

22. USAID, *Trafficking in Persons: The USAID Response* (Washington DC: USAID, 2003).
23. See section 101 of *United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act*. See also J. Raymond, "Profiles and Consequences of Sexual Exploitation" in J. Raymond (see note 21), pp. 54-74.
24. CHANGE, *Working with Women in Prostitution: A Critical Dimension of HIV Prevention* (CHANGE, 2003).
25. USAID, *Acquisition and Assistance Policy Directive*, From the Director, Office of Procurement, Issued: January 15, 2004, AAPD 04-04.
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## INTERROGATING THE ABSENCE OF HIV/AIDS INTERVENTIONS FOR MIGRANT SEX WORKERS IN SOUTH KOREA

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With a focus on HIV/AIDS prevention, this commentary discusses the marginalization of migrant sex workers' right to health by both the state and non-governmental organizations (NGOs) in South Korea (henceforth "Korea"). It first examines how state policy on migrant workers and migrant entertainers, in the sex industry in particular, engenders human rights violations on multiple fronts. It then explores how relevant NGOs fail to intervene because of both ideological and practical preoccupations. The avid concern of anti-prostitution NGOs to position migrant women as "victims of trafficking," together with the lack of intervention from HIV/AIDS NGOs and migrant workers NGOs, effectively ignores the health needs of these women, relegating them to the "regulation and deportation" approach of the government, exacerbating their vulnerability, and violating their basic rights to health information and services. In order for HIV/AIDS interventions to be integrated into NGO advocacy and state policy for migrant sex workers, it is essential that both NGOs and the state adopt a rights-based approach to sex work, migrant issues, and HIV/AIDS for both Koreans and non-Koreans. This analysis draws in part on the author's fieldwork

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research with Filipina entertainers in U.S. military camp towns in South Korea (*kichich'on*) in 1998-2001.

### Filipina Entertainers and Migrant Workers in Korea

Since 1996, the Korea Special Tourism Association (KSTA), formed by *kichich'on* club owners, has arranged for foreign women entertainers to work in *kichich'on* clubs. U.S. military forces have been stationed in Korea since the Korean War (1950-53) as part of a policy to contain communism. The United States Forces in Korea (USFK) currently has a force of 37,000 troops. The military presence has created a demand for female company and sexual services around the bases, particularly clubs with female entertainers. In the 1990s, Korea's rapid, two-decade economic advancement led to a shortage of Korean women willing to serve these soldiers because of the stigma attached to the work as well as its relatively low income. To fill these vacancies, foreign women were brought in legally on "arts and entertainment" (E-6) visas.<sup>1</sup> Their contract period is usually for one year and most of them leave after the contract period ends. The number of Filipina entertainers in 1999 was estimated at 600.<sup>2</sup>

Foreign entertainers enter Korea within the larger context of labor importation to fill vacancies in "dirty, dangerous, and difficult" jobs abandoned by Korean nationals. Since 1993, foreign laborers have entered Korea for legal employment via the government's "industrial trainee system" (on D-3 visas).<sup>3</sup> These trainees get less than half the wages of their Korean counterparts, cannot join unions, and have no insurance coverage. Many trainees eventually stay in Korea illegally, leading to abuses by both employers and the state, which regularly perpetrates raids on illegal immigrants and deports them. In 2003, about 300,000 migrant laborers, or 80% of the total migrant laborers in Korea, were illegally employed.<sup>4</sup> After much lobbying and debate in the legislature, the Korean government finally moved to replace the industrial trainee system with a work permit system. To begin in August of 2004, this work permit system will grant foreign workers the same labor rights as Koreans.<sup>5</sup> These reforms will not benefit entertainers (E-6 visa holders), who

are considered a distinct immigration category in spite of the similarities of their structural conditions to that of other migrant workers.

"Entertainers" in *kichich'on* are frequently assumed to be "prostitutes" because of the sexually ambiguous nature of the clubs. It is important to note that these entertainers do not necessarily engage in sexual intercourse with their customers. They provide company to a customer for the price of a "ladies' drink" (an overpriced beverage at \$10 US dollars). Customers may bring a woman into the "VIP room" (a private room in the club) with her consent, or they may pay a "bar fine" to take a woman outside the facilities. Whatever happens in the VIP room or on a "bar fine" outing is subject to negotiation between the woman and the customer—or, in the words of many Filipina entertainers, "it's up to you." As migrants and entertainers, these Filipinas enjoy little protection of their rights as laborers; seizure of passports, withholding salaries, and arbitrary penalties are all common. Yet these migrant women know of no formal channels of redress for such abuses.

From the entertainer's perspective, the number of regular customers she has often translates into increased material and social support. The rhetoric of love is heavily deployed in the clubs by both the entertainers and the customers, each for their own purposes. Distinction between customers and boyfriends becomes blurry in the process, and the exchange of money and sex frequently takes place within the paradigm of romance rather than commerce. This often gives the women greater leverage in negotiations with customers, empowering them as they deploy the romantic ideology to delay or avoid sex and to extract money from boyfriends in the name of love. On the other hand, however, this ideology can often be a compromising condition for the women, particularly in terms of condom use because of the "trust" associated with romantic love.

### Mandatory STD/HIV Tests

As of September 2003, Korea had a low HIV prevalence rate of 0.01%, or 2,405 HIV/AIDS cases out of the total population of 47,000,000.<sup>6</sup> HIV/AIDS has been consistently por-

trayed in the Korean media as a "foreign disease" contracted from foreigners and spread domestically by homosexuals and prostitutes. Such representations are also found in government reports and policy. For example, the National Institute of Health continues to distinguish between "domestic infection" of HIV and "overseas infection" of HIV in their statistics (though domestic infection overtook overseas infection in 1994).<sup>7</sup> Both foreigners who reside in Korea for more than a year and foreign entertainers entering Korea need to prove their HIV status; those found to be HIV-positive are deported.

The presumption that foreigners are sources of HIV infection has resulted in increased surveillance of migrant workers. Since 1994, migrant workers have been required to take an obligatory HIV test upon arrival.<sup>8</sup> Test administration, however, appears to have been lax. In 2000, a legislator brought attention to the fact that many foreign entertainers entered Korea without the requisite certification of their negative HIV status.<sup>9</sup> In the wake of the extensive media coverage of this allegation, the measure was reinforced, and all Filipinas now entering Korea on an E-6 visa are required to get a medical certificate attesting to their HIV status.

Though prostitution is illegal in Korea, mandatory STD (and eventually HIV) testing of women registered as "business girls" was introduced for kichich'on women in 1971 (under the joint supervision of the Korean government and the USFK)—a policy implemented not for the women's welfare but rather for the benefit of the Korea-US relationship by keeping American soldiers healthy.<sup>10</sup> Mandatory testing for STDs and other infectious diseases was soon extended nationwide in 1977 to all women engaged in the "pleasure industry" (mainly bars and clubs) and subsequently to all men and women involved in lodging, sauna, catering, and beauty industries. HIV testing of prostitutes was first introduced in October of 1986.<sup>11</sup> It is important to note that STD/HIV regulation of women in kichich'on has been much stricter than in other parts of Korea, both because of the security issues involved and the tight, coordinated organization of women in kichich'on.<sup>12</sup> Therefore, even though the health ID system (under which all individuals subject to the regular health tests were required to carry an ID that speci-

fied their test status and results) was "abolished" in 1999 on human rights grounds, it continued to apply to women in kichich'on.<sup>13</sup>

In the kichich'on STD/HIV regulation regime, foreign women are objects of surveillance rather than subjects with rights to health information and services. Clinic staff speak only Korean. Very few of the Filipinas know what tests are being administered. While treatment for STDs is provided free of charge, unlike their Korean counterparts they are not given any information on STD/HIV prevention, safer sex or contraception.<sup>14</sup> The information these women have most commonly comes from those around them: co-workers and boyfriends. Many club owners refrain from providing condoms, as it would implicate them in the stigmatized and illegal business of prostitution. Any condom use appears to be initiated by the clients; no Filipinas I met with actively purchased condoms. Furthermore, as with Korean kichich'on women, Filipinas enjoy neither access to information nor privacy rights as patients: their health registration cards are processed in Korean (which means they do not understand the records) and club owners are informed of any STDs the women have contracted (by keeping these cards after each checkup).

In guarding national borders against the AIDS epidemic, the Korean state regulates these foreign women with mandatory testing, provides no health education or counseling, and has the easy option of deportation if they test positive for HIV. These measures are thus designed to protect the state. These conditions epitomize the situation both for migrant workers and sex workers in Korea: human rights violations by the Korean state seriously exacerbate the vulnerability of women in kichich'on—particularly in relation to STD/HIV.

And yet, curiously enough, no NGO has addressed these violations.

### The NGOs

For the most part, NGOs run by Korean nationals have led the way in advocacy and research on Filipina entertainers; however, HIV/AIDS education and prevention for

these women has never appeared on their agendas.<sup>15</sup> Logically, the NGOs working independently in various relevant areas—kichich'on prostitution, HIV/AIDS, migrant workers—could form an alliance that would potentially create an empowering environment for these migrant sex workers in Korea. The absence, however, of any collaborative or independent effort to recognize these migrants' right to health exposes certain assumptions by these various actors about gender, ethnicity, and sex work.

### **Kichich'on Prostitution NGOs**

Korean women's NGOs working on the issue of foreign women in kichich'on have consistently identified these women as "victims of [sex] trafficking."<sup>16</sup> These NGOs have invoked a nationalist-feminist critique of prostitution. According to them, foreign entertainers are not only victims of militarism, capitalism and patriarchy (as is the case, they believe, with Korean kichich'on women), but also of globalization. This stance corresponds to the prominence of the anti-trafficking discourse that emerged at the 1995 Beijing Women's Conference. This ideological premise prioritizes the rescue of sex workers and the abolition of prostitution over these women's need for health information and services.

In the women's movement of Korea, the total absence of a discourse on sex workers' rights precludes any approach based on the right to health in NGO advocacy or services. The victim paradigm, which emphasizes the women's powerlessness, presumes that the need to "stop trafficking" is of paramount importance and attempts to do so by exposing abusive conditions through published reports and international lobbying. There is no critique in this paradigm of the mandatory STD/HIV tests and deportation, or the absence of health education for foreign entertainers, or suggestions to rectify these violations of migrants' right to health. The limited services provided by these NGOs are directed only at runaways and do not include women in the clubs. There is no rights-based analysis of a woman's health or working conditions.

The victim paradigm embraced by these NGOs poses an ideological obstacle to effective intervention: Since the goal is to halt the migration of women into prostitution, sugges-

tions to improve their working conditions are readily equated with condoning prostitution and trafficking and are thus considered objectionable. From her study of sex workers and NGOs in the Philippines, Lisa Law has argued that HIV/AIDS intervention projects are shaped by assumptions about women's agency. Through collaboration with international HIV/AIDS organizations, for instance, a "sex worker subject" emerged in the Philippines out of an urgent concern to empower women to protect themselves against HIV/AIDS.<sup>17</sup> The result was the formation of a rights-based approach to HIV/AIDS advocacy.

In Korea, however, none of these preconditions have been available. The victim paradigm predominates. There is no transnational collaboration between Korean NGOs and foreign agencies with a strong HIV/AIDS or sex workers' rights agenda. And a general lack of HIV/AIDS awareness persists, from which feminist-nationalist activists are not exempt. These factors combine to limit the ability of these NGOs to intervene in reducing migrant sex workers' vulnerability to HIV/AIDS.

### **HIV/AIDS NGOs**

The two main national HIV/AIDS NGOs in Korea have focused on illegal migrant workers, virtually excluding foreign entertainers in kichich'on who enter the country legally and receive regular STD/HIV testing from their activities.<sup>18</sup> Concerns that the large population of illegal migrants could constitute a serious health threat prompted local governments and NGOs to act. Free health checkups are now provided for migrant workers (legal and illegal) by some government and Red Cross clinics in areas where a large number of migrants reside (e.g., Incheon and Ansan, two main industrial areas).<sup>19</sup> Free condoms are distributed and HIV/AIDS pamphlets are now published in foreign languages.<sup>20</sup> These services and information, however, have not benefited foreign entertainers in kichich'on, who constitute a fraction of the migrant population and undergo mandatory testing in different clinics because of their location.<sup>21</sup>

The lack of activism in kichich'on on the part of HIV/AIDS NGOs may also be understood within the perceived impenetrable "foreignness" of the space, a situation

arising from the contested sovereignty over *kichich'on* between the Korean government and the USFK. This "foreignness" discourages efforts on the part of NGOs to extend their HIV/AIDS education for Korean sex workers to foreign entertainers; it also perpetuates the lack of understanding about the situation in *kichich'on* and the need for HIV/AIDS services there.<sup>22</sup> As one activist claimed, "The women are not interested and do not like any talk about AIDS."<sup>23</sup>

The spatial and social marginality of *kichich'on* entertainers, together with the fact that they are forced to undergo mandatory testing, has resulted in a lack of attention on the part of HIV/AIDS organizations, leaving any HIV/AIDS-related interventions solely within the purview of the state.

### The Migrant Workers Movement

Since its inception in the mid-1990s, the migrant workers' movement has focused on repealing the exploitative industrial trainee system in both Korean-led alliances and migrant-run organizations.<sup>24</sup> While this movement has made calls for equal pay, medical insurance, and the right to join a union as part of their demands for workers' rights, no appeals have been made against mandatory HIV/AIDS testing and deportation. Entertainers occupy a marginal space in the movement because they are not industrial trainees. Furthermore, the entertainers, who are in Korea usually for the contract period of one year, see little relevance in the migrant workers' rights movement to their lives. They see in their co-workers and customers a more concrete and effective network of support than the remote struggle for migrant workers' rights. There is little motivation for either side to attempt to weld greater solidarity.

Entertainers are rarely mentioned in migrant workers' meetings and statements except in rhetorical protests against "trafficking" and "prostitution"—as in a statement objecting to young women being "beaten and then forced into prostitution in brothels near the US military bases."<sup>25</sup> These migrant NGOs have made no policy suggestions and have provided no

services that cater to the specific needs of the entertainers, not to mention the lack of any attempts to support the empowerment of these entertainers as they work for HIV/AIDS prevention. In fact, the central distinction here—between migrant workers who demand their rights and powerless women in prostitution who need to be rescued—precludes any recognition of sex work as "labor," rules out an agentive understanding of sex workers, and effectively excludes entertainers from the migrant workers movement.

### Conclusion

In the late 1990s, both the Korean state and Korean NGOs were operating in a difficult environment. The country was struggling through the Asian economic crisis, a situation that further diminished already scarce resources for migrants regarded as second-class beings in the nation. More importantly, the two dominant frameworks for understanding migrant women involved in sex work—either as trafficked victims who need to be rescued or as foreign prostitutes whose health must be adequately managed by the state—have both prevented a rights-based analysis of these women's situation and have thwarted the development of effective interventions to support them.

A paradigm shift in the way these migrant women's situation is understood is essential to stop the violations of their human rights. Besides recognizing migrants' rights as human rights, it is crucial to depart from a conception of these women as either "victims" or "prostitutes." The ability of NGOs and the state to respect an individual's choices and resourcefulness to engage in sex work will allow for the development of "interventions to prevent work-related health risks with a rights-based, participatory approach with a goal to promote the health of sex workers and not just a way to slow down the dissemination of HIV."<sup>26</sup>

For NGOs in particular, recognition of these women as migrant workers—and not as *victims*—could help to create an enabling environment that would allow them to be more involved in shaping their own lives. The incorporation of

risk education, sexual assertiveness, and peer support into NGO interventions for these women could help to drastically reduce their potential exploitation and abuse.

The current absence of HIV/AIDS interventions for migrant sex workers is not merely a health issue but reflects larger human rights violations of the disenfranchised in Korea. The lack of human rights protection for these women points to the need for a comprehensive rights-based approach to sex work, migrant workers, and HIV/AIDS by both NGOs and the Korean state.

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### References

1. E-6 visas have been issued to foreigners engaged "in art activities such as music, art, literature and so on, and such activities as entertainment, performance, play, sports, advertisement, fashion modelling, and other occupations corresponding to those above." Immigration Bureau, Ministry of Justice, "Visa Issuance Procedure," 2002. Available at: [www.moj.go.kr/english/function/function06\\_03.php](http://www.moj.go.kr/english/function/function06_03.php), last accessed 5/12/04.
2. This is an estimate from my own fieldwork when I visited the clubs. The current number is more complicated and unclear as Filipinas are entering the local entertainment industry as well and not only on E-6 visas.
3. The D-3 visa, offered for up to two years, "is available to individuals who will participate in a formal training program which must be related to" various types of industrial companies in the Republic of Korea. Immigration Bureau (see note 1).
4. "New Plan Improves Workers' Rights," *Korea Herald*, 8/9/03.
5. See note 4.
6. "HIV/AIDS Statistics in Korea," [www.kaid.or.kr](http://www.kaid.or.kr), last accessed 5/7/04.
7. Statistics in 1993 showed for the first time that infection via contact with nationals (44.7%) surpassed that with foreigners (43.3%). *Donga Ilbo*, 7/31/94.
8. "AIDS Test for Migrant Workers Mandatory—Ministry of Labour," *Kookmin Ilbo*, 8/9/94.

9. "'Hole' in Immigration Office's Regulation of AIDS," *Kyungghang Shimun*, 10/28/00.

10. The illegal nature of prostitution made it necessary for the government to regulate the health status of women in prostitution under a different guise. Women entertainers working in the clubs in kichich'on were required to register themselves as "business girls" with the local government before the introduction of the coercive venereal diseases tests. This registration system then became the basis for monitoring the women's STD status. The initial stage of this regulation included "mass round-ups" of women in kichich'on (including "club prostitutes, waitresses, streetwalkers...") and subsequent gynecological examinations and injections of penicillin. K.H.S. Moon, *Sex Among Allies: Military Prostitution in U.S.-Korea Relations* (New York: Columbia University Press, 1997), pp. 92-103, 128-139.

11. That the term "prostitutes" appears in a government document, in spite of the illegality of prostitution, is notable. It is used here most probably to refer to women in the "pleasure industry." Ministry of Health and Welfare, "Report by ROK Government at the UNDP Project Formulation Meeting of RAS/97/402," November 1997. Available at: [www.hivundpa-dp.net/subreg/east/koreview.htm](http://www.hivundpa-dp.net/subreg/east/koreview.htm).

12. Women's Associations in kichich'on have helped to police unregistered women. See K.H.S. Moon (see note 10), pp. 139-141. In my fieldwork, the Women's Association in Songt'an was responsible for registering newcomers, including foreign women, and giving out their health IDs. Sex workers in the local sex industry are more transient and less organized.

13. Lee Chong-gu, Head of the Department for the Prevention of Infectious Diseases, was quoted as announcing that the health ID system was abolished for "regulation reform and the promotion of human rights protection." "Health ID System Fully Abolished after 21 Years," *Hankook Ilbo*, 5/29/99. Yet regulation continued by requiring workers at designated industries to take specified tests at specified intervals on their own initiative—though they could choose between government and private clinics. Fines for non-compliance were dramatically increased for effective regulation after the abolition of the health IDs. Department for the Prevention of Infectious Diseases, "Improvement of the Health Examination Handbook Management System," Ministry of Health and Welfare Press Release, 7/7/98. Field service providers observed in 2004 that the ID system is still in place among local sex workers, but administration has been lax and varies widely between districts.

14. The targets for the promotion of HIV/AIDS prevention for foreigners of the 2003 National Institute of Health's *Management Guide for HIV/AIDS* included only industrial trainees, illegal migrants, and foreigners traveling in the country—E-6 entertainer visa holders were not mentioned at all.

15. The Archdiocesan Pastoral Center for Filipino Migrants has been providing support and services to Filipino migrant workers in Korea. Runaway Filipina entertainers have occasionally approached the center for shelter, assistance with immigration services, and mediation with

Korean employers. It does not engage in advocacy work with the Korean government.

16. These NGOs include Saewoomtuh and Korea Church Women United Counseling Center for Migrant Women Workers. For examples of their reports see Saewoomtuh, *Han'gukae kichich'on songsan p to yuipioennun p'illi pin y s ngi munjae* ("The Problem of Filipinas Employed in the Sex Industry in US Military Camp Towns in Korea") [Saewoomtuh, 2000] and Korea Church Women United, *Fieldwork Reports on Trafficked Women in Korea* [Korea Church Women United, 1999, 2000].
17. L. Law, *Sex Work in Southeast Asia: The Place of Desire in a Time of AIDS* (London: Routledge, 2000), p. 78.
18. These two NGOs, the Korea Anti-AIDS Federation (KAAF) and the Korea Alliance to Defeat AIDS (KADA), were both established in 1993.
19. The obligatory HIV test in these checkups has put off many because of the prospect of deportation. In 2002, the National Institute of Health reported that 206 HIV-positive foreigners were deported while 19 others (all men) were missing. Migrants are left with the option of avoiding the test or evading expulsion once testing positive; both options have the effect of exacerbating migrant workers' vulnerability to STD/HIV infection, to receiving needed care and support, and may result in further spread of these diseases.
20. They are published in English, Russian, Chinese, and French.
21. One may surmise that they pose much less of a health threat than the 300,000 illegal migrants roaming free in the country.
22. Staff at one of the organizations explained their perspective on difficulties in gaining access to foreign women in kichich'on and the uncooperative attitude of the Korea Special Tourism Association in facilitating their work.
23. Interview, KADA, June 2003. In my view, foreign entertainers' dislike for HIV/AIDS talk—if true—should be grounds for intervention rather than non-intervention.
24. The Korean-led alliances include the Common Committee for the Elimination of Discrimination against Migrant Workers and the Joint Committee of Migrant Workers in Korea, and the migrant-run organizations include KASAMMAKO, a Filipino labor organization in Korea.
25. "Kasamma-ko' expands fight for better treatment of migrant Filipino workers," *Korea Times*, 5/7/99.
26. I. Wolfers and N. van Beelan, "Public Health and the Human Rights of Sex Workers," *The Lancet* 361 (2003): p. 1981.

## SEXUALITY SCHOLARSHIP AS A FOUNDATION FOR CHANGE: Lawrence v. Texas and the Impact of the Historians' Brief

Daniel Hurewitz

On the last Thursday in June 2003, the United States Supreme Court struck down a Texas state law criminalizing homosexual sex, determining that the 30-year-old law violated the U.S. Constitution. The decision, *Lawrence v. Texas*, which affirmed the right of John Lawrence and Tyrone Garner to have sex at home, was a watershed moment. The next day, newspapers across the country shouted headlines like "Gay Rights Affirmed in Historic Ruling" and "Decision Represents an Enormous Turn in the Law."<sup>1</sup> Indeed, while it is not uncommon for the nation's highest court to strike down state laws and reverse the decisions of lower courts, in this case the court also overturned its own decision from 17 years earlier. In so doing, the court declared all anti-sodomy laws unconstitutional and, according to some observers, articulated one of the most significant human rights decisions in the country in nearly 50 years.<sup>2</sup>

Clearly, the implications of such a decision are widespread and multi-faceted. One set of implications, though, derives from the fact that the arguments presented to the Supreme Court—and reiterated by the justices in their decision—rested heavily on the scholarship of historians of sexuality. The historians' interpretation of the past, and particularly of the changing meaning of sodomy and sodomy laws, proved crucial to convincing the justices to go against their own precedent. Justice Anthony Kennedy's majority opinion

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