



# No more beating about the (Dubya) Bush

The impact of the PEPFAR 'Anti-Prostitution Pledge' on HIV  
prevention and treatment for sex workers



## SA HIV Clinicians Society Conference

Session title: “Moving services to the fringes: what is holding up HIV and TB care to Key Populations and other marginalised groups?”

25 November 2012

Cape Town

Marlise Richter

International Centre for Reproductive Health, Ghent University  
African Centre for Migration and Health, Wits University

# Why focus on sex work within the South African AIDS field?

- In 1998, HIV prevalence amongst different female sex worker groups in South Africa ranged between **46% -69%** (Rees et al 1998, Williams et al 1998)
- In a recent Modes of Transmission/HIV incidence modelling study, it was suggested that up to **20%** of all new infections in 2010 were sex work related
  - SW: 5.5%, SW clients: 11.5%, Partners of SW clients: 2.8% (SANAC, 2011)
- A meta-analysis emphasised the considerable risk that HIV poses to sex workers
  - They have about a **12.4**-fold higher risk of acquiring HIV infection compared to other women of reproductive age in low- and middle-income countries (Baral et al, 2012)

Why focus on the criminal law in relation  
to sex work and HIV/AIDS?

# The impact of the criminal law on sex workers' vulnerability to HIV

- Increases stigma of profession
- Limits access to health care, legal and social services
  - Access to safer sex education?
  - Access to condoms?
  - Access to STI/HIV testing and treatment?
  - Mobilisation?
- Increase exploitation and abuse of sex workers by clients, partners, brothel-owners, pimps and the police
  - Barriers to legal recourse
  - Vulnerability to prosecution and persecution increases already high stress levels and decreases well-being
- Sex workers often have no choice but to live in dangerous, squalid conditions – these conditions attract social and criminal ills
- May force sex workers to relocate often – social disintegration



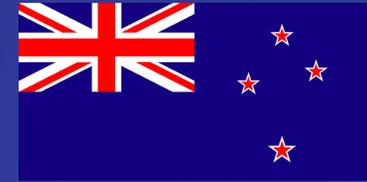
# The impact of the criminal law on sex workers' vulnerability to HIV

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Increase the risk of contracting HIV





## Where is the evidence?

- New Zealand decriminalised sex work in 2003
- Review of the impact of the law 5 years later:
  - No increase in the number of people who entered the industry (Abel, 2009)
  - Sex workers reported improved working conditions and well-being, feeling safer under the new legal framework, while being more likely to report abuse to police (NZ Ministry of Justice , 2008)
  - In general sex workers were found to practice safe sex with a very low rate of HIV incidence amongst them (NZ Ministry of Justice , 2008)



## Where is the evidence?

- A study by Harcourt et al (2010) compared the health coverage of 3 Australian cities with different sex work legal frameworks
- More Sydney sex workers reported a sexual health centre as a source of safer sex training and information
  - Sydney (decriminalised) 52%
  - Melbourne (legalised) 33%
  - Perth (criminalised) 35% ( $p < 0.001$ )
- The legal context appeared to affect the conduct of health promotion programs targeting the sex industry
- Brothel licensing and police-controlled illegal brothels can result in the unlicensed sector being isolated from peer-education and support

Health promotion practice

Article

**The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers**

# Where is the evidence?

Systematic review of HIV and STI interventions in FSWs in resource-poor settings showed that

- the combination of sexual risk reduction, condom promotion and improved access to STI treatment reduced HIV/STI acquisition in sex workers receiving these programmes, while
- structural interventions, policy change or empowerment of sex workers, reduced the prevalence of HIV and other STIs (Shahmanesh, 2008)

## **Effectiveness of interventions for the prevention of HIV and other sexually transmitted infections in female sex workers in resource poor setting: a systematic review**

Who supports  
the decriminalisation of sex work?

# Who supports the decriminalisation of sex work?

## GLOBAL REPORT

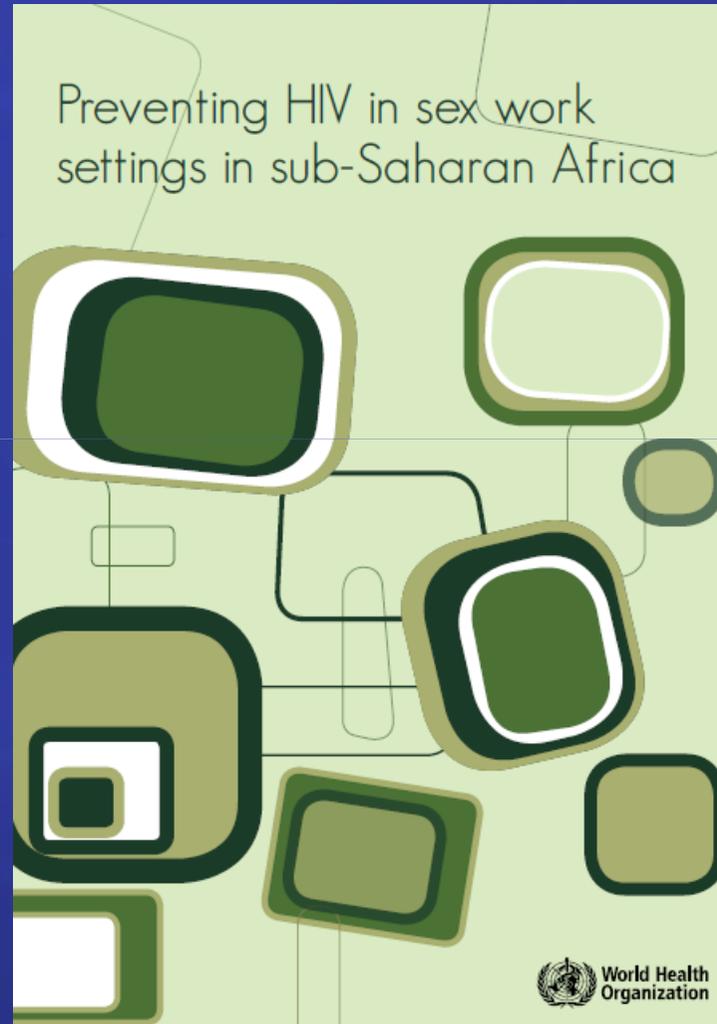
UNAIDS REPORT ON THE  
GLOBAL AIDS EPIDEMIC | 2010

The global reference book on the AIDS  
epidemic and response



English | Français | Español | Русский

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International Guidelines  
on **HIV/AIDS** and **Human Rights**  
2006 Consolidated Version

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HIV/AIDS and Human Rights  
Geneva, 23-25 September 1996

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Geneva, 25-26 July 2002

Organized jointly by the Office of the United Nations  
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OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER  
FOR HUMAN RIGHTS

**UNAIDS**  
UNITED NATIONS PROGRAMME ON HIV/AIDS

Preventing HIV in sex work  
settings in sub-Saharan Africa

World Health Organization

**GLOBAL REPORT**

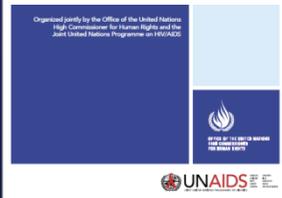
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# Who supports the decriminalisation of sex work?



## Global Commission on HIV and the Law



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# Who supports the decriminalisation of sex work?

United Nations

A/HRC/14/20



**General Assembly**

Distr.: General  
27 April 2010

Original: English

**Human Rights Council**

**Fourteenth session**

**Agenda item 3**

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Report of the Special Rapporteur on the right of everyone to  
the enjoyment of the highest attainable standard of physical  
and mental health, Anand Grover\***



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Global Commission on HIV and the Law



Preventing HIV in sex work  
settings in sub-Saharan Africa



# Who supports the decriminalisation of sex work?

## HIV & AIDS and STI National Strategic Plan 2007-2011



United Nations A/HRC/14/20

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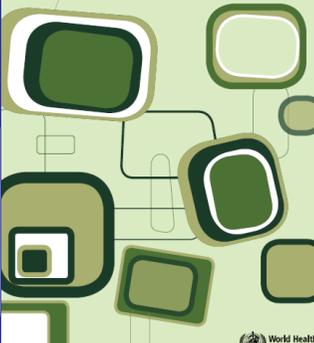
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# Who supports the decriminalisation of sex work?



## Key Populations, Key Solutions

A Gap Analysis and Recommendations for Key Populations in South Africa, and Recommendations for the National Strategic Plan for HIV/AIDS, STIs and TB (2012-2016)

Men who have sex with men  
Sex workers  
Injecting drug users  
Prisoners  
Migrant populations  
Transgender people

October 2011

United Nations A/HRC/14/20

**General Assembly**

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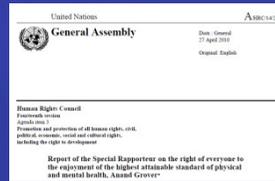
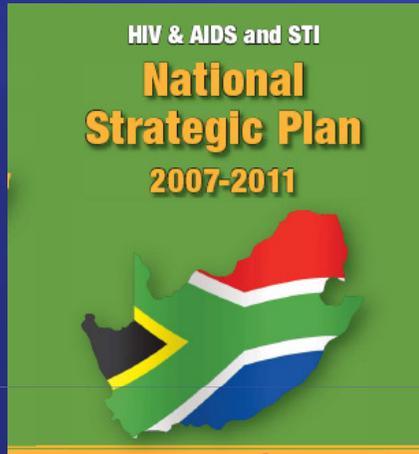
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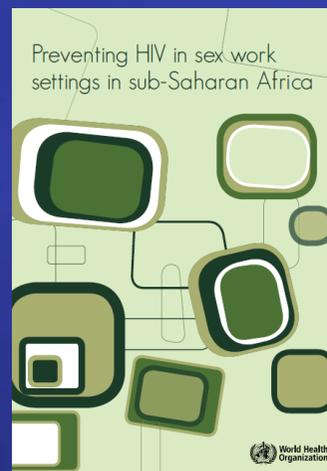
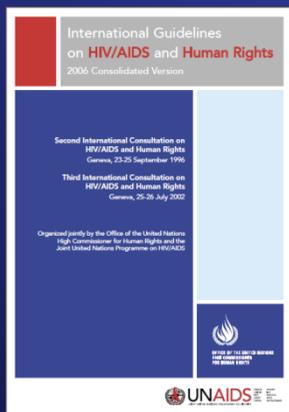
HIV and the Law

### Preventing HIV in sex work settings in sub-Saharan Africa

# Who supports the decriminalisation of sex work?



versus



## GLOBAL REPORT

UNAIDS REPORT ON THE GLOBAL AIDS EPIDEMIC | 2010

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# Who is PEPFAR?

- President's Emergency Plan for AIDS Relief (PEPFAR)
- America's initiative to diminish the impact of the global AIDS epidemic and is part of the Global Health Initiative



# What has PEPFAR achieved?

- PEPFAR reports that at the end of the fiscal year 2011, it has supported over 3.2 million people on treatment through bilateral programs globally



# What has PEPFAR achieved in South Africa?

**Table 2: PEPFAR Bilateral Funding for South Africa 2004 – 2011 (US\$ in millions)**

FY <sup>5</sup> 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2009 – 2010 ARVs	TOTAL FY 2004- 2011
\$89.3	\$143.3	\$221.6	\$397.8	\$590.9	\$561.3	\$560.4	\$548.7	\$483.7	\$120.0	\$3,717.0

3.7 billion US dollars (ZAR 29.7 billion<sup>4</sup>)



Source: Partnership Framework Implementation Plan (2012)

# What has PEPFAR achieved in South Africa?

## **Saving Lives: PEPFAR Program Results**

Progress achieved in South Africa through direct PEPFAR support during fiscal year (FY) 2011:<sup>1</sup>

**1,139,500** individuals receiving antiretroviral treatment

**2,400,000** HIV-positive individuals who received care and support (including TB/HIV)

**556,600** orphans and vulnerable children receiving support

**720,100** pregnant women with known HIV status received services to prevent mother-to-child transmission of HIV (PMTCT)

**236,100** HIV-positive pregnant women received antiretroviral prophylaxis for PMTCT

**6,850,200** individuals received counseling and testing

## But, what is the 'PEPFAR Anti-Prostitution Pledge'?

“The pledge is an unconstitutional law passed by Congress in 2003 that requires all groups participating in the PEPFAR program to pledge their opposition to prostitution. The law requires participating groups, most of which are independent nongovernmental organizations (NGOs), to adopt the government’s point of view on prostitution and to censor their speech related to sex work even when using private funds. The pledge takes aim at some of the most effective programs for combating HIV, such as those that organize sex workers and advocate for legal changes necessary to promote HIV prevention among vulnerable groups.”



- Rebekah Diller  
Brennan Center for Justice at  
the New York University School of Law

# What is the 'Anti-Prostitution Pledge'?

According to the USA's 'Leadership Act' (2003) all recipients of PEPFAR money have to sign an agreement with PEPFAR that commits them to the following:

- “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.”
- “No funds . . . may be used to promote or advocate the legalization or practice of prostitution or sex trafficking”

Why is the Pledge a problem?

## i.) Muddled thinking: conflation of sex work and trafficking

- **Sex work** relates to adult, consensual sex and is a livelihood strategy or a job
- **Trafficking** is similar to sexual slavery
- According to the United Nations definition of trafficking, three conditions have to be met before a case of trafficking can be established :
  1. The person must be moved or transferred, harboured or received;
  2. There must have been some form of coercion or deception involved; and
  3. The actions should be for the purposes of exploitation

## i.) Muddled thinking: conflation of sex work and trafficking

- **Sex work** relates to adult, consensual sex work, often as a strategy or a job
- **Trafficking** is similar to sex work but involves coercion

Sex work and trafficking is definitely not the same thing

- As a result of the conflation of sex work and trafficking, three elements of trafficking can be identified:
  1. The person must be moved or transferred, harboured or received; and
  2. There must have been some form of coercion or deception involved; and
  3. The actions should be for the purposes of exploitation

## ii.) Direct and 'chilling' effects on organisations working with sex workers

- MSF clinic in Cambodia closed after raids “by US-funded anti-trafficking groups, sex workers experienced severely restricted mobility, resulting in limited access to health care and a reduced ability to earn a livelihood.” (Masenior 2007; Busza, 2006)

## ii.) Direct and 'chilling' effects on organisations working with sex workers

### Global Network of Sex Work Projects criticism:

- No clear guidance about what activities are forbidden and permitted for HIV prevention with sex workers
- Enforcement has been erratic
- Many grant recipients have censored themselves because they did not want to lose funding
- Some grant recipients have stopped supporting sex worker organisations as part of their programming, and have ceased delivering HIV services to sex workers

## ii.) Direct and 'chilling' effects on organisations working with sex workers

### Global Network of Sex Work Projects :

- The pledge has made it difficult to know how sex workers are affected by HIV/AIDS and which programmes are effective. This is because some organisations have been discouraged from using the term 'sex worker', adopting vague terms such as 'vulnerable women' or 'MSM'
  - While it is difficult to identify which programmes work with sex workers, it is close to impossible to evaluate HIV programming for sex workers
- Many organisations have suppressed information about their successes in working with sex workers because of a justified fear of investigation by anti-prostitution conservatives
- Some organisations have dropped sex work projects as partners

# Case Study: Hillbrow



- The Wits Reproductive Health and HIV Institute (WRHI) initiated female sex worker-specific health services in Hillbrow in 1996 (Sibanyoni et al., 2012).
- Over the last 16 years, their services to sex workers have expanded and it currently provides TB, HIV and PAP smear screening, referrals, and other sexual and reproductive health care services
- The programme employs nurses, community health care workers and sex worker peer educators, and includes mobile outreach to hotels.
- Supported the establishment of a branch of Sisonke - a sex worker-lead CBO in Hillbrow
- Has received PEPFAR money since 2003 and was able to expand its services to sex workers

# So, what is the problem?

- Until recently, WRHI's services were the only sex work-specific health care available in South Africa
- WRHI's services are very popular with sex workers (Richter et al 2008)
- The institution has amassed information on sex worker health problems due to structural violence, and health care staff has first-hand knowledge of the impact of the criminal law on sex workers:
  - Sex workers' increased risk of HIV in an inner-city context
  - Physical abuse by police, by partners and clients
  - Client insistence on unprotected sex
  - Rape by police and clients
- WRHI voices would carry particular authority on the public health implications of the criminalisation of sex work, and the urgent need to remove the criminal law
- But these voices are effectively silenced by the PEPFAR Pledge
  - In 2002, one of the Institution's doctors provided expert testimony in a Constitutional Court case in which the criminal law on sex work was challenged (St vs Jordan 2002 (6) SA 642 (CC))
    - Under the current PEPFAR obligations, this will not be possible
    - In the context of current debates on law reform of sex work –and those looming in future - WRHI will not be able to present input or take a particular view on the matter

# What other organisations receive PEPFAR funding in SA?

PEPFAR has direct funding agreements with more than 120 prime implementing partners, including SAG, parastatals, non-governmental organizations, unions, private entities, and universities. Approximately 10% of PEPFAR's budget directly funds and provides technical assistance to several national departments and parastatals.

# What other organisations receive PEPFAR funding in SA?

- Not many organisations mention 'sex work' as part of their work plans – these do:
- **Population Services International**
  - "Higher risk populations such as prisoners, sex workers, and men who have sex with men are targeted when possible"
- **Medical Research Council**
  - "Primary target populations are high-risk vulnerable populations, (including IDUs, sex workers, and MSM), and organizations that provide service to these populations."
- Some specifically exclude 'sex work':
- **Salesian Mission**
  - "The target population is adolescents, teachers, religious leaders and most at risk population which will include the street youth, persons who engage in transactional sex, but who do not identify as persons in sex work and incarcerated populations."

# What other organisations receive PEPFAR funding in SA?

- BroadReach Health Care
- Child Welfare of South Africa
- EngenderHealth
- Foundation for Professional Development (FPD)
- Futures Group
- The Hospice and Palliative Care Association of South Africa (HPCA)
- National Health Laboratory Service (NHLS)
- Human Science Research Council of South Africa (HSRC)
- Pathfinder International
- Right to Care
- Soul City
- South African Business Coalition on HIV and AIDS (SABCOHA)
- Aurum
- CARE
- Family Health International Centre
- Health Development Africa
- Johns Hopkins University Center for Communication Programs (JHUCCP)?
- Dept of Health, Education, Correctional Services, Defence?

# Public health and being "attorneys of the poor"

## Paul Farmer:

- “Pioneers of modern public health during the nineteenth century, such as Rudolph Virchow, understood that epidemic disease and dismal life expectancies were tightly linked to social conditions
- By insisting that our services be delivered equitably, even physicians who work on the distal interventions characteristic of clinical medicine have much to contribute to reducing the toll of structural violence.
- The poor are the natural constituents of public health, and **physicians**, as Virchow argued, **are the natural attorneys of the poor.**”



Source: Farmer et al (2006)

# Public health and being "attorneys of the poor"

- South Africa has a history of health care providers speaking out against human rights violations, unethical practices, the impact of the law on the marginalised, and the need for law and policy reform:
  - Steve Biko case and other apartheid medicine cases
  - Minister of Health vs TAC, Haroon Saloojee and the Children's Rights Centre
  - AIDS denialism
- The PEPFAR Pledge effectively prohibits a number of individuals from doing similar and could be likened to the problem of "Dual Loyalty"

# Dual Loyalty

- “The International Dual Loyalty Working Group” defines Dual Loyalty as  
“simultaneous obligations, express or implied, to a patient and to a third party, often the state”
- World Medical Association’s International Code of Medical Ethics:  
“A physician shall be dedicated to providing competent medical service in full professional and moral independence, with compassion and respect for human dignity. A physician shall act in the patient’s best interest when providing medical care. A physician shall owe his/her patients complete loyalty and all the scientific resources available to him/her.”

# Reactions: Brazil

- Brazil's National STD and AIDS Program refused to adopt the Pledge and turned down \$40 million from USAID for HIV prevention activities.
- Pedro Chequer, then Director of the National STD and AIDS Program stated that

“Sex workers are part of implementing our AIDS policy and deciding how to promote it...They are our partners. How could we ask prostitutes to take a position against themselves?”



# Reactions: USA court case

- ▶ May 2006, two U.S. District Courts determined that the oath required of grant recipients by the U.S. government violated the First Amendment [free-speech] rights of the plaintiff organizations, the Alliance for Open Society International, Pathfinder, and DKT International.

# Reactions: USA court case

The case was taken to the USA's Federal Appeals Court which confirmed the decision in July 2011



Changing foreign policy. Changing women's lives.

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**Women's Health Rights Advocates Applaud Court Ruling Against Bush-era HIV/AIDS Policy Against Sex Workers**

*Center for Health and Gender Equity Calls on Obama Administration to Stop Enforcing Anti-Prostitution Pledge*

WASHINGTON, July 6, 2011—The Center for Health and Gender Equity (CHANGE) applauded today's [decision by a federal appeals court](#) that the United States government cannot require U.S. organizations that receive U.S. foreign assistance to fight HIV/AIDS globally to denounce prostitution. Serra Sippel, president of CHANGE, welcomed the court's decision and stated that the Obama administration, "should immediately stop enforcing this self-defeating policy against U.S.-based and foreign organizations."

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While good news for U.S. organizations, the decision does not apply to or "release" subcontractors/subgrantees working on the ground in other countries

## Ex-AIDS chief in escort flap called hypocritical

Backed US policy that forbids aid to help prostitutes



Less than two years ago, President Bush asked Randall L. Tobias (above) to overhaul the way overseas aid is given.

By John Donnelly

Globe Staff / April 29, 2007

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WASHINGTON -- Randall L. Tobias, the Bush administration official responsible for foreign assistance who resigned late Friday because of his use of an escort service allegedly involved in prostitution, was ridiculed as a hypocrite yesterday because he supported US policies that forced overseas organizations not to help prostitutes. (Full article: 1007 words)

2007: Randall Tobias U.S. administration's foreign aid chief who was responsible for implementation of the anti-prostitution pledge, resigned over allegations that he had used an escort service.

# PEPFAR Changes

- The original PEPFAR legislation was drafted under the leadership of George W. Bush whose approach to HIV/AIDS was strongly influenced by right-wing, conservative, religious values.



# Other peculiar PEPFAR requirements

- ▶ Original PEPFAR legislation required that:
  - one-third of all funds for prevention be directed towards abstinence-until-marriage programmes
  - IDU programmes could not adopt Harm Reduction components
  - Abortion policy barred any foreign organization receiving U.S. foreign assistance from using its own funds or funds from other donors to:
    - perform abortions;
    - advocate for the liberalization or decriminalization of abortion in laws and policies;
    - or provide information, make referrals, or counsel women on the procedure—even in countries where abortion is legal.



# PEPFAR Changes

- Some of the original provisions instituted by Bush have been changed:
  - Abortion limitation provisions were taken out by Obama in January 2009
  - Abstinence-only requirements replaced a new requirement that a minimum of 50 percent of funds for prevention of sexual transmission be allocated to "behavior change" as defined by Congress
  - IDU programmes can now include Harm Reduction components (July 2011)



# PEPFAR Changes?

- But the PEPFAR Anti-Prostitution Pledge still stands



# Conclusion

- Since 2004, PEPFAR's support of AIDS programmes in South Africa has been remarkable and far-reaching, and has saved millions of lives
- Yet, the existence of the Anti-Prostitution Pledge has been a travesty since its enactment in 2003 and creates an unethical obligation in the form of 'Dual Loyalty' for health and other AIDS workers
- In addition, it is anomalous and disgraceful that this Pledge is allowed to stand in Africa and elsewhere, when it has been struck down as unconstitutional in the USA and repealed for organisations working within the USA.



# Conclusion

- A number of organisations in South Africa, Africa and Asia are bound by the PEPFAR Pledge and may not be able to risk speaking out against its requirements
  - While governments are not bound by it, it surely has a chilling effect (R30 billion's worth and millions of lives dependant on ARVs)
- This places a greater responsibility on those of us who can, to demand the repeal of the Pledge
- Therefore: this conference should resolve to reject the moralistic, counter-evidentiary and ideology-based requirements of the PEPFAR anti-prostitution pledge and urge PEPFAR to remove these provisions, and to move to evidence-based policy on sex work and HIV

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