

Liz Ramey

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The Social Construction of Sex Workers in U.S. Global AIDS Policy

Introduction

Globally, 33.2 million people are living with HIV or AIDS, and half of all infected adults are women (UNAIDS 2007). In most parts of the world, the epidemic is localized among at-risk populations, including sex workers and their patrons (UNAIDS 2007). Despite the need for comprehensive prevention programs that work effectively with marginalized groups like sex workers, the United States federal government has placed several restrictions on the use of federal funds in combating the global AIDS pandemic. These limitations include the requirement that one-third of all prevention funding be allocated to abstinence-until-marriage programs, which do not address the needs of sex workers and other at-risk populations, and the stipulation that recipient organizations must declare their opposition to the practice and legalization of prostitution (Global AIDS Act 2003; TVPRA 2003).

These funding constraints are consistent with the social constructions of sex workers contained in several pieces of U.S. legislation, which portray sex workers as enslaved women and children trapped in situations of perpetual sexual exploitation. Several current bills challenge this social construction, in favor of a more empowering approach to HIV prevention among sex workers. This paper will examine the social constructions contained in federal legislation and speeches from the Congressional Record and evaluate their implications for effective HIV prevention policy among female sex workers.

This paper relies on the broad definition of a commercial sex act contained in the Trafficking Victims Protection Act of 2000: “the term ‘commercial sex act’ means any sex act

on account of which anything of value is given to or received by any person” (6). A commercial sex worker is therefore anyone who engages in a commercial sex act. Commercial sex workers include those who consider sex work to be their primary occupation as well as those who engage in the practice infrequently as a supplemental source of income or support.

The rest of the paper is structured as follows: the literature review provides an overview of the situations of women who engage in sex work and their role in the spread of HIV. Next, detailed descriptions of the lives of sex workers in Thailand and India are presented to illustrate the varied circumstances of sex workers worldwide. The methodology section introduces Schneider and Ingram’s (1993) arguments about the social construction of target populations, after which the funding restrictions in two federal laws are explained. Then, the negative and positive portrayals of sex workers in nine pieces of federal legislation and several speeches from the Congressional Record are analyzed, followed by an examination of the implications of these portrayals for HIV prevention among sex workers. Finally, conclusions about the need for effective HIV prevention assistance policies are drawn.

Literature Review

Many studies have focused on female sex workers as a high risk group for HIV infection and transmission, particularly in Africa, Latin America, the Caribbean, and Southeastern Asia (Parker, Easton, and Klein 2000). Kloos, Haile Mariam, and Lindtjørn (2007) identify female commercial sex workers as one of the first populations widely infected with HIV in Ethiopia, with prevalence rates of 18 to 29 percent in the late 1980s. Women biologically have a higher risk of HIV infection than men do because of the large mucosal area exposed to bodily fluids during intercourse. Moreover, the spread of other sexually transmitted infections between sex workers and their clients can heighten the susceptibility of both parties to the transmission of

HIV, as sores provide additional openings for the virus to enter the bloodstream (Kloos, Haile Mariam, and Lindtjørn 2007). Patrons of sex workers are often members of migrant populations, such as miners in South Africa, who transmit the virus between sex workers and their own wives, helping to make heterosexual sex the predominant mode of HIV transmission today (PATHWAY 2007).

Some women are trafficked into commercial sex work, while others chose to enter the profession (Bales 1999; Kempadoo 2001; Kloos, Haile Mariam, and Lindtjørn 2007). Many women find themselves participating in the commercial sex industry due to their limited economic opportunities (Bales 1999; Kempadoo 2001; Kloos, Haile Mariam, and Lindtjørn 2007; Parker, Easton, and Klein 2000). Widespread unemployment and poverty, as well as gender inequalities that often restrict women's access to alternative income-generating activities, may effectively force women into commercial sex work in order to provide for the basic needs of their families (Parker, Easton, and Klein 2000). In Ethiopia, many female divorcees migrate from rural to urban areas to become commercial sex workers, while other women trying to escape famine conditions may feel compelled to perform sexual acts in exchange for food and economic support (Kloos, Haile Mariam, and Lindtjørn 2007).

However, even women that enter the profession out of economic necessity may not entirely object to sex work. In her interviews with Caribbean sex workers, Kempadoo (2001) found that both male and female sex workers saw their work as a legitimate source of income. Some felt that sex work was "less demanding or less hazardous to their well-being" than jobs in domestic service, manufacturing, and vending (46). Women in particular, many of whom were poor and fairly uneducated, said they found sex work economically empowering (Kempadoo 2001). Additionally, sex workers are increasingly able to insist on condom usage with their

clients, demonstrating some degree of empowerment within the worker-patron relationship (Bales 1999; Kempadoo 2001; Kloos, Haile Mariam, and Lindtjørn 2007).

Many sex workers face tremendous social stigma as a result of their occupations, particularly if they are also HIV positive (Bales 1999; Kempadoo 2001; Kloos, Haile Mariam, and Lindtjørn 2007; Parker, Easton, and Klein 2000). Nonetheless, sex work may be valued in certain cultures, as in the case of the Indian *devadasis* discussed below. Similarly, Kempadoo (2001) notes that within Caribbean cultural artifacts, “prostitutes are invariably portrayed as an integral part of village and town life” (42). The impressions and stigmas surrounding sex workers in a given place may depend on gender, age, culture, location, type of sex work, and reasons for sex work (Kempadoo 2001).

As the following sections illustrate, the lives of sex workers vary widely around the world. Some engage in sex work on a regular basis, while others consider sex work “‘opportunity’ work” done on an occasional basis (Kempadoo 2001). Many live in appalling conditions, but some live in safe, social environments. Some are sexually exploited and enslaved, while others enjoy a measure of autonomy over their work and their lives. However, HIV transmission remains a risk for all sex workers, to a greater or lesser degree depending on the HIV prevalence in their area, the frequency of intercourse, the availability of condoms, their bargaining power within the client-sex worker relationship, and other factors.

Modern Slavery in Thailand

Bales (1999) tells the story of Siri, a fifteen year old girl from rural northern Thailand who has been working in a brothel for a year. A broker bought Siri from her parents for 50,000 baht (a year’s income for rural families), promising her a high paying job as a prostitute. Siri was then raped, beaten, and sold to a brothel, where she was told that she had to repay a debt of

200,000 baht out of her earnings as a sex worker, in addition to paying for her food and lodging at the brothel. Her debt is nearly impossible to repay, even though she earns a higher rate from clients because of her youth. Any resistance to those in authority and any attempts at escape are met with beatings and rape. Therefore, Bales (1999) classifies Siri as a modern slave, a disposable worker trapped in a situation of fear and violence by debt bondage.

Thailand has an adult HIV prevalence rate of around 1.4 percent – representing 580,000 people – which has been fueled in large part by the commercial sex industry in which Siri is an unwilling participant (UNAIDS 2007). UNAIDS (2007) reports that 43 percent of new HIV infections occur in women, most of whom contract the virus from their husbands who have had unprotected commercial sex. Siri knows that she is at high risk for contracting HIV and receives a monthly HIV test (Bales 1999). She tries to require her clients to use condoms, and the brothel pimp generally supports this. However, the pimp himself or a police officer may decide to have unprotected sex with her, and Siri will be beaten if she refuses. Moreover, the use of condoms with ten or fifteen men a night can harm her vaginal lining, putting her at a greater risk for HIV transmission when she does have unprotected sex. Siri prays daily to Buddha that she will avoid the fate of many sex workers, who return to their northern rural villages after several years of sex work to die of AIDS (Bales 1999).

After living in a nearly hopeless situation for a year, Siri has internalized the horrors to which she has been exposed. “I’m just a whore, that’s all,” she tells Bales (1999) with resignation (37). She no longer considers escape an option, knowing she will be tracked down and beaten; however, she hopes to save enough money to return to her village and construct a house someday.

Servants of the God in Rural India

In contrast to the situation of Siri in Thailand, Orchard (2007) presents the stories of Indian *devadasis*, or “servants of the God,” a class of young women who engage in sex work in their rural homes and small brothels (2380). Devadasis used to work in the temple performing spiritual duties; however, they were officially outlawed in 1984 and have since conducted their work in more private settings. Orchard (2007) finds that the majority of devadasis she interviewed grew up doing housework, and many had attended school, just as their non-devadasi peers did. Most young women become devadasis when they are 13 to 15 years old, after their mothers instruct them to enter the devadasi life. Among those interviewed, all but one said they did not know they would engage in sex work until their mothers informed them of their duties.

Most devadasis provide the main source of income for their families, although typically other family members contribute wages or labor to the family as well. The economic motivation for devadasi work seems prevalent in Orchard’s (2007) study. Many state that their earnings allow them to support their families and enjoy life. Devadasis usually spend their leisure time with friends, most of whom are also devadasis. Thus these sex workers live in a highly social and economically stable atmosphere. However, HIV is still a concern for devadasis, and some mothers delay the sexual debut of their daughters in order to protect them infection (Orchard 2007). Although most clients do use condoms, the first client initiation ceremony is conducted without a condom, placing young devadasis at high risk for HIV transmission.

Orchard (2007) argues that the situation of devadasis challenges the prevailing notion of child prostitution, in which young children are abused, neglected, and kept in isolation. Devadasis have strong social networks and do not necessarily feel forced into their positions as sex workers. “Instead, they present themselves as girls who may not always like what they do or what is demanded of them, but do so out of a sense of filial duty, economic need, and because

doing *dhandha* [sex work] is incorporated into their models of female maturity” (Orchard 2007: 2388). These young women have a degree of agency over their lives that contrasts sharply with the submission of enslaved sex workers like Siri.

Methodology and Legislative Background

Schneider and Ingram (1993) argue that public policy contains embedded value-laden images of the populations affected by the policy, which they term the social construction of target populations. As the authors note, “policy sends messages about what government is supposed to do, which citizens are deserving (and which not), and what kinds of attitudes and participatory patterns are appropriate in a democratic society” (Schneider and Ingram 1993: 334). The portrayals of target populations are influenced both by the personal views of the policy-makers and by the stereotypes believed to be held by key sectors of the public. These depictions may evolve slowly over time, or they may be continuously contested and redefined.

Schneider and Ingram (1993) delineate four essential categories of target populations, two of which are relevant to sex workers in global AIDS policy: dependents and deviants. Dependents are groups that have a generally positive social construction but wield little political power, whereas deviants are populations with a negative social construction and little political clout. Because of their negative construction and weak political standing, deviants often face punitive policies even when constructive policies would be more effective. Policies targeting dependents, on the other hand, tend to be symbolic and imposed by those in authority, without meaningful participation from the target group.

This paper will examine nine pieces of legislation – four acts and five bills – that address sex work and global HIV/AIDS funding. The Trafficking Victims Protection Act of 2000, hereafter called TVPA, is the first of three divisions contained in the Victims of Trafficking and

Violence Protection Act of 2000. This Act was introduced by Representative Christopher Smith of New Jersey in November 1999 and became public law in October 2000. The purpose of the law is “to combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude.” Two subsequent Trafficking Victims Protection Reauthorization Acts, hereafter TVPRA, were passed in December 2003 and January 2006 (although the latter is known as the TVPRA of 2005). The United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, hereafter the Global AIDS Act, was introduced in March 2003 by Representative Henry J. Hyde of Illinois and became public law in May 2003. This piece of legislation provides federal funding to combat HIV/AIDS, tuberculosis, and malaria in foreign countries, and stipulates permissible and impermissible uses of these funds.

Of the five bills under consideration, three are currently in Congress. These are the HIV Prevention Act of 2007 (S. 1553), and two versions of the Protection Against Transmission of HIV for Women and Youth Act of 2007 (H.R. 1713 and S. 2415), hereafter referred to as the PATHWAY Act.¹ The bills were introduced by Senator Diane Feinstein of California, Representative Barbara Lee of California, and Senator Harry Reid of Nevada, respectively. All three bills aim to remove the funding earmark for abstinence-until-marriage education programs contained in the Global AIDS Act, and the PATHWAY Act additionally seeks to address the particular biological, economic, and social vulnerabilities of women and children to HIV/AIDS. The final two bills analyzed, H.R. 2012 and S. 937, are the End Demand for Sex Trafficking Acts of 2005, which seek “to combat commercial sexual activities by targeting demand, to protect children from being exploited by such activities, to prohibit the operation of sex tours, to assist State and local governments to enforce laws dealing with commercial sexual activities,

¹ The texts of the House and Senate versions of the PATHWAY Act are not exactly identical, but they are close. Therefore this paper will quote from the House version of the bill, which was the first one introduced in Congress.

[and] to reduce trafficking in persons...” Since the text of these bills is identical, they will be jointly referred to as the EDST Act of 2005 hereafter.

Funding Restrictions on HIV Prevention Programs

Despite the tremendous need for programs that address both the immediate need of HIV prevention methods for sex workers and the structural issues of poverty and gender inequality that contribute to the supply of women in commercial sex work, the United States government places several restrictions on the types of interventions that it will fund. In particular, the Global AIDS Act and the TVPRA of 2003 require international non-governmental organizations (NGOs) to condemn sex work in order to receive U.S. government funding – the so-called prostitution oath. The TVPRA of 2003 states:

No funds made available to carry out this division, or any amendment made by this division, may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to promote the purpose of this Act by ameliorating the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked (12).

No funds made available to carry out this division, or any amendment made by this division, may be used to implement any program that targets victims of severe forms of trafficking in persons described in this section 103(8)(A) of this Act through any organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution (12).

Similarly, the Global AIDS Act stipulates that:

No funds made available to carry out this Act, or any amendment made by this Act, may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and when proven effective, microbicides (23-24).

No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking (24).

Several studies have argued that these requirements inhibit the ability of organizations to assist sex workers. NGOs may find it necessary to avoid judgments about sex work and sex workers in order to gain the acceptance and trust of the populations they seek to help (Center for Health and Gender Equity 2005; Cornish and Ghosh 2007; “Why Health Services Should Work with Sex Workers”). Actors who benefit from the existence of sex work, such as pimps, brothel owners, and local authorities, may prohibit access to red light districts if they perceive that organizations want to threaten the sex work establishment (Cornish and Ghosh 2007). Moreover, agencies may avoid providing services to sex workers out of fear that their interventions may be interpreted as noncompliance with U.S. mandates (Center for Health and Gender Equity 2005).

Additionally, the Global AIDS Act requires one-third of all federal funding for HIV prevention efforts “should be expended for abstinence-until-marriage programs,” limiting the available funding for prevention efforts that are relevant to at-risk groups like commercial sex workers (36). Both the General Accountability Office and the National Institute of Health subsequently published reports on the ineffectiveness of abstinence-until-marriage programs in preventing the spread HIV/AIDS (PATHWAY 2007).

The Global AIDS Act states that “HIV/AIDS is first and foremost a health problem” (4). Why then do the Global AIDS Act and the TVPRA of 2003 contain social policies restricting the use of federal funding for effective, health-based prevention initiatives? Part of the reason may be the social constructions of sex workers embedded within the legislation.

Social Constructions within Trafficking Legislation and the Global AIDS Act

The rationale for these funding restrictions stems in part from the social constructions of sex workers contained in the TVPA, TVPRA of 2003 and 2005, the EDST Act, the Global AIDS

Act and the speeches of the bills' sponsors, which depict sex workers in gendered, powerless terms. These constructions focus on sex workers as vulnerable women and children, prostitutes, slaves, and victims – in Schneider and Ingram's (1993) terms, as deviants and dependents.

First, sex workers and individuals who have been trafficked are repeatedly portrayed using gendered language. While women and children compose perhaps eighty percent of trafficked individuals, references to women and children exceed even this percentage (TVPA 2000). Men are rarely explicitly mentioned in the legislation; and when they are, they are often presented as sexual exploiters, never as sex workers themselves. Specifically, the Global AIDS Act includes thirty-two references to women, of which twenty contain references to children, pregnancy, or girls in close proximity. Men are usually included in the context of their treatment of women. For instance, the Act requires the President to report on “specific strategies to encourage men to be responsible in their sexual behavior, child rearing and to respect women including the reduction of sexual violence and coercion” (9). Likewise, the TVPA makes fifteen references to women, twelve of which also mention either children or girls in the same clause. In contrast, “men” is only mentioned once – when quoting the Declaration of Independence to say that all men are created equal. The EDST Act mentions women seven times, four of which include references to children nearby. Men are not mentioned at all. The TVPRA Acts of 2003 and 2005 contain few references to either gender.

Moreover, women and children are treated as groups susceptible to exploitation in and of themselves: for instance, the TVPA authorizes the President to alter funding regulations “when necessary to avoid significant adverse effects on vulnerable populations, including women and children” (21). Representative Smith declared in 2005 that “hundreds of vulnerable women and children are being re-victimized” in the Congo. Similarly, the TVPA contends that “traffickers

lure women and girls into their networks through false promises of decent working conditions at relatively good pay,” a sentiment reiterated in Senator Paul Wellstone’s remarks in support of the Act (TVPA 2000: 3; Wellstone 2000). Statements like this present females as impressionable, economically desperate, and dependent on others for survival. While this may be true for some individuals, like Siri in Thailand, who enter the commercial sex industry on false pretences, it is not the case for the majority of sex workers worldwide.

Second, sex work is presented as prostitution rather than a source of income, and sex workers are seen as prostitutes rather than laborers. The TVPA, TVPRA of 2003 and 2005, the EDST Act, and the Global AIDS Act collectively contain seventeen references to prostitute or prostitution, words with considerable negative connotations, and no references to sex work or sex workers. The EDST Act boldly declares that “prostitution and related activities...are inherently harmful and dehumanizing” (2). The Act continues stating that “an alarming number of individuals who are used for commercial sexual activities are socially and economically marginalized” (3). Indeed, many sex workers face poverty and stigma before, during, and after their engagement in commercial sex work. However, these statements leave no room for the notion of economic empowerment through sex work presented in Kempadoo’s (2001) research in the Caribbean.

This element of the social construction of sex workers in U.S. global AIDS policy may also be discerned based on the omission of these groups from relevant sections of the legislation. For instance, section 314 of the Global AIDS Act, entitled “Pilot Program of Assistance for Children and Families Affected by HIV/AIDS,” makes no mention of sex workers or prostitutes, despite the fact that many commercial sex workers use their incomes to support families (Kloos, Haile Mariam, and Lindtjørn 2007; Orchard 2007). As discussed in greater detail below, the

legislation treats sex workers as victims rather than economically sufficient laborers who contribute to their families' livelihoods.

Third, these pieces of legislation generally evoke stories of young women like Siri – slaves purchased from their low-income families, trafficked to unknown locations, and repeatedly abused physically, sexually, and psychologically (TVPA 2000: 3). In fact, the TVPA contains twenty-two references to slaves or slavery, and the EDST Act contains five. Similarly, the TVPRA of 2003 and of 2005 mention slaves, slavery, or enslavement eight and five times, respectively. The Global AIDS Act, in part because of its focus on AIDS rather than trafficking, contains no references to slavery. The testimonies of several Congressmen in favor of these pieces of legislation echo the social construction of sex workers as slaves. Representatives Smith (2003) and Lantos (2003) both decry “modern day slavery,” while Representative Burton (2003) condemns trafficking as “human slavery” and a new form of “crimes against humanity.” Burton (2003) continues that Congress should “continue to protect and liberate people who are currently enslaved against their will in these modern times.”

Worldwide, Bales (1999) estimates that 27 million people are enslaved – the same number cited in Burton's (2003) remarks – but only 7 to 12 million of these are enslaved sex workers. Moreover, Siri's experience is not the norm for sex workers in Thailand, let alone globally. Bales (1999) estimates that there are half a million to one million sex workers in Thailand, only five percent of whom he classifies as “enslaved” (43). Thus not all slaves are sex workers, and not all sex workers are slaves. This is not to say that un-enslaved sex workers enter the profession willingly, or that their lives are free from fear and violence. However, any nuanced understanding of the situations of sex workers globally that U.S. policy-makers might

have seems hidden under the generalized and highly emotional rhetoric of slavery and gross exploitation.

Finally, the legislation and remarks of several Congressmen present sex workers as unwilling victims of the global sex trafficking network, rather than as autonomous individuals. In fact, the TVPA draws a clear distinction between “victims of a severe form of trafficking in persons,” who are either younger than eighteen years old or who engage in transactional sex acts because of “force, fraud, or coercion,” and “victims of trafficking” generally, whose willingness or unwillingness to enter the sex industry is not presupposed (TVPA 2000: 7-8; Chapkis 2003). Nearly all of the programs, rights, and protections afforded in the TVPA apply only to victims of a severe form of trafficking. Additionally, many of the benefits for which victims of a severe form of trafficking may be eligible require the person to assist law enforcement in the investigation and prosecution of traffickers and exploiters (Chapkis 2003; TVPA 2000). Exploiters may include family members of the trafficked individual, as in the case of Siri, whose parents received payment for her enslavement. Thus the requirements for the receipt of benefit may place enormous mental and emotional strain on an individual, even presuming their safety from retribution could be assured.

In the terminology of Schneider and Ingram (1993), victims of a severe form of trafficking are necessarily dependents, while victims of trafficking may be either deviants or dependents. As expected given their negative social construction, deviants are excluded from most rights and benefits under U.S. global AIDS policy. Dependents may receive benefits under the policy, but these benefits are tied to stigmatizing labels (“victims of a severe form of trafficking”) and are subject to additional requirements.

Furthermore, the law portrays commercial sex workers as victims regardless of their willingness to engage in transactional sex, under the presumption that “the sex trade has a dehumanizing effect on all involved” (EDST Act 2005: 2). While the Global AIDS Act contains only six references to victims or victimization, the EDST Act contains seventeen, the TVPRA of 2003 contains fifty-three, the TVPRA of 2005 contains fifty-four, and the TVPA contains 119. The language repeatedly emphasizes the powerlessness of sex workers, particularly those who have been trafficked. Victims are defined through passive voice: “the person recruited, enticed, harbored, transported, provided, or obtained” (TVPRA 2003: 5). Lantos (2003) states that since the TVPA “victims are coming forward because of the federal benefits we are offering to them, treating them like the *refugees* that they are” (italics added). Smith (2005) argues that “this bill [the TVPRA of 2005] would begin to shift the paradigm...to view these exploited souls for what they really are – victims of crime and sexually exploited children.”

Social Constructions in the PATHWAY and HIV Prevention Acts

In contrast to the images of victimized women and enslaved children contained in the TVPA, the TVPRA of 2003 and 2005, the EDST Act, and the Global AIDS Act, the PATHWAY Act offers a social construction of sex workers as vulnerable but capable women. Both versions of the bill contain no mention of prostitutes or prostitution, using instead the less stigmatized term “sex workers.” Likewise, the words victim and victimization are never used. While the PATHWAY Act does contain thirty-nine references to women, twenty-five of which are in close proximity to the words children or girls, the Act explicitly focuses on women and youth, not trafficking victims, sex workers, or at-risk groups generally (which would include men), as in the case of the legislation discussed above.

The PATHWAY Act offers a detailed and nuanced presentation of the challenges that sex workers face, finding:

An increase in commercial sex for survival, due to pervasive poverty, social dislocation, war and internal conflicts, and other factors. According to UNAIDS, the vulnerability of sex workers to HIV infection is heightened by stigmatization and marginalization, limited economic options, limited access to health, social, and legal services, limited access to information and prevention means, gender-related differences and inequalities, sexual exploitation and trafficking, harmful or nonprotective legislation and policies, and exposure to risks associated with commercial sex such as violence, substance abuse, and increased mobility (5).

Additionally, the Act criticizes the restrictions placed on U.S. federal funding for HIV prevention, noting that seventeen of the twenty countries participating in the PEPFAR program felt constrained by the abstinence-until-marriage funding earmark, in part because it “limited funding to deliver appropriate prevention messaging to high-risk groups” (15). Similarly, the HIV Prevention Act cites a Government Accountability Office report that determined “the abstinence-until-marriage spending requirement limited or reduced funding for programs directed at high-risk groups, such as...commercial sex workers” (1).

Moreover, the authors of the PATHWAY Act argue that the proposed solutions to these challenges should come from the women themselves, rather than politicians and bureaucrats. The Act explicitly advocates “utilizing such organizations that are already empowering women and girls at the community level” and “encouraging the participation and involvement of women in drafting, coordinating, and implementing the national HIV/AIDS strategic plans of their countries” (9-10). Likewise, the PATHWAY Act favors the development and use of female-controlled prevention methods, which are currently limited in availability and effectiveness. Overall, the PATHWAY and HIV Prevention Acts offer a more empowering social construction of sex workers, one in which women and youth retain agency despite the economic and social vulnerability that many face.

Implications of the Social Constructions of Sex Workers for Global AIDS Policy

Given the well-documented links between commercial sex work and the spread of HIV, government policy surrounding sex work should address HIV and policy around HIV should address sex work. In practice, these policy links are limited. The TVPA, TVPRA of 2003 and 2005, and the EDST Act contain a combined eight references to HIV and nine references to AIDS – of which five and six, respectively, are located in the definitions section. In fact, the TVPRA of 2003, which was passed only seven months after the Global AIDS Act, contains no references whatsoever to HIV or AIDS. Although the Global AIDS Act does refer to prostitutes or prostitution six times, the section entitled “Prevention” makes no explicit mention of sex work in any form. The primary connection between trafficking and HIV/AIDS legislation is in fact the social construction of sex workers as dependents and deviants, culminating in requirement that all federally funded service agencies must have a statement opposing the practice and legalization of prostitution.

Because of their dependent and deviant statuses in trafficking legislation and the Global AIDS Act, sex workers *qua* victims are not strongly encouraged to develop their own solutions to the HIV epidemic or the transnational trafficking network. As Schneider and Ingram (1993) suggest, these types of groups are often “denied information, discouraged from organizing, and subjected to the authority of others – including experts – rather than helped to form their own self-regulatory organizations” (339). Indeed, the EDST Act calls for several groups to participate in an annual conference on the sex trade, including law enforcement officials, State officials, academic experts, medical personnel, and NGO staff – but not sex workers themselves (15). While the TVPRA of 2005 does explicitly identify “persons who have been subjected to *severe forms of trafficking* in persons or commercial sex acts” as a participatory group for the

annual conference on human trafficking, general victims of trafficking are not included (12; italics added). Similarly, The Global AIDS Act nominally promotes “the participation of at-risk populations in programs designed to encourage behavioral and social change and reduce the stigma associated with HIV/AIDS” (5). In practice, however, the prostitution oaths in both the Global AIDS Act and the TVPRA of 2003 undermine HIV prevention and socioeconomic empowerment efforts in sex worker communities. This result belies the dependent social construction of sex workers perpetuated in these pieces of legislation.

Instead, the primary power to improve the lives of sex workers lies in Congress, under this social construction. As Burton (2003) said, before the TVPA, “victims had no hope that they would be rescued from the horrid conditions into which they had been forced to live.” Now, however, the law has “given victims of slavery a real chance for liberty, and we as Members of Congress should do all that we can to promote their freedom.”

The portrayals of rape, abuse, impoverishment, and danger may not be inaccurate depictions of the horrors to which some sex workers are subjected; however, sex workers generally face a multitude of circumstances, and federal legislation to assist them should reflect the nuance and complexity of their lives rather than the monolithic images presented. In reality, there are “a mixture of both autonomous and coerced sex workers” and “where the lines between autonomy and coercion [lie are] neither rigid nor always easily discernible” (Kempadoo 2001: 53). Trafficking and global AIDS legislation entirely ignores sex workers who do not believe themselves to be victims, and is not fashioned to assist them in effective HIV prevention, let alone economic empowerment.

Sex workers may be increasingly rejecting their social construction as dependents and deviants, fighting for both effective HIV prevention methods and broader socioeconomic

empowerment through sex work and alternative economic opportunities (Cornish and Ghosh 2007; Kempadoo 2001; Kloos, Haile Mariam, and Lindtjørn 2007; Lopes 2001; Orchard 2007; Parker, Easton, and Klein 2000; Weitzer 2007). As Schneider and Ingram (1993) state, “groups may refuse to accept the negative social constructions, mobilize, and engage in widespread political participation” (343). The PATHWAY in particular recognizes and encourages the movement towards empowerment among sex workers. Both the PATHWAY and HIV Prevention Acts contest the representation of sex workers as exploited women and children, and as a result seeks to eliminate one of the barriers to funding for effective HIV prevention programs: the abstinence-until-marriage earmark of the Global AIDS Act.

Conclusion

Unfortunately, confusion around which types of activities may be supported with U.S. federal funds remains, and the PATHWAY and HIV Prevention Acts do not address the prostitution oath. Although the legislation allows the use of funding for “the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and when proven effective, microbicides,” these health-based measures do not address the underlying social and economic conditions that contribute to sex work around the world (Global AIDS Act 2003: 24). Additional legislation specifically tackling poverty and gender-based disparities in education, employment, and health care – without funding restrictions like the prostitution oath – is needed to prevent the transmission of HIV and to reduce the number of women who engage in sex work because of socioeconomic marginalization. This analysis suggests that the promotion of a positive social construction of sex workers within Congress and the broader electorate may be necessary for such policies to be effective and participatory.

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