25. USAID, *Acquisition and Assistance Policy Directive*, From the Director, Office of Procurement, Issued: January 15, 2004, AAPD 04-04.
26. National Intelligence Council, *The Global Infectious Disease Threat and Its Implications for the United States*, No. NIED 99-17 of the National Intelligence Estimates (Washington, DC, 2000).