



Only Rights Can Stop the Wrongs

NSWP STATEMENT

Update on USAID v AOSI Case on Anti-Prostitution Pledge

On April 22nd 2013, the U.S. Supreme Court will listen to evidence surrounding the case named USAID v AOSI (Alliance for Open Society International). The case relates to the constitutional status of the anti-prostitution pledge that must be signed by all USAID funding recipients. This pledge is a provision within the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (known as the Leadership Act), which forces sub-grantees to explicitly oppose prostitution in order to qualify for U.S. Government funding to fight HIV and AIDS. The results of this case will have dramatic consequences for NGOs, faith-based groups, civil society, and importantly for NSWP's members, for sex workers globally.

The Leadership Act was passed in 2003 and funded the President's Emergency Plan for AIDS Relief (PEPFAR). This fund is the largest economic commitment to fighting the global HIV/AIDS pandemic and has contributed billions to worldwide efforts to saving millions of lives. However, as NSWP members are very aware, from the start PEPFAR has contained a requirement that any organisation receiving funding must pledge explicit opposition to prostitution and sex trafficking. Although the policy began under the Bush administration, it has remained in place under Obama, and it continues to force the

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organisations that receive USAID funding to explicitly oppose sex work. This requirement is forced upon organisations based in the US that often partner with programs around the world to deliver HIV prevention, treatment and care services to key affected communities and in places where HIV prevalence rates are high.

The constitutional status of this requirement has been in doubt since it began. Opponents and lower court judges have claimed that forcing funding recipients to adopt the US government position on sex work is a violation of free speech (written in the First Amendment of the US Constitution). Some sex worker-led services have already suffered funding cuts because their work is not thought to be in line with this moral stance on sex work. For example, Durjoy Nari Shangho, a service that was identified by UNAIDS as delivering “best practice” for fighting HIV amongst sex worker communities, lost funding after the international NGO that sponsored them signed the anti-prostitution pledge. If the US government is successful in the USAID v AOIS case then we will see many more sex worker-led services in the same position, where funding is removed.

The court case addresses the First Amendment and the groups involved are fighting the government on this basis. However, a wider issue is clearly of interest for NSWP members and other groups who advocate for the rights of sex workers: the vagueness of the policy can force US-based organisations to change their own funding activities whilst also encouraging organisations to avoid working with local community groups and sex-worker led services that are seen to support sex workers. To reverse the pattern of HIV infection rates by providing expert input into international programmes, it is best for sex workers to carry out their own community-based prevention, treatment and care programmes. This was recently supported publicly by UNAIDS in their



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response to the ongoing case.¹ To exclude sex workers from this process would have a very negative impact on the established relationships between sex workers and the international agencies that work together to support those living with and affected by HIV. Sex workers around the world already experience severe stigma and discrimination, which puts them at higher risk than the general population of contracting HIV whilst assisting their unequal access to treatment. To enforce this anti-prostitution agenda through US government-funded programmes only serves to increase the exclusion of sex workers from healthcare services and programs that are not developed or administered from a rights-based perspective. This anti-prostitution policy violates the health and human rights of sex workers and fundamentally restricts the global response to HIV/AIDS.

NSWP supports the Alliance for Open Society International (AOSI) in their legal battle against the US government. Furthermore, NSWP hopes that this case will lead to wider debate over the implications of maintaining a moral position on sex work that is incompatible with the realities of sex workers' lives on the issues of health promotion and HIV prevention efforts. You can follow the case by going to www.pledgechallenge.org and NSWP will continue to update its members on any rulings.

¹ http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-10_resp_amcu_junp.authcheckdam.pdf



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