

Fact Sheet

JUNE 2020

Anti-Prostitution Loyalty Oath (APLO)

What is the Anti-Prostitution Loyalty Oath?

The anti-prostitution loyalty oath (APLO) is a provision in the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (the Act) that requires all recipients of the President’s Emergency Plan for AIDS Relief (PEPFAR) funding to “have a policy explicitly opposing prostitution.”¹ The Act is a federal law that authorized billions of dollars to support both U.S. and foreign non-governmental organizations to address the global HIV and AIDS epidemic through PEPFAR.² The Act contains two related limitations on federal funding:

- No funds “may be used to promote or advocate the legalization or practice of prostitution or sex trafficking.”³
- No funds “may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.”⁴

PEPFAR has been reauthorized three times since it was created in 2003 and the APLO, or Prostitution Pledge, has been maintained in each of these laws.⁵ The APLO was challenged in the Supreme Court in 2013 and again in 2020 and was held as an unconstitutional limit on free speech when applied to U.S.-based organizations.

The APLO has been ruled unconstitutional, but only for U.S.-based organizations

<p>USAID v. AOSI, U.S. Supreme Court⁶</p>	<p>In 2013, the U.S. Supreme Court held that the APLO violates the First Amendment rights of U.S.-based NGOs since it requires funding recipients to “pledge allegiance to the Government’s policy of eradicating prostitution.”</p> <ul style="list-style-type: none"> • Congress cannot compel a U.S.-based funding recipient to “adopt a particular belief as a condition of funding”; to do so would limit the constitutionally protected right of free speech. Foreign NGOs are not protected by the U.S. Constitution’s First Amendment, and are thus not provided the constitutional right of free speech, and are required to abide by the APLO.⁷
<p>AOSI v. USAID, District Court of New York⁸</p>	<p>In 2015, the Alliance for Open Society International (AOSI) brought the U.S. Agency for International Development (USAID) back to court in order to force USAID to comply with the Supreme Court’s earlier ruling.*</p> <ul style="list-style-type: none"> • The District Court of New York held that USAID and other funding agencies must provide clear and explicit exceptions to the APLO for U.S.-based NGOs and their affiliates, and the exception language must be included in all communication between the funding agencies and the recipients in order to avoid confusion or ambiguity, which could lead to the chilling of constitutionally protected speech. • Regulations published by funding agencies must be clear and comply with the Supreme Court’s decision, so as to prevent ambiguity and needless closures of programs for sex workers.⁹

<p>USAID v. AOSI, U.S. Supreme Court (2020)¹⁰</p>	<p>In August 2019, the Department of Justice, on behalf of USAID, HHS, and CDC, filed a petition for writ of certiorari with the Supreme Court. In January 2020, the Supreme Court granted certiorari to decide “whether the First Amendment further bars enforcement of that directive [the APLO] with respect to legally distinct foreign entities operating overseas that are affiliated with respondents.”¹¹</p> <ul style="list-style-type: none"> • This decision decided who the 2013 decision applies to answered the questions: Are U.S. organizations <i>and their affiliates</i> exempt from the APLO? Or only U.S.-based organizations? • The Supreme Court decision, released in June 2020, determined that only U.S. organizations are exempt from the APLO and that because “foreign affiliates possess no First Amendment rights, applying the [APLO] to them is not unconstitutional.”¹²
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*AOSI was the named plaintiff in the case, though organizations including Open Society Institute (OSI), Pathfinder International, and Global Health Council (GHC), were also plaintiffs. Likewise, USAID was the named defendant, though the U.S. Department of Health and Human Services (HHS) and the U.S. Centers for Disease Control and Prevention (CDC) were also defendants.

The APLO is a barrier to reducing HIV infections globally

Data show that sex workers worldwide are disproportionately affected by HIV and AIDS due to their exposure to legal, social, and economic injustices.¹³ Sex workers also often face discrimination and are denied health services, including confidential HIV and AIDS counseling, testing, and treatment.¹⁴ Sex workers’ vulnerability to HIV is also exacerbated by other human rights violations, including: physical and sexual violence from clients, police officers, and intimate partners; social stigmatization; and unlawful arrest and detention.¹⁵

- The APLO reduces the effectiveness of ongoing HIV programs, promotes stigma and discrimination against sex workers, and prevents sex workers from accessing effective HIV programs and services.¹⁶
- Reductions in programs benefitting sex workers actively impede the goal of combatting HIV and preventing future infections.¹⁷
 - Behavioral interventions like condom promotion and distribution show a 70% reduction in HIV transmission, and pre-exposure prophylaxis and test and start could reduce incidence by another 40%.¹⁸
 - Increasing sex worker access to antiretroviral therapy (ART) to meet current WHO guidelines could reduce HIV infections by 34% in sex workers and their clients if structural support is also ensured.¹⁹
- The APLO often prevents sex workers’ involvement in the design, development, implementation, and assessment of HIV and AIDS programs and services, which undermines the public health best practice approach of community empowerment.²⁰ Enhancing community empowerment among sex workers is a standalone, evidence-based, technical recommendation by the WHO and the Global Network of Sex Work Projects (NSWP) among others.²¹

How does the APLO impact PEPFAR partnerships and programs?

- The conflation of ‘prostitution and sex trafficking’ and voluntary sex work by the U.S. government denies the self-determination and autonomy of sex workers, hampers bilateral and organizational collaboration, and fundamentally compromises PEPFAR’s global HIV and AIDS response.²²
- Sex workers are prioritized in PEPFAR programming as a “key population”²³ and research suggests that HIV prevention and treatment programs are more successful when they include sex worker involvement and leadership through community mobilization and peer-led approaches.²⁴ Since the APLO reduces engagement with sex workers, its existence prevents the implementation of best practices for preventing HIV infection.²⁵
- In countries receiving PEPFAR funds, national governments and local organizations tend to prioritize what PEPFAR prioritizes in their national HIV and AIDS response efforts.²⁶ The APLO prevents PEPFAR from effectively engaging with foreign organizations who provide programming for sex workers and do not have a policy explicitly opposing prostitution, which detrimentally effects PEPFAR programs.²⁷
- It is unclear what types of activities and services are prohibited by the APLO, which has led to arbitrary and unpredictable interpretations of its restrictions by PEPFAR implementing partners.²⁸ Organizations fear that their PEPFAR funding will

be at risk if they provide any services to sex workers, and so have eliminated these services from their programs.²⁹ This abandonment of programs for sex workers by recipients of PEPFAR funding is known as the “chilling effect.”³⁰

- Some organizations find that publicly opposing sex work while also providing social and health services to sex workers both further stigmatizes sex workers and is hypocritical.³¹ For this reason, sex worker-led organizations and organizations engaged in effective HIV prevention and advocacy efforts must decline PEPFAR funding if they refuse to adopt the anti-prostitution measures required by the APLO, which further contributes to the “chilling effect” and reduces the availability of sex worker-friendly services through PEPFAR.³²
- The continued exclusion of sex workers from HIV and AIDS prevention, care, and treatment programs undermines the global goal of implementing comprehensive HIV and AIDS programs to reach epidemic control.³³

About CHANGE

CHANGE is a U.S.-based nongovernmental organization that promotes sexual and reproductive health and rights as a means to achieve gender equality and empowerment of all women and girls, by shaping public discourse, elevating women’s voices, and influencing U.S. and global policies. We are guided by our vision of a world that respects, protects, and honors sexual and reproductive rights for all. Our four-pronged impact model—advocacy, research, partnerships, and communications—is grounded in and driven by a human rights framework at the intersection of multiple sectors including women’s rights, human rights, family planning, maternal health, HIV/AIDS, and gender-based violence.

Endnotes

1. United States Leadership Against HIV/ AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C. § 7601 (2003).
2. *Id.*
3. *Id.*
4. *Id.*
5. Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act, Pub. L. No. 110-293, 122 Stat. 2918 (2008); PEPFAR Stewardship and Oversight Act, Pub. L. No. 113-56, 127 Stat. 648 (2013); PEPFAR Extension Act, Pub. L. No. 115-305, 132 Stat. 4402 (2018). *See also*: Henry J Kaiser Family Foundation, PEPFAR Reauthorization: Side-by-Side of Legislation Over Time (2019), *available at* <http://files.kff.org/attachment/Issue-Brief-PEPFAR-Reauthorization-Side-by-Side-of-Legislation-Over-Time>
6. Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc., 133 S. Ct. 2321 (2013).
7. DKT Memorial Fund LTD. v. United States Agency for Int’l Dev., 887 F.2d 275, 285 (D.C. Cir. 1989).
8. Alliance for Open Soc’y Int’l, Inc., v. United States Agency for Int’l Dev., 05-cv-8209, 2015 U.S. Dist. LEXIS 12361 (S.D.N.Y. Jan. 30, 2015).
9. HHS proposed regulation: “...[R]ecipients agree that they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children.” Additionally, “this proposed rule will no longer require United States organizations receiving Leadership Act HIV/AIDS funds to have a policy explicitly opposing prostitution and sex trafficking, because of a Supreme Court decision.” 45 C.F.R. § 89.3. (2014).
10. Agency for Int’l Dev. et al. v. Alliance for Open Society Int’l, Inc., et al., 591 U.S. ____ (Jun. 29, 2020), *available at* https://www.supremecourt.gov/opinions/19pdf/19-177_b97c.pdf [Hereinafter USAID et al. v. AOSI et al., 2020].
11. Petition for Writ of Certiorari, Alliance for Open Soc’y Int’l, Inc. v. United States Agency for Int’l Dev., 19-177, (Aug. 07, 2019).
12. USAID et al. v. AOSI et al., 2020, *supra* note 10.
13. Kate Shannon et al., *Global Epidemiology of HIV Among Female Sex Workers: Influence of Structural Determinants*, 385 LANCET 55, 55 (2015); *See also* CHANGE, ALL WOMEN, ALL RIGHTS, SEX WORKERS INCLUDED: U.S. FOREIGN ASSISTANCE AND THE SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS OF FEMALE SEX WORKERS (2016), 26, *available at* http://www.genderhealth.org/files/uploads/All_Women_All_Rights_Sex_Workers_Included_Report.pdf [Hereinafter CHANGE, ALL WOMEN, ALL RIGHTS]; *See also* UNAIDS, WE’VE GOT THE POWER: WOMEN, ADOLESCENT GIRLS, AND THE HIV RESPONSE (2020), *available at* https://www.unaids.org/sites/default/files/media_asset/2020_women-adolescent-girls-and-hiv_en.pdf.
14. Michele R. Decker et al., *Human Rights Violations Against Sex Workers: Burden and Effect on HIV*, 385 LANCET 186, 199 (2014) [Hereinafter Decker et al., 2014]; Kathleen Deering et al., *A Systematic Review of the Correlates of Violence Against Sex Workers*, 104 Am. J. Pub. Health e42, e42 (2014); GLOBAL NETWORK OF SEX WORK PROJECTS, SEX WORKERS’ ACCESS TO HIV TREATMENT AROUND THE WORLD (2014), *available at* <https://www.nswp.org/sites/nswp.org/files/Global%20Briefing%20-%20Access%20to%20HIV%20Treatment%20-%20English.pdf>;

See generally Ashar Dhana et al., *Systematic review of facility-based sexual and reproductive health services for female sex workers in Africa*, 10 *Globalization & Health* 1, 1 (2014); See also Rhoda Wanyenze et al., “When they know that you are a sex worker, you will be the last person to be treated”: Perceptions and experiences of female sex workers in accessing HIV services in Uganda, 17 *BMC INT HEALTH HUM RIGHTS* (2017).

15. Decker et al., 2014 at 189-190; See also Lucy Platt, et al., *Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies*, 15 *PLOS Medicine* (2018).; See also GLOBAL NETWORK OF SEX WORK PROJECTS, *SEX WORK AND THE LAW: UNDERSTANDING LEGAL FRAMEWORKS AND THE STRUGGLE FOR SEX WORK LAW REFORMS* (2014), available at <https://www.nswp.org/sites/nswp.org/files/Sex%20Work%20%26%20The%20Law.pdf>; See generally UNAIDS, *UNAIDS GUIDANCE NOTE ON HIV AND SEX WORK, ANNEX 1: THE LEGAL AND POLICY ENVIRONMENT AND THE RIGHTS OF SEX WORKERS* (2012), available at https://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf.
16. Melissa H. Ditmore & Dan Allman, *An Analysis of the Implementation of PEPFAR's Anti-Prostitution Pledge and its Implications for Successful HIV Prevention Among Organizations Working with Sex Workers*, 16 *J. Int'l AIDS Soc'y.* 17354 (2013) [Hereinafter Ditmore & Allman, 2013]; Pathfinder International Advocacy Programs, *The Anti-Prostitution Loyalty Oath: Undermining HIV/AIDS Prevention and U.S. Foreign Policy: Factsheet* (2006), available at <http://www2.pathfinder.org/site/DocServer/HIV-AIDS3.pdf>; See also Deanna Kerrigan et al., *A Community Empowerment Approach to the HIV Response Among Sex Workers: Effectiveness, Challenges, and Considerations for Implementation and Scale-Up*, 385 *LANCET* 172, 172 (2015) [Hereinafter Kerrigan et al., 2015]; See also CHANGE, ALL WOMEN, ALL RIGHTS, *supra* note 13.
17. Chris Beyrer et al., *An Action Agenda for HIV and Sex Workers*, 385 *LANCET* 287, 301 (2014), at 294 [Hereinafter Beyrer et al., 2014].
18. Linda-Gail Bekker et al., *Combination HIV Prevention for Female Sex Workers: What is the Evidence?*, 385 *Lancet* 72, 87 (2015).
19. Beyrer et al., 2014, *supra* note 17.
20. Kerrigan et al., 2015, *supra* note 16; See also CHANGE, ALL WOMEN, ALL RIGHTS, *supra* note 13.
21. WORLD HEALTH ORGANIZATION, *IMPLEMENTING COMPREHENSIVE HIV/STI PROGRAMMES WITH SEX WORKERS: PRACTICAL APPROACHES FROM COLLABORATIVE INTERVENTIONS* (2013), available at https://apps.who.int/iris/bitstream/handle/10665/90000/9789241506182_eng.pdf?sequence=1&isAllowed=y.
22. CHANGE, ALL WOMEN, ALL RIGHTS, *supra* note 13.
23. PEPFAR, *PEPFAR 2019 ANNUAL REPORT TO CONGRESS*, (2019) 9 available at <https://www.state.gov/wp-content/uploads/2019/09/PEPFAR2019ARC.pdf>.
24. Kerrigan et al., 2015, *supra* note 16; See also Tendayi Ndori Mharadze et al., *Changes in engagement in HIV prevention and care services among female sex workers during intensified community mobilization in 3 sites in Zimbabwe, 2011 to 2015*, 21 *J Int AIDS Soc* (2013); GLOBAL NETWORK OF SEX WORK PROJECTS, *GOOD PRACTICE IN SEX-WORKER LED HIV PROGRAMMING* (2014), available at <https://www.nswp.org/sites/nswp.org/files/Global%20Report%20English.pdf>.
25. Ditmore & Allman, 2013, *supra* note 16.
26. CHANGE, ALL WOMEN, ALL RIGHTS, *supra* note 13, at 22.
27. Ditmore & Allman, 2013, *supra* note 16; and CHANGE, ALL WOMEN, ALL RIGHTS, *supra* note 13.
28. *Id.*
29. Ditmore & Allman, 2013, *supra* note 16; CHANGE, All Women, All Rights, *supra* note 13; See also CHANGE, *A POWERFUL FORCE: U.S. GLOBAL HEALTH ASSISTANCE AND SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN MALAWI* (2020), available at http://www.genderhealth.org/files/uploads/change/publications/CHANGE_A_Powerful_Force_Malawi_February_2020.pdf.
30. *Id.*
31. *Id.*
32. *Id.*
33. Pamela Das & Richard Horton, *Bringing Sex Workers to the Centre of the HIV Response*, 385 *Lancet* 3, 4 (2015); See also CHANGE, ALL WOMEN, ALL RIGHTS, *supra* note 13.