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**CRITIQUE OF THE ANTI-PROSTITUTION PLEDGE AND ITS GLOBAL
IMPACT**
A Position Paper of the Sex Workers Project at the Urban Justice Center

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I. Introduction

The human immunodeficiency virus (HIV), which causes the acquired immunodeficiency syndrome (AIDS), has evolved into a pandemic that militates against public health on a global scale. In many countries, sex workers are at risk of being exposed to HIV and other sexually transmitted infections (STIs). Public health experts believe that cooperation with and among sex workers to prevent the spread of HIV and STIs among this particular community is a highly effective method in stemming the dissemination of these diseases. In this manner, education and outreach to sex worker communities remain effective methods of the public health operations of U.S. and foreign-based organizations. Friederike Strack of Hydra, one of the sex worker organizations from Germany that collaborated with the World Health Organization to create a toolkit on HIV/AIDS prevention for sex workers,¹ correctly emphasizes that, “sex workers know better than anyone else about the problems they face, the kind of language and programs that work. Only by involving those within the sex industry can both sex workers and clients be motivated to make use of condoms and health clinics.”²

The WHO toolkit emphasizes key principles for work in the area of HIV prevention among sex workers. Among these key principles are adopting a non-judgmental attitude, ensuring that interventions do no harm, respecting sex workers’ views, knowledge, and life experiences, and involving sex workers in intervention and implementation methods.³ Indeed, a study undertaken by various researchers in conjunction with DMSC in Kolkata, India highlighted

¹ The World Health Organization, *Sex Work Tool Kit: Targeted HIV/AIDS Prevention and Care in Sex Work Settings*, <http://who.arvkit.net/sw/en/contentdetail.jsp?ID=204&d=sw.11> (last visited Mar. 14, 2007).

² The World Health Organization, Press Release: *New Online Tool Kit on HIV/AIDS Prevention for Sex Workers*: GTZ, WHO and Sex Work Networks Share Information and Lessons Learned, <http://www.who.int/mediacentre/news/releases/2004/pr80/en/print.html> (last visited Aug. 4, 2006).

³ The World Health Organization, *Sex Work Tool Kit: Key Principles*, <http://who.arvkit.net/sw/en/contentdetail.jsp?ID=33&d=sw.00.03> (last visited Mar. 28, 2007).

the importance of self-esteem, empowerment, and education in regards to condom use and HIV prevention.⁴ The study found that identity and self-esteem, autonomy and mobility, perception of diminished violence and discrimination, access to and control over material resources, and social inclusion and community participation all impacted condom use among the female sex workers interviewed.⁵ Such findings fit in to the holistic model proposed by the WHO toolkit and have been embraced by sex worker organizations worldwide.

Studies have shown that where sex workers have poor access to HIV prevention services, HIV prevalence can be as high as 60-90%.⁶ Evidence shows that targeted prevention interventions in sex work settings can turn the epidemic around. In Thailand and Cambodia for example, condom use rose to over 80% and HIV and STIs declined dramatically thanks to large scale programs targeting sex workers and clients.⁷ In order to stave off the spread of HIV/AIDS and STIs to participants in the sex industry, including sex workers and customers, cooperation is needed on the part of sex workers and public health professionals. Despite proof that prevention programs in sex work settings are effective to reduce the spread of HIV, currently only 16% of sex workers have access to these services and around the world.⁸

As it stands, numerous current U.S. laws and policies dictate how federal funding can be used to combat HIV/AIDS. These laws and policies include the President's Emergency Plan for AIDS Relief (PEPFAR), the Global AIDS Act of 2003⁹ and the Trafficking Victims

⁴ Nondinee Bandyopadhyay et. al., The Role of Social Inclusion and Community Development in Reducing HIV/STI-Related Vulnerability Among Female Sex Workers in Kolkata, India, http://who arvkit.net/sw/media/Sex_Workers_in_Kolkata.pdf (last visited Mar. 28, 2007) (this study is part of the WHO Toolkit).

⁵ The World Health Organization, Press Release: *New Online Tool Kit on HIV/AIDS Prevention for Sex Workers*, *supra* note 2.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ United States Leadership Against HIV/AIDS, Tuberculosis, AND Malaria (Global AIDS Act) P. L. 108-25, 117 Stat. 711; 22 U.S.C.S. § 7601 (2003).

Protection Act of 2000¹⁰ (with Reauthorizations in both 2003 and 2005), and include funding restrictions which are aimed at organizations working with sex workers. These restrictions against actions or organizations that “promote or support the legalization or practice of prostitution”¹¹ are detrimental to public health and fly in the face of established best practices to prevent the global spread of HIV/AIDS. Equally important is the fact that they violate established human rights norms. By placing a moral stamp against prostitution and requiring organizations working with sex workers to explicitly oppose prostitution, the Bush Administration restricts necessary funding to productive efforts working to reduce the spread of HIV, having a counter-intuitive result.

II. U.S. Stance Conflating Trafficking And Prostitution

In a December 2002 National Security Presidential Directive,¹² the U.S. Government adopted a strong stance against prostitution.¹³ The United States government believes that prostitution feeds human trafficking and that the vast majority of sex workers want to escape from this form of commerce. The U.S. Government believes that tolerance of prostitution provides market opportunities for criminals who traffic people into prostitution. Furthermore, the U.S. Government contends that a system of legalized or regulated prostitution would make it difficult for law enforcement officials to identify and penalize criminals who engage in trafficking. Consequently, in their efforts to eliminate trafficking, the U.S. government has unnecessarily and inaccurately deemed forced trafficking to be interchangeable

¹⁰ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 Division A, 114 Stat. 1464 (2000) (codified as amended in scattered sections of the U.S.C.) [*hereinafter* TVPA]. The TVPA was amended and reauthorized in December 2003 by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003) (codified as amended in scattered sections of the U.S.C.) [*hereinafter* TVPA Reauthorization].

¹¹ United States Leadership Against HIV/AIDS, Tuberculosis, AND Malaria (Global AIDS Act) P. L. 108-199; 22 U.S.C.S. § 7631(e) (2004).

¹² Trafficking in Persons National Security Presidential Directive, NSPD 22, President George W. Bush, Office of the Press Secretary, The White House (Feb. 25, 2003), <http://www.fas.org/irp/offdocs/nspd/trafpers.html>.

¹³ United States Department of State, Office to Monitor and Combat Trafficking in Persons “The Link Between Prostitution and Sex Trafficking,” Global Affairs (Nov. 24, 2004), <http://www.state.gov/r/pa/ei/rls/38790.htm>.

with all forms of sex work. The U.S. government's simplistic approach ignores the myriad causes that lead men and women into sex work, as well as the varied circumstances surrounding the nature and type of work engaged in by individuals along the sex work spectrum.

Based on this inaccurate conflation between prostitution and trafficking, the U.S. Government decided to implement restrictions on HIV/AIDS funding to organizations that work with sex workers, incorrectly believing that it was preventing trafficking. Instead of providing necessary funding for organizations that empower sex workers to have real choices, the Government chooses to fund unworkable "rescue-oriented"¹⁴ initiatives that attempt to force all sex workers to leave prostitution without providing real solutions to larger issues of poverty, unemployment, violence, or female subordination.

In effect, the U.S. government uses HIV/AIDS federal funding streams to implement their moral stance against prostitution by restricting money to organizations working with sex workers and/or trafficked persons unless those organizations publicly condemn all forms of sex work.

III. PEPFAR, Global AIDS Act, and Trafficking Victims Protection Reauthorization Act

PEPFAR:

In 2003, George W. Bush initiated the President's Emergency Plan for AIDS Relief (PEPFAR), an executive directive aimed at stemming the global spread of HIV/AIDS.¹⁵

¹⁴ Ronald Weitzer, *Moral Crusade Against Prostitution*, SOCIETY, 27-32, 30 (March/April 2006). See also, Empower Chiang Ma, *A Report By Chiang Ma Thailand on the Human Rights Violations Women are Subjected to When Rescued By Anti-Trafficking Groups Who Employ Methods Using Deception, Force and Coercion* (June 2003) available at: www.nswp.org/mobility/mpower-0306.html.

¹⁵ The United States President's Emergency Plan for AIDS Relief, *About PEPFAR*, <http://www.pepfar.gov/about/> (last visited Mar. 21, 2007).

PEPFAR only targets 15 countries¹⁶ with \$15 billion intended to prevent 7 million new infections, treat 2 million people living with AIDS related illnesses, and provide care and support for 10 million persons affected by AIDS.¹⁷

PEPFAR endorses the “ABC” (“abstinence,” “being faithful,” and “condoms”)¹⁸ approach and gave President Bush an opportunity to scale up the \$10 million abstinence crusade that he had promoted as Governor in Texas into a billion dollar program throughout Africa.¹⁹ PEPFAR promises that 33 percent of all funds are spent on abstinence-promotion and that faith-based organizations can receive funding even if they refuse to talk about or provide contraception.²⁰ Most of the funding recipients reported that fulfilling this percentage requirement presents challenges to their ability to respond to the local cultural and social norms and thus can undermine the integrated nature of HIV/AIDS prevention programs.²¹

Therefore, PEPFAR is deficient in that it does not consider best practices in public health and human rights standards vis-à-vis sex work. It restricts U.S. funding against organizations that do not denounce the practice of sex work. In this way, PEPFAR compels the viewpoints, activities and operations of organizations working effectively with sex workers by requiring them to adopt an anti-prostitution stance, resulting in constitutional violations against U.S.-based organizations. By mandating an anti-prostitution stance and discounting proven

¹⁶ PEPFAR Watch: Promoting Accountability of US Global HIV/AIDS Programs Through Information and Advocacy, *Focus Country Facts and Briefs*, http://www.pepfarwatch.org/index.php?option=com_content&task=view&id=55&Itemid=73 (last visited Mar. 21, 2007). The following countries are covered by PEPFAR: Botswana, Cote d'Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Vietnam and Zambia.

¹⁷ PEPFAR Watch: Accountability of US Global HIV/AIDS Programs Through Information and Advocacy, *What is PEPFAR?*, http://www.pepfarwatch.org/index.php?option=com_content&task=view&id=12&Itemid=26 (last visited July 24, 2006).

¹⁸ USAID, *The ABCs of HIV Prevention*, http://www.usaid.gov/our_work/global_health/aids/News/abcfactsheet.html (last visited July 24, 2004).

¹⁹ Kerry Howley, *Foreign AIDS: America's Overseas Social Engineering*, REASON ONLINE, Mar. 2, 2005, <http://www.reason.com/links/links030205.html>.

²⁰ *Id.*

²¹ United States Government Accountability Office, *Spending Requirement Presents Challenges for Allocating Prevention Funding Under the President's Emergency Plan for AIDS Relief*, GAO-06-395, April 2006 at 34.

methods against HIV that involve the cooperation of sex workers, this global initiative engenders negative public health outcomes by making sex workers more vulnerable to HIV/AIDS infection.

This initiative has given impetus to the creation of a cluster of laws and policies with similar restrictions such as the Leadership against HIV/AIDS, Tuberculosis, and Malaria Act (Global AIDS Act) of 2003²² and the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005.²³ These laws and policies are mutually reinforcing and the interactive effect of this policy agenda has resulted in adverse health outcomes.

Global AIDS Act:

In May 2003, based on the President's PEPFAR initiative, the U.S. Congress passed the United States Leadership against HIV/AIDS, Tuberculosis, and Malaria Act (Global AIDS Act),²⁴ which explicitly bars the use of federal funds to "promote, support, or advocate the legalization or practice of prostitution or sex trafficking."²⁵ The law requires organizations receiving U.S. HIV/AIDS funding to adopt a policy explicitly opposing prostitution. Under this new requirement, even organizations whose prevention and treatment programs for AIDS have nothing to do with sex work must now certify in writing their acceptance of the pledge or face a funding ban.²⁶

Organizations that do not denounce prostitution are in the position of losing substantial amounts of funding, therefore impeding their efforts to prevent the spread of HIV among sex workers and to the general public, and undermining efforts to promote the fundamental human rights of all persons.

²² United States Leadership Against HIV/AIDS, Tuberculosis, And Malaria (Global AIDS Act) P. L. 108-25, 117 Stat. 711; 22 U.S.C.S. § 7601-7682 (2003).

²³ Trafficking Victims Protection Reauthorization Act, P. L. 109-164, 119 Stat. 3558, 22 USCS § 7101 (2005).

²⁴ United States Leadership Against HIV/AIDS, Tuberculosis, And Malaria (Global AIDS Act) P. L. 108-25, 117 Stat. 711; 22 U.S.C.S. § 7601-7682 (2003).

²⁵ Id. at 22 U.S.C. § 7631(e).

²⁶ Michael M. Phillips, *Bush Ties Money for AIDS Work to a Policy Pledge*, WALL ST. J., Feb. 28, 2005, at A3, available at: http://www.tdpf.org.uk/MediaNews_LatestNews_28_02_05.htm.

The Global AIDS Act is currently applicable to foreign NGOs receiving bilateral U.S. HIV/AIDS funds and U.S.-based NGOs working abroad.²⁷ Currently, the restrictions do not apply to multilateral organizations including the Global Fund to fight AIDS, Tuberculosis and Malaria, the World Health Organization (WHO), International AIDS Vaccine Initiative, and any United Nations agency, although an attempt was made previously to expand its application.²⁸ In May 2005, the Centers for Disease Control announced funding restrictions on UNAIDS and WHO sub-grantees, which were later abrogated after widespread public denunciation.²⁹

Most of the \$3.2 billion that President Bush has asked Congress to appropriate for international HIV programs is channeled through the U.S. Agency for International Development (USAID) and the Department of Health and Human Services (HHS) to private organizations and other health groups working in developing nations.³⁰ Therefore, in January 2003, in order to ensure implementation by USAID field offices, then-Secretary of State Colin Powell sent a cable to offices worldwide outlining the new U.S. government mandate restricting all future funding to organizations not explicitly opposing prostitution. Mr. Powell stated that the ABC—abstinence, being faithful, and condoms—approach should be implemented. In his memo, Powell directly states that “organizations advocating prostitution as an employment choice or which advocate or support the legalization of prostitution are not appropriate partners for USAID anti-trafficking grants and contracts, or sub grants and sub-contracts.”³¹

The Global AIDS Act, as well as relevant U.S. State Department memos and official USAID policies, are viewed by many organizations working in global public health as a

²⁷ Consolidated Appropriations Act of 2004, Pub. L. No. 108-199 (2004), amending Global AIDS Act 301(f).

²⁸ Center for Health and Gender Equity, *Implications for U.S. Policy Restrictions for Programs Aimed at Commercial Sex Workers and Victims of Trafficking Worldwide* (Nov. 2005) <http://www.genderhealth.org/pubs/ProstitutionOathImplications.pdf>.

²⁹ *Id.*

³⁰ Phillips, *supra* note 26, at A3.

³¹ Cable from Colin Powell, Secretary of State, U.S. Government, to USAID field offices worldwide (Jan, 2003) (Excerpt of cable on file with the Sex Workers Project at the Urban Justice Center).

slippery slope that will have disastrous public health consequences. Organizations advocating for the rights of sex workers maintain that the Global AIDS Act operates in opposition to human rights norms and best practices in public health.

Trafficking Victims Protection Reauthorization Act:

Because of the pervasive tendency to conflate trafficking and prostitution, the Bush Administration's strong stance against prostitution directly affects anti-trafficking funds.. The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 prohibits U.S. funding for organizations that "promote, support, or advocate the legalization or practice of prostitution."³² The TVPRA of 2003 is fraught with an ideological agenda which endorses the views of the Christian and conservative right as it concerns sex work.

These funding restrictions mandated by the TVPRA bar organizations using a framework based on human rights to maintain public health from employing proven best practice methods to engage with trafficking victims. NGOs and organizations fighting trafficking are likely to be working against the stigmatized, underground nature of illicit prostitution, but they cannot accept U.S. funds unless they condemn the practice.³³ Therefore, due to flawed reasoning conflating prostitution with trafficking, organizations working to aid and empower victims of trafficking lose necessary funding to stave off health-related and other harms surrounding sex work.

IV. Proponents of the Anti-Prostitution Pledge

Proponents of the abstinence, "rescue"-oriented, and abolitionist views of sex work tend to favor the mandates of the Anti-Prostitution Pledge and subscribe to the erroneous

³² TVPA Reauthorization, 22 U.S.C. § 7110(g) (2) (2003).

³³ Howley, *supra* note 19.

view that the harm reduction, empowerment and human rights models perpetuate exploitative commercial sex.

Oddly enough, the Christian conservative right has banded together with radical feminists to argue that trafficking in persons is inextricably linked with sex work. Abolitionists view sexual commerce as degrading and dehumanizing, characterizing sex work and trafficking in persons interchangeably as forms of “modern-day slavery.”³⁴ An assumption is made by abolitionists that all sex workers are victimized and never elect to engage in sex work out of decisions based on their needs, but rather seek to escape this practice. Abolitionists do not realize that, in sharp contrast to trafficking victims, the majority of sex workers are not coerced or forced into unwanted sex acts.

Those who favor the Anti-Prostitution Pledge argue that abolition of prostitution, rather than risk reduction, must be at the forefront of HIV/AIDS and STI prevention efforts of public health organizations.

Therefore, as stated earlier, the Bush administration is barring private American AIDS organizations and foreign NGOs from winning federal grants to provide health services overseas unless they pledge their opposition to prostitution, as part of a broader conservative effort to apply conservative values to foreign-assistance programs.³⁵ International Justice Mission and other religious and conservative groups are promoting the idea that young women can and must be saved not just from HIV, but from the sex industry itself. Donna Hughes, a women’s studies professor at the University of Rhode Island, says HIV/AIDS education is

³⁴ United States Department of State, Office to Monitor and Combat Trafficking in Persons, *supra* note 13.

³⁵ Phillips, *supra* note 26.

wasted on women who have no voice or power against their “rapists” and therefore rescue is the only humane, ethical intervention.³⁶

Restore International, a faith-based Christian organization whose goal is to rescue and “rehabilitate” those who have been forced into prostitution, has maligned SANGRAM, an Indian organization that has worked effectively with women in prostitution for over a decade. Restore International’s anti-SANGRAM smear campaign combined with SANGRAM’s refusal to accept U.S. funding has negatively impacted this Indian organization’s ability to effectively work with sex-workers to stem the spread of HIV/AIDS.³⁷ These approaches worry many public health experts who believe that the spread of HIV/AIDS can only realistically be stopped by working within and among sex worker communities, not by demeaning and dehumanizing them. As Dr. Peter Piot, director of UNAIDS, points out, “Our role isn’t to rescue [communities]. It is to support them.”³⁸

Furthermore, those who favor the Anti-Prostitution Pledge inaccurately reason that the harm-reduction model of prostitution encourages the practice of sex work and increases the market demand for the profession causing a rise in persons trafficked into commercial sex.

The arguments articulated by the abolitionists do not hold up to scrutiny. Best practices in public health and human rights norms suggest that harm reduction is a more compelling model than the abstinence-only approach as it relates to the spread of HIV/AIDS and STIs among commercial sex workers.³⁹ The abolitionist approach to public health treats the symptoms rather than the etiology of sex work. The pro-Anti Prostitution Pledge arguments

³⁶ Amy Kazim, *Deliver Them From Evil*, FIN. TIMES LONDON, July 10, 2004, at 3, available at: <http://search.ft.com/ftArticle?queryText=deliver+us+from+evil&aje=true&id=040709005495>.

³⁷ Mena Seshu, “SANGRAM Statements,” (June 19, 2005), available at: <http://www.genderhealth.org/pubs/SANGRAMStatements.pdf>.

³⁸ Geoffrey Cowley, *The Life of a Virus Hunter*, NEWSWEEK, May 15, 2006, at 56, available at: <http://www.keepmedia.com/pubs/Newsweek/2006/05/15/1544855?extID=10032&oliID=213>.

³⁹ See *infra* “Harm Reduction” section below for a further discussion on this public health model.

counter the proven need for a more complex and human rights-based understanding of sexual commerce. The greater success in stemming the spread of HIV/AIDS among sex workers met by organizations opposed to the Anti-Prostitution Pledge evidence a more sophisticated understanding of the root causes and everyday realities for those working within the sex industry.

In fact, one religious organization, Christian Aid, has decided to adopt an alternate comprehensive approach to HIV called SAVE: Safer practices, Available medications, Voluntary counseling and testing, Empowerment through education. Christian Aid sees HIV as a virus and not a moral issue and believes the response to HIV should therefore be based on public health measures and human rights principles.⁴⁰

One example of the misdirected efforts by the combination of conservatives and radical feminists lies in the effects of the anti-prostitution pledge in Cambodia. Prior to the new U.S. government funding requirement, Cambodia had fought successfully to reverse the advance of HIV. According to UNAIDS, 3.3 percent of the country's adults were infected with HIV in 1998, but this has dropped to 2.6 percent in 2002, thanks to an aggressive campaign to promote condom use during all paid sexual encounters.⁴¹ Although Cambodia still has one of Asia's highest HIV rates, efforts to promote condoms during commercial sex are under attack from an unlikely alliance of radical feminists and Christian social conservatives who accuse humanitarian groups of "aiding and abetting the slave trade."⁴²

Many health groups charge that the administration and Republicans are imposing their social agenda on a medical crisis. Susan Cohen, director of government affairs for the Alan Guttmacher Institute, observes that "Social conservatives inside and outside this administration

⁴⁰ Christian Aid, *Christian Aid's HIV Unit Replaces ABC with SAVE in its Comprehensive HIV Programmes*, (Mar. 21, 2006), <http://www.christian-aid.org.uk/news/media/pressrel/060321p.htm>.

⁴¹ Kazim, *supra* note 36, at 2.

⁴² *Id.*

are going way beyond trying to transform what the government funds to focusing on who the government funds.”⁴³ The moral stance against sex workers worries many health experts who believe this simplistic attitude towards prostitution will only increase the worldwide spread of HIV/AIDS.

V. Opponents of the Anti-Prostitution Pledge

Opponents of the anti-prostitution pledge favor the utilization of harm reduction and empowerment strategies and champion a non-stigmatizing human rights approach.. These advocates and organizations use methods that have been proven highly effective in engaging with sex workers, resulting in marked reduction in the transmission of HIV/AIDS.⁴⁴ Sex work is more likely to result in high rates of HIV transmission when associated with female poverty, high rates of sexually transmitted infections, limited access to health care services, and/or high rates of unprotected sex with clients who then spread the disease to low-risk partners and others in the general population.⁴⁵

Organizations working with prostitutes do not encourage prostitution but instead seek to improve workers’ health (for example, by enabling sex workers to negotiate condom use with clients and thus reduce risk of infection to both groups) and to provide prostitutes with the skills and opportunities needed to find other means of survival if they so choose.⁴⁶ The most effective organizations working with sex workers to prevent the spread of HIV/AIDS engage in a range of strategies and activities intended simultaneously to protect basic human rights of people

⁴³ Phillips, *supra* note 26, at A3.

⁴⁴ The efficacy of various models in India, Brazil, and Thailand will be discussed in the country-specific sections below.

⁴⁵ Cheryl Overs, *Sex Workers: Part of the Solution. An Analysis of HIV prevention programming to prevent HIV transmission during commercial sex in developing countries* (2002), <http://www.nswp.org/pdf/OVERS-SOLUTION.PDF>.

⁴⁶ Center for Health and Gender Equity, *Working with Women in Prostitution: A Critical Dimension of HIV Prevention*, (April 2003), at 3, <http://www.genderhealth.org/pubs/SexWorkersHIVPreventionApr2003.pdf>

working in prostitution and to provide meaningful alternatives to livelihood for those who want them.⁴⁷

Instead of explicitly opposing prostitution, organizations that seek to stem the spread of HIV/AIDS prefer proven effective harm reduction models that use human rights and empowerment mechanisms in a non-stigmatizing manner.

Harm Reduction

Opponents of the Anti-Prostitution Pledge argue that harm-reduction is a best practices model and funding should not be eliminated for organizations implementing this approach. Harm reduction as an approach to HIV/AIDS and STI prevention is defined as a method that “offers individuals the opportunity to move their behavior to the next lowest level of possible harm.”⁴⁸ Harm reduction is also described as a “simple, safe, and inexpensive strategy to avoid risk, mitigate harm, and save lives.”⁴⁹

Using a harm reduction model in interactions with sex workers, the risks associated with commercial sex are reduced with an eye toward empowering sex workers to protect themselves against STI and HIV/AIDS transmission and thus stop the spread to their customers and the general public.

Harm reduction as a public health intervention model involves reducing the health risks and harms surrounding sex work. Organizations that work with sex workers use harm reduction principles to help “safeguard sex workers’ lives in the same way that drug users have benefited from drug-use harm reduction.”⁵⁰ Organizations working with sex workers in stemming the spread of HIV/AIDS use harm reduction interventions such as occupational health

⁴⁷ Id.

⁴⁸ Peter A. Newman, *Reflections on Sonagachi: An Empowerment-Based HIV-Preventive Intervention for Female Sex Workers in West Bengal, India*, WOMEN’S STUDIES QUARTERLY. Vol. 31, No. ½: 170 (2003).

⁴⁹ Michael L. Rekart., *Sex-Work Harm Reduction*, THE LANCET. Vol. 366, No. 9503: 2130 (2005).

⁵⁰ Id. at 2123.

and safety guidelines for brothels, distribution of male and female condoms, training in condom-negotiating skills and safety tips for street-based sex workers as HIV/AIDS preventative strategies.⁵¹

Many HIV/AIDS groups say the best way to limit the disease is to acknowledge that some people inevitably engage in risky behavior and thus health workers should try to mitigate the harms of these activities.⁵² Empirical evidence of public health operations involving sex workers highlights the greater efficacy of the harm reduction model in countering the spread of HIV/AIDS among sex workers. Specific examples of such successful programs are discussed below.

India: By bringing a harm reduction model to bear on public health interventions in India, the Sonagachi project, an HIV-prevention program in Calcutta, has significantly lowered HIV seroprevalence rates among sex workers in the city. Human Rights Watch estimated that the Sonagachi project “has reached more than 30,000 persons working in the commercial sex sector at risk of HIV.”⁵³ Whereas “HIV seroprevalence rates are 50% and higher among sex workers in Delhi, Pune, and Chennai” in “Calcutta, a gateway to the Golden Triangle, the nexus of many national truck routes, and home to an extensive red light district, the HIV seroprevalence rate among sex workers is estimated at 11.9%.”⁵⁴

The Sonagachi project couples harm reduction principles with empowerment strategies to minimize the health risks of sexually transmitted diseases among sex workers. According to one study, “along the lines of harm reduction, the Sonagachi project aims to reduce

⁵¹ *Id.*

⁵² Phillips, *supra* note 26, at A3.

⁵³ Human Rights Watch, *U.S.: Restrictive Policies Undermine Anti-AIDS Efforts: Mandatory Anti-Prostitution Pledge Threatens Lives of Sex Workers and Trafficking Victims* (May 18, 2005), <http://hrw.org/english/docs/2005/05/18/usdom10978.htm>.

⁵⁴ Newman, *supra* note 48, at 168.

the immediate harm to sex workers from HIV and STDs by empowering them to protect themselves against HIV.”⁵⁵ Sonagachi’s peer educators work to stop the spread of HIV among women and men in prostitution in part through strategies intended to earn their trust, reduce their social isolation, increase their participation in public life, and confront stigma and discrimination.⁵⁶

Significantly, Sonagachi project has been widely credited as one of the best examples of an effective HIV prevention program, as it holistically addresses both the short-term issues necessary to reduce infection, as well as the long-term issues related to vulnerability of women involved in the sex industry..⁵⁷

Brazil: Furthermore, the Brazilian government has embraced the tenets of harm reduction and labor rights in regard to fighting HIV infection among sex workers.⁵⁸ Brazil’s harm reduction HIV/AIDS prevention and treatment programs are “considered by the United Nations to be the most successful in the developing world.”⁵⁹ According to current estimates, there are at least 600,000 people infected with HIV in Brazil, but that is only half the number forecasted by the World Bank a decade ago.⁶⁰ Through state-funded sex education and prevention workshops, the distribution of free condoms, and informational pamphlet dissemination, Brazil has managed to effectively reduce the HIV/AIDS rate throughout the

⁵⁵ Id. at 170.

⁵⁶ UNAIDS, *Female Sex Worker HIV Prevention Projects: Lessons Learnt from Papua New Guinea, India, and Bangladesh*, UNAIDS Best Practice Collection, Nov. 2000, at 57-90, available at: http://data.unaids.org/Publications/IRC-pub05/JC438-FemSexWork_en.pdf

⁵⁷ Id. at 59.

⁵⁸ See Bill Hinchberger, *Brazilian Sex Workers Don’t Mourn, They Organize*, BRAZILMAX.COM, Oct. 19, 2005, http://www.brazilmax.com/news.cfm/tborigem/fe_society/id/23 (chronicling the sex workers’ rights movement in Brazil, as well as the Brazilian government’s response to restrictive US policies that infringe upon Brazil’s ability to implement necessary programs); See also, Gabriela Leite, Video: Taking the Pledge, <http://sexworkerspresent.blip.tv/> (last visited Mar. 28, 2007).

⁵⁹ Reel Monte, *Where Prostitutes Also Fight AIDS: Brazil’s Sex Workers Hand Out Condoms, Crossing US Ideological Line*, WASH. POST, A14 (March 2, 2006), available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/01/AR2006030102316.html>.

⁶⁰ Id.

country. A working partnership with sex workers is a key reason that the country's AIDS prevention and treatment programs are considered by the United Nations to be the most successful in the developing world.⁶¹ Referencing Brazil's successful HIV/AIDS prevention efforts, Mariangela Simao, deputy director of Brazil's national HIV/AIDS program, states that she is "convinced it is a result of the way the government has responded because they provide information and resources, and don't enter into moral or religious issues."⁶²

However, in late February 2006, Brazil received a letter from USAID declaring the country ineligible for a renewal of a \$48 million AIDS prevention grant if they did not agree to the Anti-Prostitution Pledge.⁶³ Not willing to budge on their highly successful HIV/AIDS prevention methods, Brazil became the first country to take a public stand against the Bush administration's requirement and rejected the \$48 million for its AIDS programs.⁶⁴ Brazil refused to agree to a declaration condemning prostitution because its government and many AIDS organizations believe such a declaration would be a serious barrier to helping sex workers protect themselves and their clients from infection.

Thailand: In Thailand, an effort to promote condom use in red-light districts reduced new HIV infections from about 143,000 a year in 1991 to about 20,000 in 2003, saving millions from the disease and winning plaudits as a model for the rest of the developing world.⁶⁵ Activist groups such as Empower Foundation have organized sex work communities, advocated for safe work practices and equal rights,⁶⁶ and have voiced their opposition to current U.S.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Kazim, *supra* note 35.

⁶⁶ Empower Foundation HomePage, <http://www.empowerfoundation.org/> (last visited Mar. 28, 2007); *See also*, Video: Taking the Pledge, <http://sexworkerspresent.blip.tv> (The video discusses the current situation in Thailand and the work of Empower).

policies regarding “raid and rescue.”⁶⁷ Such groups are invaluable to local communities, and continue to provide services premised on a harm reduction model, despite societal backlash and/or political opposition.⁶⁸

Human Rights

Advocates opposing the Anti-Prostitution Pledge contend that this policy is in violation of the fundamental human rights of sex workers. The Anti-Prostitution Pledge is at odds with a corpus of international human rights instruments and laws such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The rights emanating from the UDHR, including the right to “security of person,” freedom from “inhuman or degrading treatment” and “equal protection of the law,” are eroded by these US laws and policies demanding organizations to take a moral stance against prostitution. Access to healthcare is a fundamental human right as stated in Article 25 of the UDHR⁶⁹ and the constraints wrought by the Anti-Prostitution Pledge deprive sex workers of their basic right to health. Furthermore, the Anti-Prostitution Pledge is at odds with Article 7 of the UDHR, which protects the right to freedom from discrimination and safeguards “equal protection of the law.”⁷⁰

Article 6 of the ICESCR “recognizes the right to work, elaborating that states should take steps that include technical and vocational guidance and training programs, policies

⁶⁷ Empower Chiang Ma, *supra* note 15.

⁶⁸ See generally, Melissa Ditmore, *Trafficking in Lives: The Impact of New International Anti-Trafficking Laws in Asia*, TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS (Kamala Kempadoo, ed. 2005).

⁶⁹ Declaration of Human Rights, Gen. Assembly. Res. 217A (I,II), Art. 25, U.N. Doc. A/810 (1948).

⁷⁰ Id at Art. 7.

and techniques to achieve steady economic, social, and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”⁷¹ Other fundamental human rights embedded in Article 11 of the ICESCR include guarantees to “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.”⁷² Article 13 of the ICESCR lays out the right to education that sex workers are entitled to as human beings.

Whereas many international human rights laws lack enforcement power and implementation rests on the political will of governing bodies, laws and policies implemented by the U.S. government compel observance as noncompliance results in the loss of necessary funding. The limited range of public health interventions sanctioned by the Global AIDS Act fly in the face of best practices and human rights norms, forcing recipient organizations to adopt less effective HIV/AIDS and STI prevention strategies. This in turn has an adverse effect on the health of sex workers by furthering the spread of HIV/AIDS into the wider public, thereby negatively affecting global public health.

Through its proscription of harm reduction, which involves empowerment and peer-education, the Anti-Prostitution Pledge counteracts human rights and severely undermines public health efforts.

Empowerment

Empowerment and harm reduction share a synergistic relationship. One of the hallmarks of harm reduction is respect for the individual’s right to self-determination. This right is also a core concept of empowerment.

⁷¹ International Covenant on Economic, Social and Cultural Rights (ICESCR) Gen. Assembly Res. 2200A (XXI), at. 6 (1966).

⁷² Id. at Art. 11.

The harms associated with sex work can be minimized through the empowerment of sex workers. An individual who is empowered to make his/her own decisions will be better equipped to protect his/her health and to enact harm reduction strategies.⁷³ The goal of empowerment is to provide real opportunities for sex workers through services such as job training, language skills, access to health services and protection from violence. Current legislation is antithetical to best practices that promote empowerment.

Organizations using empowerment mechanisms to provide opportunities to sex workers work to provide persons in prostitution with new skills essential to moving out of the commercial sex sector, to secure legal rights of men and women in prostitution to be free from violence and discrimination, and to empower them to demand universal condom use, thereby preventing the further spread of HIV infection.. These initiatives focus on promoting the fundamental human rights and health of persons working in prostitution, but do not equal the promotion of prostitution.⁷⁴

Empowerment schemes, such as voluntary education programs, intended to provide sex workers with economic alternatives to sex work, are being negatively affected by the government policy. For example, NGOs in Cambodia have “discontinued plans to provide English-language classes --which could provide a path out of sex work-- for fear that they would be seen as promoting prostitution.”⁷⁵ Likewise, according to the Center for Health and Gender Equity, the intervention strategies of EMPOWER Thailand, an organization that assists women working in prostitution to obtain high-school diplomas and job skills⁷⁶ have been jeopardized as

⁷³ Newman, *supra* note 48, at 170.

⁷⁴ Center for Health and Gender Equity, *supra* note 28.

⁷⁵ Center for Health and Gender Equity, *Restrictive U.S. Policies Undermine Anti-AIDS Efforts: Mandatory ‘Anti-Prostitution Pledge’ Threatens Lives of Sex Workers and Trafficking Victims*, (May 18, 2005) <http://www.genderhealth.org/pubs/PR20050518.pdf>.

⁷⁶ Center for Health and Gender Equity, *supra* note 46.

a result of the Anti-Prostitution Pledge. In short, the Anti-Prostitution Pledge can be said to have a perverse effect on the public health operations and empowerment goals of organizations working with sex workers. As Elizabeth Ngugi, a nurse working with sex workers to prevent sexually transmitted diseases in Majengo, Kenya, said, “You can’t just tell people to make better choices. You have to give them the *power* and the *tools*.”⁷⁷

Women’s Network for Unity is a group of Cambodian sex workers who have banded together to improve the conditions for the thousands of women and men who have little chance of getting out of the sex trade. This is an organization that the U.S. government once supported, but due to the new funding restrictions, it will no longer provide support. Rosanna Barbero, the driving force behind this network, views the organization’s mission rescuing Cambodian prostitutes not from the sex trade, which she sees as virtually impossible without fundamental economic and social changes, but from their feelings of despair, isolation, and powerlessness.⁷⁸ Barbero strongly believes that “the best thing [the organization] can do for these women is to respect what they do, but work very hard to eliminate the criminal elements, the exploitative elements. She continues that “unless women are given an opportunity to gain dignity, a voice, a face, you will never achieve a reduction in HIV/AIDS among the sex worker population.”⁷⁹

Although the U.S. government once saw merit in Barbero’s reasoning they soon began requesting that she tone down the rhetoric about sex workers’ rights, eliminate the use of the word empowerment and to begin calling sex workers “prostitutes” or “trafficking victims.” Eventually becoming frustrated with the requests, the network renounced its U.S. funding.⁸⁰

⁷⁷ Cowley *supra* note 38, at 56.

⁷⁸ Kazim, *supra* note 36, at 5.

⁷⁹ *Id.*

⁸⁰ *Id.* at 6.

Stigmatization

Opponents of the Anti-Prostitution Pledge suggest that the pro-abstinence agenda is myopic insofar as it alienates sex workers—the very population essential to prevent further spread of HIV/AIDS—by further stigmatizing sex work.

Women, men, and transgender persons in prostitution are among the most marginalized persons in any society. Social stigma impacts help-seeking behavior. Sex workers are confronted with violence, discrimination, and harassment by clients and law enforcement officials. They are often reticent to seek assistance from outsiders, including NGOs, for fear of severe stigmatization, fines, and incarceration.⁸¹ When a health clinic first opened in Majengo, Kenya in the 1980s, no one sought out its services. After years of being demeaned by imperious doctors, the district's 2,000 sex workers had stopped seeking treatment—even free treatment—for sexually transmitted diseases.⁸² Requiring health professionals and international development organizations to judge—and pronounce their disapproval of—the very people they are trying to help could damage the trust between health professionals and those most in need.⁸³ Research done by the Sex Worker Education and Advocacy Taskforce (SWEAT) with sex workers in South Africa in 2005 found that the stigma sex workers face and the need to hide the work they do blocks sex workers from accessing formal services or from disclosing the nature of their work from service providers.⁸⁴

Implicit in the Anti-Prostitution Pledge is the denunciation of the lived and embodied experiences of sex workers. The public condemnation of sexual commerce that

⁸¹ Pathfinder International, *The Anti-Prostitution Loyalty Oath: Undermining HIV/AIDS Prevention and U.S. Foreign Policy*,

http://www.pathfind.org/site/PageServer?pagename=Priorities_Advocacy_Fact_Sheets_AntiProstitutionLoyaltyOath&printer_friendly=1 (last visited Mar. 26, 2007).

⁸² Cowley, *supra* note 38, at 56.

⁸³ Pathfinder International, *supra* note 81.

⁸⁴ Nicole Fick, *Coping with Stigma, Discrimination, and Violence: Sex Workers Talk About Their Experiences*, Sex Worker Education & Advocacy Taskforce, <http://www.sweat.org.za/docs/coping.pdf> (last visited Mar. 28, 2007).

organizations working with sex workers are compelled to adopt under US laws and policies heighten the stigma surrounding sex work. Requiring organizations to adopt these policies makes it extremely difficult, if not impossible, to establish the trust necessary to provide services to these hard-to-reach groups.⁸⁵ Any anti-prostitution declaration by organizations working in the sex sector has the potential to judge and alienate the very people these organizations seek to assist, making it very difficult or impossible to provide services or assistance to those at risk.⁸⁶

Therefore, many AIDS organizations are reluctant to issue a statement condemning prostitution because they work closely with sex workers on health initiatives such as distributing condoms. The groups say such official stigmatization would increase women's isolation, making it harder for them to receive AIDS prevention and treatment services.⁸⁷

The organizations with the most effective anti-AIDS strategies build their efforts on a sophisticated understanding of the social and personal dynamics faced by marginalized populations and start by building trust and credibility among the populations in question.⁸⁸ As proven effective, public health organizations strive to provide non-judgmental assistance to best serve the health of sex workers, regardless of the status or situation of the individual.⁸⁹

VI. Effects of the Anti-Prostitution Pledge

After being chastised by the U.S. government, Brazil took a bold step and repudiated the U.S. funds in order to save their country-wide effective HIV/AIDS prevention efforts. Unfortunately, most NGOs working on the ground do not have the kind of money or support that NGOs in Brazil do and thus are in dire straights trying to decide what actions to take. The broad language of the restrictions increases the risk that organizations will self-censor

⁸⁵ Center for Health and Gender Equity, *supra* note 75.

⁸⁶ *Id.*

⁸⁷ Phillips, *supra* note 26, at A3.

⁸⁸ Center for Health and Gender Equity, *supra* note 75.

⁸⁹ Pathfinder International, *supra* note 81.

or curtail effective programs for fear of being seen as supporting or promoting prostitution.⁹⁰ For example, an organization in Cambodia discontinued its language classes, eliminating an effective program providing alternative skills to sex workers to enable them to work outside of the sex industry, for fear that such a program would be construed as supporting prostitution.

Durjoy Nari Shangha, a Bangladeshi sex workers collective, closed drop-in centers for sex workers in that country's capital in order to win U.S. funding. It closed them after signing the prostitution loyalty oath that requires groups receiving USAID funding to have a policy opposing prostitution and sex trafficking. Hazera Bagum of Durjoy Nari Shangha stated that "closing a drop-in center is like losing their homes, like losing their meeting point, losing their school, losing everything."⁹¹ The Bangladeshi organization had 20 drop-in centers before December, offering sex and literacy education as well as moral support, toilets and a place to wash and rest for up to 5,000 women. The group now has just four centers, geared to children and childrens' rights.⁹²

Organizations not self-censoring but continuing to work with sex workers through harm reduction and empowerment models are already being harassed with threatened or actual funding cuts to their programs. Empower, a Thai NGO that has promoted the rights of sex workers for 20 years and teaches them literacy and safe sex skills, had its small USAID support cut last year, despite its significant role in Thailand's HIV/AIDS prevention efforts.⁹³

⁹⁰ Center for Health and Gender Equity, *supra* note 75. See also Matt Moffett and Michael M. Phillips, *Brazil Refuses U.S. AIDS Funds, Rejects Conditions*, WALL ST. J., May 2, 2005, at A3, available at: http://www.walnet.org/csis/news/world_2005/wallstreet-050502.html.

⁹¹ Janet Guttsman, *Bangladesh Worker Angry at US AIDS Help Restrictions*, REUTERS FOUND., August 17, 2006, available at: <http://www.aegis.org/news/re/2006/RE060877.html>.

⁹² *Id.*

⁹³ Ditmore, *supra* note 68.

VII. Constitutional Concerns with the Anti-Prostitution Pledge

Those opposed to the Anti-Prostitution Pledge also raise constitutional concerns, specifically that it violates freedom of speech (protected by the First Amendment), as well as due process (protected by the Fifth Amendment)..

First Amendment: Advocates argue that by forcing organizations to explicitly oppose prostitution, thereby requiring domestic and foreign-based organizations working in public health to align themselves with a position in keeping with that of U.S. government policy, the Anti-Prostitution Pledge compels speech, and therefore violates the First Amendment. . According to Human Rights Watch, “compelling foreign organizations to adopt policies consistent with the government’s viewpoint raises important constitutional concerns and undermines the democratic principles for which the United States stands.”⁹⁴ The loyalty oath forces private, U.S.-based organizations to espouse the government’s point of view on a controversial social issue in order to remain eligible for government grants and restricts how organizations use their private funds to engage in speech or programs related to prostitution.⁹⁵

While the U.S. government can legally require its funds be used to further government-approved messages,⁹⁶ it has not previously compelled U.S. organizations with multiple funding sources to speak explicitly on an issue in compliance with a specific U.S. objective.⁹⁷

Due Process Clause: Advocates opposing the pledge also argue that the language of the loyalty oath requirement is so vague that organizations do not know how to

⁹⁴ Human Rights Watch, *U.S.: Restrictive Policies Undermine Anti-AIDS Efforts: Letter to President Bush Opposing Mandatory ‘Anti-Prostitution’ Pledge’ Which Threatens Lives of Sex Workers and Trafficking Victims*, May 18, 2005, <http://hrw.org/campaigns/hiv-aids/hiv-aids-letter/>. See also *DKT Memorial Fund Ltd. v. Agency for Intern. Dev’t*, 887 F.2d 275 (D.C. Cir. 1989) (Judge Ginsberg,, dissenting).

⁹⁵ Pathfinder International, *supra* note 81.

⁹⁶ *Rust v. Sullivan*, 500 U.S. 173, 196 (1991).

⁹⁷ Center for Health and Gender Equity, *supra* note 75.

comply with its mandate and government officials do not know how to enforce it. This lack of guidance allows the law to be arbitrarily applied, which is in violation of the due process clause of the Fifth Amendment.⁹⁸

Based on these constitutional concerns, three organizations, DKT International, Alliance for Open Society, and Pathfinder, filed two separate lawsuits. On May 9, 2006 Judge Victor Marrero of the U.S. District Court for the Southern District of New York ruled that the pledge requirement violated the First Amendment rights of the two plaintiff organizations, Alliance for Open Society International (AOSI) and Pathfinder International, by restricting their privately funded speech and by forcing them to adopt the government's viewpoint in order to remain eligible for funds. In his ruling, Judge Marrero determined that a preliminary injunction against the enforcement of the pledge requirement was necessary to prevent AOSI and Pathfinder from suffering irreparable harm.⁹⁹

On May 19, 2006, Judge Emmet Sullivan of the U.S. District Court for the District of Columbia granted a permanent injunction against USAID from enforcing the anti-prostitution pledge requirement on DKT International. The judge's ruling states that both the global AIDS program authorizing statute ? and USAID policy (AAPD-05-04) are unconstitutional violations of DKT's First Amendment rights and instructs USAID and its intermediaries that DKT is not required to certify compliance with the pledge requirement in order to be eligible to receive U.S. assistance for HIV/AIDS prevention activities.

⁹⁸ Pathfinder International, *supra* note 81; *See also* DKT Memorial Fund Ltd. v. Agency for Intern. Dev't, 887 F.2d 275 (D.C. Cir. 1989) (Judge Ginsberg, dissenting).

⁹⁹ Open Society Institute, *Judge Rules in Favor of AOSI, Says USAID Pledge Rule is Unconstitutional*, Factsheet, May 9, 2006, http://www.soros.org/initiatives/health/focus/sharp/news/pledge_20060509.

In October 2006, the U.S. government filed notice of appeal in the DKT case.¹⁰⁰

In a decision handed down on February 27, 2007, the United States Court of Appeals for the District of Columbia Circuit reversed Judge Sullivan's ruling.¹⁰¹ In an opinion by Judge Randolph, the court argued that the effectiveness of the government's viewpoint-based program would be "substantially undermined" and its message "confused" if the organizations hired to implement HIV/AIDS programs advance opposite viewpoints in their privately funded activities.¹⁰² Further, the court argued that here, as in *Rust v. Sullivan*,¹⁰³ the government may constitutionally control how its own message is being delivered.¹⁰⁴ Judge Randolph observed that DKT could "solve" the dilemma by establishing a subsidiary organization that adopts the pledge and receives the funding while the larger organization can continue to abstain from signing the pledge.¹⁰⁵ This case is likely to be further litigated.

VIII. Conclusion

Productive public health outcomes can be achieved more successfully through human rights and empowerment mechanisms coupled with the harm reduction model rather than a monolithic anti-prostitution and abstinence only approach to sex work. HIV/AIDS and STIs are public health concerns of global proportions. As it stands, the Global AIDS Act will accelerate the transmission of HIV/AIDS increasing morbidity and mortality rates among sex workers as well as the larger population. Therefore, a rethinking of U.S. government policy is in order.

¹⁰⁰ MEDICAL NEWS TODAY, *Federal Appeals Court Rules in Favor of US Policy Requiring Groups that Receive HIV/AIDS Funding to Condemn Commercial Sex Work*, (Mar. 2, 2007),

<http://www.medicalnewstoday.com/medicalnews.php?newsid=64200&nfid=crss>.

¹⁰¹ DKT International, Inc. v. USAID, No. 06-5225, 1-10 (D.C. Cir. Feb. 27, 2007), available at: <http://pacer.cadc.uscourts.gov/docs/common/opinions/200702/06-5225a.pdf>.

¹⁰² Id. at 8.

¹⁰³ See *Rust*, *supra* note 96.

¹⁰⁴ DKT International, No. 06-5225, at 7.

¹⁰⁵ Id. at 9-10.

IX. Policy Recommendations

In light of the public health concerns and further disenfranchisement of sex workers that these government policies engender, we offer policy recommendations to the U.S. government. The U.S. government must eliminate the anti-prostitution language and mandates from both the Global AIDS Act and the Trafficking Victims Protection Reauthorization Act. The U.S. government must also permit organizations that do not have a policy explicitly opposing prostitution to receive U.S. federal funds. In this way, the U.S. government will successfully fund programs that adopt best health care practices. Broad-based consultation with experts across the professional spectrum including but not limited to social work practitioners, public health professionals, sex workers' rights groups, and organizations working in the sex sector to effectively create an overarching policy that productively stems the spread of HIV/AIDS is strongly advised.

Further, the U.S. government must negate the conflation of sex work with human trafficking. First, this inaccurate ideology completely ignores the vast majority of victims of trafficking who are coerced into the general labor sector, including work in restaurants, farms, homes, and other non-sexual venues. In addition, by making trafficking and sex work interchangeable, the U.S. government completely ignores the myriad causes that lead men and women into sex work, thereby demeaning their specific needs and requirements separate from the situation of trafficking victims.

Next, the U.S. government must support the harm reduction model in engaging with the sex worker community both domestically and globally. Allowing organizations to implement programs that reduce the risk inherent in sex work will allow for better health and safety of sex workers, thus stemming the spread of HIV/AIDS and other STIs. Empowering sex workers

enables them to negotiate safer sex, protect themselves from violence and educate their clients and peers, in effect promoting greater welfare for the general population.

Finally, human rights standards must flow through each and every U.S. law and policy affecting sex workers, HIV/AIDS and federal funding provisions. Regardless of the legality of sex work currently in the U.S., sex workers are human beings first and their inherent rights must not be violated by misguided policy.