

Ominous Convergence: Sex Trafficking, Prostitution and International Family Planning

By Susan A. Cohen

Sex trafficking is one component of the broader problem of trafficking in persons—an internationally recognized human rights violation and a crime in the United States. It would appear, however, that from the perspective of many social conservatives both inside and outside the Bush administration, human trafficking is problematic largely to the extent it involves trafficking for sex. And since these advocates view sex trafficking and prostitution as inextricably linked, if not for all intents and purposes identical, the U.S. government's global antitrafficking program in many ways has come to resemble a global campaign against prostitution.

As a matter of federal law, private, nongovernmental organizations (NGOs) must have a position in opposition to prostitution in order to participate in the U.S. antitrafficking effort. A similar litmus test is required by law for NGO participation in the president's emergency plan for AIDS relief. So far, the Bush administration has applied these rules only against foreign NGOs, but the administration is expected to begin enforcing them shortly against U.S.-based groups as well.

HIV prevention advocates argue that disqualifying indigenous developing country NGOs from eligibility for U.S. funding unless they oppose prostitution unwisely limits U.S. partnership options to the detriment of the global effort to fight AIDS. That problem would only be heightened by extending such a requirement to U.S.-based groups. Moreover, since compelling an American private-sector organiza-

tion to take an antiprostitution stance (or any ideological position) would be tantamount to imposing a "gag rule" in reverse, such a move could have far-reaching legal and programmatic implications. If left unchallenged or ruled constitutionally permissible, it would stand as a powerful incentive for expansion of the "Mexico City" antiabortion gag rule—currently being imposed only on foreign NGOs—to U.S.-based recipients of funds for overseas family planning efforts.

Trafficking and Sex Trafficking

Trafficking in human beings is a global phenomenon that involves kidnapping and selling or otherwise coercing individuals into sweatshop labor, farm labor, household domestic labor, drug smuggling or prostitution. It often involves transporting people from one country to another, which increases the vulnerability and isolation of its victims. While human trafficking is age-old, it apparently has been on the rise in recent years. "These days," writes Tara McKelvey in *The America Prospect*, "human trafficking follows roughly the same routes as weapons and narcotics. Left unchecked, human trafficking will become the most lucrative of the[se] three criminal industries within ten years."

Unquestionably, sex trafficking—which is most widespread in South Asia, where large commercial sex industries thrive—is an extremely serious aspect of the larger issue. And, since foreign sex tourists are particularly interested in finding younger and younger sex partners

(partly in hopes of minimizing their risk of exposure to HIV), child sexual exploitation is a major component of the problem. By their own perceptions, however, not all women in prostitution have been trafficked. Many consider themselves to have become commercial sex workers by choice and participate actively in the movement for sex workers' rights, advocating for protections against abuse and exploitation, and for health care and other economic benefits.

Combating sex trafficking, then, is a complicated matter. The moral imperative to rescue women from brothels is compelling when young girls are involved or there is clear evidence of duress, but "rescuing" adult women from brothels against their will can mean an end to their health care and economic survival. In countries and situations in which basic survival is a daily struggle, the distinction between free agency and oppression may be more a gray area than a bright line. Indeed, the Center for Health and Gender Equity observes that sex workers who resist rescues may not do so because they would prefer commercial sex as a lifestyle, other things being equal, but because there are no "viable economic alternatives to feed and clothe themselves and their families."

Sex Trafficking and Prostitution

Conservative U.S. groups that have entered the larger discussion around trafficking through the issue of sex trafficking, such as the Family Research Council, Concerned Women for America (CWA) and The Salvation Army, dismiss these complexities. Prostitution, as CWA asserts, is by definition "a form of slavery" and, as such, must be abolished. According to Jennifer Block, writing in *Conscience*, U.S. Ambassador John Miller, director of the State Department's Office of Monitoring and Combating Trafficking in Persons, credits conservative organi-

zations' activism for the political momentum that led to the enactment of the Trafficking Victims Protection Act (TVPA) in the final year of the Clinton administration. It is no surprise, then, that the Bush administration is interpreting and implementing the TVPA by placing a priority on combating sex trafficking and, by extension, abolishing prostitution.

By December 2002, the administration had adopted a firm stance against legalized prostitution on the grounds that "prostitution is inherently harmful and dehumanizing" and that it "fuel[s] the growth of modern-day slavery by providing a façade behind which traffickers for sexual exploitation operate." Accordingly, organizations "advocating prostitution as an employment choice" or those that "advocate or support the legalization of prostitution" were deemed to be "not appropriate partners" for U.S. antitrafficking grants.

Congress wrote this policy into law when the TVPA was reauthorized in 2003 and took it a step further. NGOs seeking funds under the TVPA must now affirmatively state that they do not support "the legalization or the practice of prostitution." Also in 2003, Congress added a similar requirement to the U.S. Leadership Against HIV/AIDS, Tuberculosis and Malaria Act, which governs the U.S. global HIV/AIDS program.

Stopping Prostitution to Stop HIV

Abolitionists such as the Heritage Foundation's Joseph Loconte strongly defend these requirements. The provision of aid or services to sex workers by NGOs that do not at that same time at least oppose prostitution "legitimize[s] the commercial sex industry," Loconte argues. Moreover, it only serves to sanction "death on the installment plan for those engaged in these behaviors."

For her part, Holly Burkhalter of Physicians for Human Rights asserts that forcing an indigenous NGO in a developing country to oppose prostitution before it can qualify for U.S. government support to fight HIV/AIDS "could end up defunding some of the most successful HIV/AIDS prevention services and empowerment strategies for women in the sex industry." In an op-ed in *The Washington Post*, Burkhalter writes: "One such group's representative, describing her effort to help Bangladeshi brothel workers acquire the right to wear shoes or sandals outside of brothels—a simple dignity denied them by local custom—stated: 'How can we help these beaten down, marginalized women organize themselves to achieve such victories if we are publicly opposing what they do to earn money?'"

Yet, the antiprostitution litmus test is not applied only to NGOs working directly with sex workers. Indeed, the provision in the antitrafficking law applies whether an NGO is involved in a program to stop forced labor or a program to stop forced sex; the language in the HIV/AIDS law is equally sweeping, applying to any kind of HIV/AIDS prevention, treatment or care program. NGOs must oppose prostitution and sex trafficking (but no other kind of trafficking) whether they promote condom use among sex workers or whether they work only in hospitals to prevent HIV transmission from pregnant women to newborns. In other words, in order to join the U.S. anti-HIV/AIDS effort, all NGOs must formally enlist in the U.S. government's antiprostitution campaign.

A Gag Rule in Reverse

In spirit, these antiprostitution provisions bear a strong resemblance to the antiabortion gag rule imposed on indigenous overseas organizations receiving U.S. international family planning funds. The former compels foreign NGOs to agree, at least on

paper, with the U.S. government's opposition to prostitution in exchange for global HIV/AIDS or antitrafficking funds. The latter forces foreign NGOs, in return for U.S. family planning aid, to remain silent if they disagree with the administration's opposition to abortion. It is probably no coincidence that Rep. Chris Smith (R-NJ) was the prime congressional agitator for both policies—and Smith may have something to do with the administration's apparent decision to up the ante even further.

In writing the antiprostitution provisions into both the HIV/AIDS law and the TVPA, Congress did not differentiate between U.S. and indigenous NGOs. Nonetheless, the Justice Department initially determined that it would not apply the provisions against U.S.-based groups, because to do so likely would violate a body of law that precludes the government from conditioning the receipt of a government benefit on a U.S. citizen's willingness to sacrifice a constitutionally protected right, specifically the right of free speech. Indeed, it is for this reason that the current Bush administration, as well as the previous Bush and Reagan administrations, never extended the Mexico City global gag rule on abortion to U.S.-based NGOs receiving international family planning funds. (That policy, which exists in the form of an administrative policy as opposed to statutory law, prohibits U.S.-based NGOs from transferring U.S. international family planning aid to indigenous organizations overseas that use other, non-U.S. funds to provide abortion counseling or services, or that engage in abortion rights advocacy with their own funds.)

Last summer, presumably after some prodding from social conservatives, administration officials changed course and began laying the groundwork for applying the antiprostitution litmus test to all NGOs, per the letter of the law. It is now expected

that the administration will begin doing so as it awards global HIV/AIDS and antitrafficking funds later this year. In the case of the HIV/AIDS program specifically, U.S. groups will be required to have a policy against legal prostitution and sex trafficking in order to be eligible for any of the approximately \$3 billion the U.S. is slated to spend overseas this year to prevent HIV infection or to treat or care for people living with HIV/AIDS. In effect, U.S. groups will be subject to a gag rule in reverse.

Future Implications

Although the anticipated administration action would appear to rest on shaky constitutional ground, the

administration and its ideological allies may hold the upper hand, politically speaking. U.S.-based organizations that currently receive either antitrafficking or HIV-related funding and might want to resist or challenge the expanded interpretation of the law on both constitutional and programmatic grounds—including major universities as well as private health and development groups—will run the risk of being labeled as “pro-prostitution.” Moreover, they risk finding themselves added to this administration’s “blacklist” of organizations that, on ideological grounds, do not qualify for U.S. government support.

However understandably difficult resistance might be, the legal and political implications for the international family planning program are clear. If the expected expansion of the antiprostitution requirement stands—either because enough U.S. NGOs accede to it or a legal challenge is unsuccessful—it would pave the way for the administration to extend the Mexico City global gag rule to U.S.-based groups receiving international family planning funds. Though there is no hard evidence at this point that any attempted change in that policy is imminent, the “test case” is on the immediate horizon. ☹



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