No. 12-10

IN THE
Supreme Court of the United States

AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL.,
Petitioners,

v.

ALLIANCE FOR OPEN SOCIETY
INTERNATIONAL, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* SECRETARIAT OF THE JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS SECRETARIAT) IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

The Joint United Nations Programme on HIV/AIDS ("UNAIDS") leads and inspires the world to achieve its shared vision of zero new HIV infections, zero discrimination and zero AIDS-related deaths. UNAIDS unites the efforts of the UNAIDS Secretariat and eleven United Nations ("UN") organizations ("UNAIDS Cosponsors"),[2] and works closely with global and national partners to maximize results for the AIDS response.

UNAIDS is governed by the UNAIDS Programme Coordinating Board comprised of representatives of twenty-two governments from all geographic regions, the UNAIDS Cosponsors, and five representatives of nongovernmental organizations, including networks of people living with HIV.

UNAIDS supports the implementation of the declarations on HIV and AIDS adopted by the three

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for petitioners and respondents consented to the filing of this *amicus* brief by letters dated April 1 and March 29, 2013, respectively.

[2] The eleven UNAIDS Cosponsors are: the Office of the United Nations High Commissioner for Refugees ("UNHCR"); the United Nations Children's Fund ("UNICEF"); the World Food Programme ("WFP"); the United Nations Development Programme ("UNDP"); the United Nations Population Fund ("UNFPA"); the United Nations Office on Drugs and Crime ("UNODC"); the United Nations Entity for Gender Equality and the Empowerment of Women ("UN Women"); the International Labor Organization ("ILO"); the United Nations Educational, Scientific and Cultural Organization ("UNESCO"); the World Health Organization ("WHO"); and the World Bank. The present brief is filed solely on behalf of the UNAIDS Secretariat.

sessions of the UN General Assembly dedicated to the global AIDS epidemic.[3] In these declarations, UN Member States have made several commitments regarding different aspects of the response to HIV. Among these is a General Assembly resolution titled the *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS*, U.N. Doc. A/RES/65/277 (June 10, 2011), in which UN Member States noted that many national HIV-prevention strategies inadequately focus on populations that epidemiological evidence shows to be at higher risk and that these populations include sex workers.

The UNAIDS Secretariat is a global expert on the HIV epidemic and the response to it. The UNAIDS Secretariat benefits from the expertise and resources of its Cosponsors.[4] The UNAIDS Secretariat is comprised of approximately 850 staff. The majority of staff works in Country Offices, providing advice and support to national counterparts on policies and programs towards effective and rights-based responses to national HIV epidemics. Regional Support Teams and Liaison Offices work with regional partners to coordinate and provide programming and technical support to strengthen national responses.

As *Amicus Curiae,* the UNAIDS Secretariat is interested in supporting national governments and

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[3] The declarations on HIV and AIDS adopted by the three sessions of the UN General Assembly dedicated to the global AIDS epidemic are described in more detail in the Appendix to this brief.

[4] The objectives, structure and approach of UNAIDS are described in more detail in the Appendix to this brief.

civil society organizations in their efforts to adopt and implement the most effective responses to HIV, informed by public health evidence and human rights, including in terms of prevention, treatment, care and support among key populations at higher risk of HIV infection.

INTRODUCTION

This Court is considering a constitutional challenge brought by a number of nongovernmental organizations engaged in the international response to HIV to a provision of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (the "Leadership Act"), 22 U.S.C. §§ 7601 *et seq*. The provision at issue — section 7631(f) — mandates that, with some exceptions, no funds made available under the Leadership Act "may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking." 22 U.S.C. § 7631(f). Respondents in this case, who receive funds under the Leadership Act, have represented that their work in addressing HIV includes engaging in various outreach efforts and partnership activities with marginalized "high-risk" groups, such as sex workers. Br. in Opp. 6; *see also* Br. for Resp'ts 11-12.[5]

The United States leadership in the global AIDS response has been instrumental in achieving important results in the response to HIV, and realizing access to HIV prevention, treatment, care and support for people living with, and affected by, HIV. The reduction in the rate of new HIV infection and the considerable increase in access to HIV

[5] The UNAIDS Secretariat does not address the United States government's decision that the funding it allocates to the global response to HIV be spent in a particular way, as directed by the United States Congress. Rather, the UNAIDS Secretariat understands that the question involved in this case is what the nongovernmental organizations engaged in the global effort to address HIV may do with the privately donated funds, in light of the requirements of section 7631(f) of the Leadership Act.

treatment worldwide over the last ten years would not have been possible without the financial and political commitment of the United States, among others. The generosity of the United States government has helped to transform the global response to AIDS and the course of the epidemic. The President's Emergency Plan For AIDS Relief ("PEPFAR"), inaugurated by the Leadership Act, was the largest health initiative ever initiated by one country to address a global health epidemic. The important funding authorized by the Leadership Act made anti-retroviral medication widely available in the developing world, saving millions of lives. When the Leadership Act was re-authorized, and PEPFAR expanded, in 2008, UNAIDS praised it as "a historic event," and commended the leadership of the President and Congress of the United States in the global response to HIV. Statement from Dr. Peter Piot, UNAIDS Executive Director, on Signing of the "Tom Lantos and Henry J. Hyde Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Reauthorization Act of 2008," http://data.unaids.org/pub/PressStatement/2008/20080730_statement_pepfar_en.pdf (July 30, 2008).

The UNAIDS Secretariat wishes to provide the Court with the benefit of its experience in supporting countries to formulate the most effective strategies for addressing the HIV epidemic, including the efforts to reduce the risk of HIV infection among particular vulnerable populations at higher risk of HIV infection, such as sex workers. Specifically, UNAIDS has developed a coordinated human rights-based approach to promoting universal access to HIV prevention, treatment, care and support in the context of sex work. *See* UNAIDS, *UNAIDS*

Guidance Note on HIV and Sex Work (2012), http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf (hereinafter "UNAIDS Guidance Note"). The fundamental goal of the Leadership Act is "to strengthen and enhance … the effectiveness of the United States response to HIV/AIDS." 22 U.S.C. § 7603. In UNAIDS's view, "enhancing access for all, including those engaged in sex work, to HIV prevention, treatment, care and support" is "[f]undamental to reducing HIV risk and vulnerability." UNAIDS Guidance Note at 24.

UNAIDS has long recognized that the social and legal environments have a profound impact on the effectiveness of national HIV responses. UNAIDS encourages countries to develop and implement effective strategies for reducing HIV risk and vulnerability among sex workers — a population that is particularly vulnerable to HIV infection. According to UNAIDS, an essential feature of effective responses to HIV among sex workers is to work in partnership with sex workers to identify their needs and to advocate for policies and programs that improve their health, safety, and engagement in the HIV response. The UNAIDS Secretariat believes that comprehensive rights-based programs on HIV and sex work are critical to the success of the global HIV response.

SUMMARY OF ARGUMENT

Sex workers[6] represent a population that is highly at risk to HIV infection. The formulation of an optimal strategy for reducing HIV risk and vulnerability among sex workers is therefore a critical component of efforts to respond effectively to the global HIV epidemic. To support countries to effectively address HIV among sex workers, UNAIDS has called for an evidence-informed and human rights-based approach aimed at promoting universal access to HIV prevention, treatment, care and support in the context of sex work. A key feature of this approach is a focus on building supportive environments that enable access to services with dignity and respect. HIV prevention, treatment, care and support programs work best when they involve, and do not stigmatize, the affected populations in shaping and managing these programs.

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[6] "Sex workers include 'female, male and transgender adults and young people (18 years of age and above) who receive money or goods in exchange for sexual services, either regularly or occasionally.' It is important to note that sex work is consensual sex between adults." WHO, UNFPA, UNAIDS and NSWP, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-income Countries: Recommendations for a Public Health Approach* 12 (2012) (citations omitted), *available at* http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf (hereinafter, "*Prevention and Treatment*"). Further, UNAIDS, in its *Guidance Note on HIV and Sex Work*, affirms "each individual's right not to be trafficked or held in slave-like conditions. It also affirms that all forms of the involvement of children (defined as people under the age of 18) in sex work and other forms of sexual exploitation or abuse contravenes United Nations conventions and international human rights law." UNAIDS Guidance Note at 3.

To be truly effective, organizations working with sex workers must have sufficient flexibility, funding and support to be able to involve sex workers in the formulation and implementation of the programs designed to address HIV within their communities. Programs aimed at addressing the specific needs of sex workers in terms of HIV prevention, treatment, care and support are generally underfunded and insufficient. The provision of adequate funding for HIV prevention, treatment, care and support programs focused on sex workers is an important part of effective responses to HIV. Limiting the ability of organizations to allocate funds to HIV-related programs that enable the engagement and participation of sex workers would further diminish the already scarce resources available to address HIV among sex workers, thus hindering efforts to end the HIV epidemic.

ARGUMENT

A. *Engagement with Sex Workers Is Essential to an Effective Response to HIV.*

Since the beginning of the AIDS epidemic, sex workers have been one of the groups at higher risk of and most vulnerable to HIV.[7] Data reports from

[7] Studies have found, for example, that 62% of female sex workers in Nairobi, Kenya were infected with HIV in 1985. *Prevention and Treatment* at 10 (internal citation omitted). In 1988, 35% of the "femme libres" in Kinshasa, Democratic Republic of the Congo were HIV-positive. *Id.* (internal citation omitted). For female sex workers in Butare, Rwanda and Abidjan, Côte d'Ivoire, the prevalence rates were as high as 88%

2007-2011 indicate that an average of 11.8% of all female sex workers in low- and middle-income countries are HIV-positive. Stefan Baral *et al.*, "Burden of HIV Among Female Sex Workers in Low-income and Middle-income Countries: a Systematic Review and Meta-analysis," 12 *Lancet Infectious Diseases* 538 (2012). Female sex workers are 13.5 times more likely to be living with HIV than other women of reproductive age in low-income and middle-income countries. *Id.* at 542-43. In some regions, the rate of HIV infection among sex workers is considerably higher. In Sub-Saharan Africa, the region with the highest HIV prevalence, the pooled HIV prevalence among sex workers is 36.9%. *Id.* at 542; *Prevention and Treatment* at 10 (internal citation omitted).[8] Because the overwhelming majority of HIV infections are sexually transmitted, sex workers (as well as their clients) are at a heightened risk of HIV infection, in large measure as a result of a larger number of sex partners. UNAIDS Guidance Note at 2. Preventing HIV infection among this population is necessary and cost-effective. A recent study "demonstrate[s] the cost-effectiveness of scaling up HIV prevention and treatment among sex workers." Deanna Kerrigan *et al.*, *The Global HIV Epidemics Among Sex Workers* at xxix, The World Bank (2013), *available at* http://www.worldbank.org/

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and 89%, respectively, during the late 1980s and early 1990s. *Id.* (internal citation omitted).

[8] The rate of HIV infection among sex workers in some countries of Sub-Saharan Africa can be almost twice as high. In Swaziland, for instance, 70% of sex workers are HIV-positive. UNAIDS, *Global Report: Report on the Global AIDS Epidemic* 23 (2012), *available at* http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2012/gr2012/20121120_UNAIDS_Global_Report_2012_en.pdf.

content/dam/Worldbank/document/GlobalHIVEpidemicsAmongSexWorkers.pdf (hereinafter, "*Global HIV Epidemics,* The World Bank").

The settings in which sex work occurs may profoundly increase HIV risk and vulnerability. UNAIDS Guidance Note at 4. "In many countries, laws, policies, discriminatory practices, and stigmatizing social attitudes drive sex work underground, impeding efforts to reach sex workers and their clients with HIV prevention, treatment, care and support programmes. Sex workers frequently have insufficient access to adequate health services; male and female condoms and water-based lubricants; post-exposure prophylaxis following unprotected sex and rape; [and] management of sexually transmitted infections." *Id.* at 5. Conversely, HIV prevention efforts are more successful when sex workers can "assert control over their working environments and insist on safer sex." *Id.* at 4. An enabling environment permits sex workers to "practice or promote safer sex and other HIV risk reduction strategies." UNAIDS Guidance Note, Annex at 17. To be effective, policies and programs addressing HIV must also address factors that contribute to the demand for unprotected paid sex. UNAIDS Guidance Note, Annex at 2.

Effective approaches to HIV prevention in the context of sex work are those that recognize the realities of sex work and enable sex workers to protect themselves from the risk of HIV transmission. One of the key aspects of this is to enable sex workers to protect themselves every time they have sex with a client or their partners. UNAIDS Guidance Note, Annex at 8. The use of condoms and lubricants by

clients in all paid sex encounters will significantly reduce HIV risk and vulnerability for sex workers, clients and their other sexual partners, including spouses.

In short, engagement with sex worker populations is vitally important to minimizing the spread of HIV. "Sound, evidence-informed measures to address sex work constitute an integral component of an effective, comprehensive response to HIV." UNAIDS Guidance Note at 3. In recognition of the heightened risks faced by sex workers and, in turn, their clients, UNAIDS calls on countries to develop and implement evidence-informed and rights-based approaches to addressing HIV risk and vulnerability. *Id.* at 2, 3. This strategy of reducing HIV risk in the context of sex work is an important integral component of the global HIV response. Reducing vulnerability to HIV infection among this key population at higher risk will also reduce the risk of infection for sex workers' clients, as well as the spouses or partners of those clients.[9] "[I]n countries with legal protection and the protection of human rights for [sex workers,] many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment, and fewer deaths." Address of the U.N. Secretary-General to the International AIDS Conference in Mexico City, U.N. Doc. SG/SM/11727 (Aug. 4, 2008).

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[9] "The clients of sex workers reflect a cross-section of the population, representing all ages, economic classes, and ethnic backgrounds. In some cases, sex work clients include women. In many countries, men who buy sex represent the most important source of new HIV infections, risking HIV transmission to their wives and partners." UNAIDS Guidance Note at 14.

UNAIDS recommends that countries adopt a three-pronged approach to effectively address the complex issues raised by HIV in the context of sex work. UNAIDS Guidance Note at 7. The first pillar of this approach calls for universal access to comprehensive HIV prevention, treatment, care and support. The goal of ensuring universal access was formally adopted by the U.N. General Assembly in its 2006 Political Declaration on HIV/AIDS. *See Political Declaration on HIV/AIDS*, U.N. Doc. A/RES/60/262 (June 2, 2006). In order to meet this goal, UNAIDS recommends that "comprehensive, evidence-informed programmes for sex workers and their clients … urgently be scaled up." UNAIDS Guidance Note at 8. The impact of these programs, however, depends to a significant extent on the participation of the affected group. *Id.* at 9 (citing UNAIDS, *Intensifying HIV Prevention: UNAIDS Policy Position Paper* (2005), *available at* http://data.unaids.org/publications/irc-pub06/jc1165-intensif_hiv-newstyle_en.pdf). The active and meaningful participation of sex workers in HIV prevention programs is an important determinant of the effectiveness of these programs. UNAIDS Guidance Note at 8 (citing Michael L. Rekart, *Sex-work Harm Reduction*, 366 The Lancet 2123, 2123-34 (2005)).

Efforts to respond to, and to eventually end, the HIV epidemic must also address structural barriers such as "policies, legislation, and customary practices that prevent access and utilization of appropriate HIV prevention, treatment, care and support." UNAIDS Guidance Note at 8. Sex workers currently encounter substantial obstacles to accessing HIV services, even where those services are theoretically

available. *Id.* at 10. To ensure meaningful access to these essential services, high-quality educational programs should be provided. By tailoring HIV services to the specific circumstances of sex workers, health care providers can significantly reduce HIV infection and improve the quality of life for those living with HIV. *Id.* at 12.

Of special relevance to this case is the second pillar of UNAIDS's recommended approach, which focuses on building supportive environments, strengthening partnerships, and expanding choices for sex workers through economic empowerment. *Id.* at 14. Community empowerment and the meaningful participation of sex workers in the HIV response are central to reducing HIV risk and vulnerability. *Id.* at 15 (internal citation omitted). To effectually prevent and treat HIV, sex workers should be involved in shaping the programs that affect their lives. *Id.* Without meaningful participation of sex workers, programs aimed at addressing HIV will not have the same chances of success. Where organizations led by sex workers have partnered with government actors, the response to HIV among sex workers has been particularly effective and sustainable. Support for such organizations is critical to a sustained and effective response to HIV and the promotion of sex worker's human rights and health. *Global HIV Epidemics,* The World Bank at xxxii. Several studies demonstrate that strong partnerships at national, regional, and local levels are crucial to formulating successful programs of combatting HIV among sex workers. *Id.*; *see also* Deanna Kerrigan *et al.*, *Community Development and HIV/STI-related Vulnerability Among Female Sex Workers in Rio de Janeiro, Brazil*, 23 Health Educ. Research 137, 144

(2007) (discussing the importance of community-building work with sex workers in fostering HIV-preventing behavior among that population).

Studies conducted on the benefits of "community empowerment-based approaches"[10] in four epidemiologically diverse countries, namely Brazil, Kenya, Thailand, and Ukraine, have shown that expanding a community empowerment-based approach to comprehensive HIV prevention intervention among sex workers has a demonstrable impact on the rate of HIV infection among both female sex workers and the overall adult population. Cumulatively, this approach averted up to 10,800 infections among sex workers and up to 20,700 infections among adults within five years. The impact is greatest in countries such as Kenya, where HIV prevalence is high among adults in the general population and female sex workers. Specifically, the rate of HIV infection among sex workers is reduced if they have equal access to HIV testing and treatment, which community-based outreach and social mobilization strategies can facilitate. *Global HIV Epidemics,* The World Bank at xxvii- xxviii.

An evaluation of community-led responses to HIV concluded that "there is strong associative evidence that empowerment of groups at high risk of

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[10] "Community empowerment-based approaches to comprehensive HIV prevention among sex workers rely on sex worker leadership to address social and structural barriers to HIV prevention, health and human rights. Key components of community empowerment-based approaches include the promotion of social cohesion and collective action among sex workers and efforts to facilitate their social inclusion and political participation." *Global HIV Epidemics,* The World Bank at xxvi.

infections, such as female sex workers … can lead to behavioral changes" translating in "higher consistent condom use with occasional and regular clients." Rosalía Rodriguez-García, René Bonnel, David Wilson, and N'Della N'Jie, *Investing in Communities Achieves Results: Findings from an Evaluation of Community Responses to HIV and AIDS*, at 51, Directions in Development Series, The World Bank (2013), *available at* http://aidsconsortium.org.uk/wp-content/uploads/2013/01/9780821397411.pdf.

The development of supportive environments and strategic partnerships can also help to minimize the stigma and discrimination faced by many sex workers. UNAIDS Guidance Note at 16. The reduced stigma will, in turn, make sex workers more likely to seek health services and information. Effective programs would also provide sex workers with the education and training necessary to make meaningful, informed decisions about their lives. *Id.* at 17.

The third pillar of UNAIDS's approach focuses on the need to reduce vulnerability of sex workers to HIV infection. Gender inequality, discrimination and social exclusion are among the structural issues that contribute to vulnerability to HIV. UNAIDS Guidance Note at 18. These factors, combined with poverty, mobility and displacement, may also cause individuals to become sex workers, thereby further increasing their vulnerability to HIV. *Id.* Gender inequality, for example, leads many women to become sex workers. *Id.* at 20. Women and girls are often faced "[w]ith unequal access to education, employment, credit or financial support outside marriage." *Id.*

Addressing these structural factors — which necessarily requires a sustained, cooperative engagement with an affected population — is essential to reversing the AIDS epidemic and sustaining long-term progress in the response to HIV. *Id.* at 19.

Several studies and UNAIDS's own experience have shown that reducing the transmission of HIV associated with sex work is feasible and necessary. *Id.* at 7. The three pillars approach recommended by UNAIDS creates a framework for building on past progress, providing guidance "for developing effective strategies to reduce the immediate HIV risk to sex workers, [partners of sex workers,] and their clients, and to the spouses and regular partners of clients; provide care for sex workers living with HIV; and reform official policies, practices and legislation to protect the human rights of sex workers." *Id.* at 24. This approach, however, requires that participating organizations have sufficient programmatic flexibility in order to involve sex workers in the formulation and implementation of the programs designed to reduce the rate of HIV infection within their communities. Organizations working with sex workers should be able to engage with this group in a supportive and non-stigmatizing environment that creates trust and enables partnerships in support of effective programs against HIV.

B. *An Effective Effort to Address HIV Requires Adequate Funding to Programs Designed to Ensure HIV Prevention, Treatment, Care and Support for Sex Workers.*

Global funding for the HIV response has risen significantly in the past 10 years to some US$ 16.6 billion in 2011. UNAIDS, *Investing for Results. Results for People. A People-Centred Investment Tool Towards Ending AIDS*, UNAIDS/PCB(30)12.CRP.4, at 4 (2012) (hereinafter, "*Investing for Results*"). This increase was made possible by the leadership and commitment of governments in all parts of the world, and particularly by the funding provided by the United States Government. Although important, current funding for HIV still falls short of the US$ 22 billion estimated yearly cost for achieving universal access to HIV prevention, treatment, care, and support by 2015. Bernhard Schwartländer *et al.*, *Towards an Improved Investment Approach for an Effective Response to HIV/AIDS*, 377 The Lancet 2031 (2011). "If investments in the AIDS response are not adequate, well targeted and prioritized, not only will future investment needs increase but the effectiveness and return on current investments will diminish." *Investing for Results* at 4.

This concern is particularly acute with respect to programs designed to ensure access to HIV prevention, treatment, care and support for sex workers. These programs remain chronically under-funded, and as a result are often implemented on such a small and localized scale that they do not reach most sex workers. *Prevention and Treatment* at 11. A review of eight country case studies found

that "[t]he coverage of HIV prevention services among sex workers is low, with generally less than 50 percent of sex workers reporting access to basic prevention services." *Global HIV Epidemics,* The World Bank at xxvii.

The experience of several organizations working in Asia highlights the difficulties posed by funding constraints for programs seeking to address HIV among sex workers. For instance, Vesha Anyay Mukti Parishad Plus ("VAMP"), an organization led by sex workers in India, has instituted a peer-based outreach program that provides HIV-related education and counseling to sex workers, and promotes and facilitates HIV testing among them. UNFPA, UNAIDS and Asia-Pacific Network of Sex Workers, *The HIV and Sex Work Collection: Innovative Responses in Asia and the Pacific* at 79, 82, *available at* http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2012/20121212_HIV_SW.pdf. Yet, VAMP faced severe challenges in providing HIV treatment, care and support services due to lack of funding. *Id.* at 79, 84. Financial support for implementing community-led referral services for treatment, care and support programs was virtually non-existent, and post-test follow-up support was often not funded altogether. *Id.* at 84. In another example, the Targeted Outreach Programme ("TOP"), which is the single largest provider of HIV prevention services in Myanmar, has faced continuous funding challenges in an effort to scale up its HIV prevention and treatment program for female sex workers. *Id.* at 37, 46. The lack of funding is a constant concern for the program's sustainability. *Id.* at 46.

These and other organizations provide much-needed services designed to limit the spread of HIV among sex workers. Yet, the programs they offer continue to face an uncertain future due to the lack of sufficient and sustainable funding. In order to give these organizations and others working to address HIV among sex workers the appropriate tools to offer comprehensive HIV prevention, treatment, care and support services to this population, it is important that the avenues of potential funding remain open to them. To reduce the ability of organizations to allocate funds to HIV-related programs that enable the engagement and participation of sex workers would further diminish the already scarce resources available to address HIV among sex workers. Ensuring adequate funding for a comprehensive, evidence-informed, rights-based and community-led response to HIV in the context of sex work is critical to the overall effort to end the HIV epidemic.

CONCLUSION

For these reasons, the UNAIDS Secretariat respectfully requests that this Court consider the aforementioned elements of effective HIV responses among sex workers, informed by public health evidence and human rights, and resolve this case in a manner that supports access to funding and resources for all organizations engaged in HIV prevention, treatment, care and support services with and for sex workers, permitting these organizations to conduct the work that makes the greatest difference in the global response to HIV.

Respectfully submitted,

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April 2013

APPENDIX

APPENDIX: UNAIDS'S OBJECTIVES, STRUCTURE AND APPROACH

UNAIDS was established in 1994 pursuant to UN Economic and Social Council Resolution 1994/24, which tasks UNAIDS with the following objectives:

- provide global leadership in response to the HIV/AIDS epidemic;
- achieve and promote global consensus on policy and programmatic approaches;
- strengthen the capacity of the UN system to monitor trends and ensure that appropriate and effective policies and strategies are implemented at the country level;
- strengthen the capacity of national governments to develop comprehensive national strategies and implement effective HIV/AIDS activities at the country level;
- promote broad-based political and social mobilization to prevent and respond to HIV/AIDS within countries, ensuring that national responses involve a wide range of sectors and institutions; and
- advocate greater political commitment in responding to the epidemic at the global and country levels, including the mobilization and allocation of adequate resources for HIV/AIDS-related activities.

UNAIDS organizes its work through a Division of Labour which describes how the UNAIDS family (*i.e.*, the UNAIDS Secretariat and the Cosponsors) works collectively to support effective responses to HIV at global, regional, and national levels. Within UNAIDS, the UNAIDS Secretariat has the overall responsibility for ensuring functioning and accountability across all areas of the Division of Labour, as follows:

(a) the UNAIDS Secretariat is to influence the setting of a rights-based and gender-sensitive HIV political agenda for the three Strategic Directions outlined in the UNAIDS Strategy for 2001–2015;

(b) the UNAIDS Secretariat is to promote coordination, coherence and partnerships across the Division of Labour in the Joint Programme; and

(c) the UNAIDS Secretariat is to support the mutual accountability of the Secretariat and Cosponsors to enhance program efficiency and effectiveness and to optimally deliver on the shared Joint Programme mission, vision, and Strategy, with measurable results.

UNAIDS operates within the framework of the UN system. It benefits from, and seeks to support, the commitments of UN Member States. As a UN-system entity, UNAIDS is guided by, *inter alia*, the UN Charter, the Universal Declaration of Human Rights and the UN human rights treaties. UNAIDS is also guided in its work by the Millennium Declaration and Millennium Development Goal 6, by which Member States have committed to halt and reverse the HIV epidemic. Moreover, UNAIDS supports the implementation of the declarations on HIV and AIDS adopted by the three sessions of the

UN General Assembly dedicated to the global AIDS epidemic. In these declarations, UN Member States have made several commitments regarding many different aspects of the response to HIV:

(a) On June 10, 2011, UN Member States adopted a General Assembly resolution titled the *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS*, U.N. Doc A/RES/65/277 (June 10, 2011), in which they noted that many national HIV-prevention strategies inadequately focus on populations that epidemiological evidence shows to be at higher risk and that these populations include sex workers.

(b) On June 2, 2006, UN Member States adopted a General Assembly resolution titled the *Political Declaration on HIV/AIDS*, U.N. Doc. A/RES/60/262 (June 2, 2006), in which they committed to overcoming legal or other barriers that block access to effective HIV prevention, treatment, care and support.

(c) On June 27, 2001, UN Member States adopted a General Assembly resolution titled the *Declaration of Commitment on HIV/AIDS*, U.N. Doc. A/RES/S-26/2 (June 27, 2001), in which they noted that some factors, including of a legal nature, are hampering awareness, education, prevention, care, treatment and support efforts.