

GAO Report: Global AIDS Law's 'Abstinence-Until-Marriage' Earmark Shortchanges Other Key Prevention Strategies

A Government Accountability Office (GAO) report to Congress dated April 4 details the negative effects of the legal requirement that at least one-third of all prevention funds appropriated under the President's Emergency Plan for AIDS Relief (PEPFAR) be reserved for "abstinence-until-marriage" programs. The report concludes that siphoning off funds for these activities has forced some PEPFAR country teams to reduce the funding they otherwise would have provided to other key prevention interventions. Negatively affected programs include those to prevent the transmission of HIV/AIDS during pregnancy and childbirth, to promote comprehensive messages aimed at preventing the sexual transmission of HIV/AIDS, and to support prevention programs aimed at HIV-positive people and high-risk groups such as sexually active youth, which could involve the distribution of condoms.

In fall 2005, the State Department's Office of the U.S. Global AIDS Coordinator devised a formula implementing the abstinence-until-marriage requirement. The guidelines specify that PEPFAR country teams must reserve half of their prevention funds for programs to prevent the sexual transmission of HIV/AIDS; the remainder must cover all other kinds of prevention interventions, such as mother-to-child and blood-safety programs. In each country, at least two-thirds of the funds to prevent the sexual transmission of HIV/AIDS must be used to promote abstinence

and "faithfulness," which the administration deems to be the two goals of the abstinence-until-marriage program. Thus, two-thirds of one-half of all the prevention funds are reserved to promote abstinence and faithfulness—or one-third of the total prevention allocation to each country.

Numerous members of Congress on both sides of the "abstinence-only" debate had asked the GAO—Congress' audit, evaluation and investigative arm—to conduct a

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review of the effects of the statutory earmark, including how the administration has chosen to implement it. GAO investigators spent the last year interviewing officials—both in the United States and in selected PEPFAR focus countries—from key government agencies, faith-based and other nongovernmental organizations and host country governments themselves. "Satisfying [the law's] abstinence-until-marriage spending requirement presents challenges to most country teams," the GAO reported. Meeting the earmark, GAO investigators were told, presents country teams with a conflict in staying true to the other directive under PEPFAR, also stipulated by law, that they promote a comprehensive ABC approach (*abstain, be faithful, use*

condoms) to preventing the sexual transmission of HIV/AIDS.

Recognizing the problems inherent in imposing a strict formula on countries ranging from Vietnam to Zambia to Haiti, which differ widely in terms of the nature of their HIV/AIDS epidemics as well as social and cultural norms, the administration has established a "waiver" system whereby country teams may be released from the formula based on the local epidemiology and specific country

needs. GAO notes, however, that although this may have alleviated the problem in those countries that have won waivers, the remaining country teams must compensate by spending even more than one-third of their total prevention funds on abstinence and faithfulness programs to meet the statutory requirement at the global level.

Assessing the content or effectiveness of the abstinence and faithfulness programs that the United States is funding was beyond the scope of this particular report; that could be a project for the future. Still, the report sheds important new light on the impact of making the abstinence-until-marriage program the single

most important U.S. global HIV/AIDS prevention strategy. It reveals that as long as resources are not infinite, the mandated high level of funding in this area is coming at the expense of other, proven interventions, which in many cases have been deemed higher priority by the public health professionals on the ground.

Upon the release of the GAO report, Sen. Dianne Feinstein (D-CA) immedi-

ately denounced the abstinence-until-marriage earmark in the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 as “the wrong approach” and declared that she would soon be introducing legislation aimed at mitigating the harm it is causing. “The GAO report...clearly demonstrates that we are not doing everything we can to protect high-risk populations around the world from the transmis-

sion of HIV/AIDS,” said Feinstein, a key member of the Appropriations Committee. Although Congress is not required to reconsider these and many other issues relating to PEPFAR until 2008, when the law must be renewed, ameliorative action could be taken between now and then in the course of approving an annual appropriation for the program.

—*Susan A. Cohen*

Federal Judges: U.S. HIV/AIDS Groups Cannot Be Forced to Sign Pledge Against Prostitution

Requiring U.S.-based nongovernmental organizations (NGOs) to pledge their opposition to prostitution and sex trafficking as a condition of eligibility for global HIV/AIDS funding is unconstitutional, according to two federal court rulings in May. “The Supreme Court has repeatedly found that speech, or an agreement not to speak, cannot be compelled or coerced as a condition of participation in a government program,” wrote Judge Victor Marrero of the U.S. District Court for the Southern District of New York in a case brought by the Alliance for Open Society International (AOSI) and Pathfinder International. In Washington, DC, U.S. District Court Judge Emmet G. Sullivan deemed the policy unconstitutional on similar grounds in a case brought by DKT International.

The antiprostitution litmus-test requirement was written into a 2003 law governing U.S. global HIV/AIDS efforts (related article, March 2005,

page 12). Initially, the Justice Department applied it only against foreign NGOs, precisely because of the implications for U.S.-based organizations’ free-speech rights. In 2005, reportedly after prodding from social conservatives, the administration changed course and began to apply the policy to U.S. NGOs as well.

HIV prevention and treatment advocates argue that the policy forces NGOs to take a position against prostitution and sex trafficking even when doing so is irrelevant to their program—for instance, if they work only in hospitals to prevent HIV transmission from pregnant women to newborns. And for NGOs that do direct their efforts to preventing HIV among sex workers, an extremely high-risk group, it compels them, in effect, to rebuke the women they are seeking to help.

The rulings could have wide implications, explained Rebekah Diller, attor-

ney for AOSI and Pathfinder. “As nonprofit organizations partner with government to address social problems, it should be clear that what counts is whether they do the work, not whether they are willing to espouse ideological positions.” Indeed, NGOs such as Pathfinder that also provide family planning services immediately recognized the parallels with another administration litmus test, the “Mexico City” antiabortion gag rule. They are challenging the constitutionality of the antiprostitution pledge on its own merits and also in order to preempt any plan to expand the gag rule to U.S.-based organizations.

Whether these rulings will hold is, of course, uncertain. Even if they do, and the requirement can no longer be applied to U.S.-based groups, foreign NGOs have no U.S. constitutional protections and still would have to comply.—*Susan A. Cohen*