

DENYING ENTRY, STAY AND RESIDENCE DUE TO HIV STATUS

Ten things you need to know



Advocating for non-discrimination in the freedom
of movement of people living with HIV

“Six decades after the [Universal Declaration of Human Rights] was adopted, it is shocking that there should still be discrimination against those at high risk, such stigma attached to individuals living with HIV. This not only drives the virus underground, where it can spread in the dark; as important, it is an affront to our common humanity... I call for a change in laws that uphold stigma and discrimination – including *restrictions on travel for people living with HIV* (emphasis added).”

*Ban Ki-Moon, United Nations Secretary-General,
United Nations High Level Meeting on AIDS, June 2008*

“One of the most long-standing and disturbing indicators of discrimination against people living with HIV has been restrictions on entry, stay and residence based on positive HIV status. We must eliminate such restrictions as well as other punitive laws that demean people living with HIV and block effective responses to AIDS. Together we can do it.”

*Michel Sidibé, Executive Director of UNAIDS
Under Secretary-General of the United Nations*

1. SOME 59 COUNTRIES, TERRITORIES AND AREAS DENY THE ENTRY, STAY OR RESIDENCE OF HIV-POSITIVE PEOPLE BECAUSE OF THEIR HIV STATUS ONLY.

In the early 1980s, when there was a great deal of ignorance, fear and prejudice in the response to HIV, many countries implemented restrictions on the entry, stay and residence of people living with HIV (“HIV-related travel restrictions”). Despite the enormous amount of knowledge gained since then about how HIV is and is not transmitted, many of these restrictions still exist. Such restrictions are unnecessary, discriminatory and obsolete.

As of May 2009, it appears that 59 countries still impose some form of restriction on the entry, stay and residence of people living with HIV. Some 7 countries require declaration of HIV status for entry or for any length of stay and either bar HIV-positive people from entering or apply discretion concerning their entry. An additional 6 countries deny visas for even short-term stays.² Twenty-six countries deport individuals once their HIV infection is discovered. There are 108 countries with no HIV-specific restrictions on entry, stay or residence. For 20 countries, the information is contradictory; and for 17 countries there is no available information.³

2. HIV-RELATED RESTRICTIONS ON ENTRY, STAY AND RESIDENCE CURTAIL IMPORTANT LIFE ACTIVITIES OF PEOPLE LIVING WITH HIV.

Restrictions on stay and residence based on HIV status not only deny equal freedom of movement to HIV-positive people, they also affect their health, development and other human rights. Such restrictions prevent HIV-positive people from visiting relatives in other countries, doing business or studying abroad, migrating for work reasons, participating in international humanitarian and development efforts, serving in consular services, seeking or receiving asylum, attending conferences, vacationing, uniting with family members or adopting HIV positive children from abroad.



3. HIV-RELATED RESTRICTIONS ON ENTRY, STAY AND RESIDENCE DO NOT PROTECT THE PUBLIC HEALTH.

Experts in infectious disease and public health have made it clear that HIV does not pose a threat to public health in relation to travel and mobility because the virus cannot be transmitted simply by the presence of an HIV-positive person or by casual contact.^{4, 5, 6}

As early as 1988, the World Health Organization (WHO) stated that "since HIV infection is already present in every region and in virtually every major city in the world, even total exclusion of all travellers (foreigners and citizens travelling abroad) cannot prevent the introduction and spread of HIV."⁷ It also said that since: "HIV screening of international travellers would be ineffective, impractical and wasteful... Rather than screening international travellers, resources must be applied to preventing HIV transmission among each population, based on information and education, and with the support of health and social services".⁸ In that same year, the World Health Assembly urged Member States "to protect the human rights and dignity of HIV-infected people....and to avoid discriminatory action against and stigmatization of them in the provision of services, employment and travel (emphasis added)."⁹

4. RESTRICTIONS ON ENTRY, STAY AND RESIDENCE BASED ON HIV STATUS ARE DISCRIMINATORY.



UNAIDS/L. Aliyanak

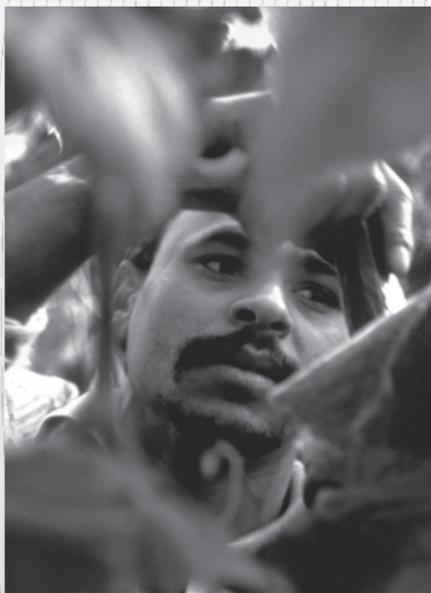
States may impose immigration and visa restrictions as a valid exercise of their national sovereignty, but they are also bound by the human rights of non-discrimination and equality before the law. If States limit these rights, they must show that this is necessary to achieve a legitimate goal and that the means used actually achieve the goal and are the least restrictive means possible.¹¹ Protecting the public health and avoiding undue costs associated with treatment and support have been cited as reasons for HIV travel restrictions. But as stated, such restrictions do not protect the public health; and the blanket exclusion of all people living with HIV is not the

5. THE ENFORCEMENT OF HIV-RELATED RESTRICTIONS ON ENTRY, STAY AND RESIDENCE CAN, AND DOES, VIOLATE OTHER HUMAN RIGHTS.

In addition to being discriminatory, the manner in which HIV-related restrictions on entry, stay and residence are implemented and their outcomes can result in the violation of other rights. Under such restrictions, many travellers or migrants are tested for HIV without being told they are being so tested, without being counselled, without being provided the results, without these results being kept confidential, and if found to be HIV positive, without being referred or anyway connected to treatment and other forms of support.¹²

Testing under these conditions is a violation of medical ethics and of the rights to privacy and health.¹³

Furthermore, the implementation of HIV travel restrictions can result in the denial of the right to seek asylum or to unite the family; and even the denial of life -- when HIV positive people die during detention where treatment is denied, or



6. HIV-RELATED RESTRICTIONS ON ENTRY, STAY AND RESIDENCE CAN IMPEDE EFFECTIVE RESPONSES TO HIV.

HIV-related restrictions on entry, stay and residence assume that positive people will act irresponsibly and thereby transmit HIV. This approach is highly prejudicial to HIV positive people and is not supported by the evidence that indicates people who know they are positive take steps to avoid transmitting HIV.¹⁶ Such prejudicial assumptions add to the climate of HIV stigma and discrimination that deters nationals and non-nationals alike from coming forward to utilize HIV prevention and treatment services. Such restrictions also encourage nationals to consider HIV a “foreign problem” that has been “dealt with” by keeping out foreigners, thereby minimizing incentives to practice safer sex. Such laws can also pressure HIV positive travellers to leave their medicines behind, causing them to become ill and to develop a form of HIV that is resistant to treatment.

HIV travel restrictions prevent HIV-positive people from participating in conferences and meetings where they can provide their considerable experience and knowledge about how to make HIV responses most effective. This is in direct opposition to the “Greater Involvement of People Living with HIV”, a principle adopted by 42 governments in the Paris Declaration on AIDS (1994).¹⁷

7. ANY EXCLUSION OF HIV POSITIVE PEOPLE TO AVOID POTENTIAL COSTS OF TREATMENT AND SUPPORT SHOULD BE BASED ON INDIVIDUAL ASSESSMENT AND SHOULD NOT SINGLE OUT HIV.

Blanket restrictions against people living with HIV based solely on their HIV status are overly broad and do not rationally determine who would, or would not, require undue support from public monies. Nor is there justification to single out HIV apart from other chronic health conditions. To do so is discriminatory.

States that fear a burden on public monies due to the entry or residence of an HIV positive person should determine *through individual assessment* whether that person will indeed cause such a burden. This determination should not only look at potential costs but also take into account contributions that may offset costs. People living with HIV can now lead long and productive working lives, and can and do produce significant economic benefits for host countries.

¹⁸ Bill Kaufmann (2008), "Canada welcomes HIV immigrants: Sun learns thousands who have the virus causing AIDS allowed to come to Canada". Calgary Sun, 20 March 2008.

¹⁹ See HB Krentz, MC Auld, MJ Gill (2004), "The high cost of medical care for patients who present late (CD4<200 cells/ μ L) with HIV infection", *HIV Medicine* 5(2): 93-98. See also Bernstein et al (2008), *HIV and lawful permanent residency: an analysis of the HIV bar, waivers, and prospects for change*, and Nancy Ordovery (2006), "Comments delivered at the US HIV/AIDS Travel Ban and Immigration Bar Congressional Briefing", GHMC. Available online: http://www.gmhc.org/policy/federal/061115_comments.pdf

8. COUNTRIES WITHOUT RESTRICTIONS ON ENTRY, STAY AND RESIDENCE OF HIV POSITIVE PEOPLE DO NOT REPORT ANY PROBLEMS.

Some 108 countries do not have restrictions on entry and stay based on HIV status. These governments have not reported any problems in terms of either public health or an undue burden on public monies. These include such diverse countries as: Argentina, Austria, Brazil, Croatia, Ethiopia, France, Indonesia, Japan, Kenya, Kyrgyzstan, Libyan Arab Jamahiriya, Mexico, Mozambique, Myanmar, Nepal, Norway, Philippines and Switzerland.²⁰

Other governments, such as Canada and El Salvador, had HIV-specific restrictions and decided to get rid of them. In Canada, organizers of the 2006 International AIDS Conference in Toronto became aware that HIV-positive attendees would have to identify themselves on a visa application form. The organizers and their Canadian allies worked fast



Migrants- Beijing, China. - ILO/UNAIDS/J. Maillard

²⁰ Global Database on HIV-related Travel Restrictions, www.hivtravel.org.

²¹ Canadian HIV/AIDS Legal Network (2005), "Recent changes to visitor visa process affecting entry into Canada for people living with HIV/AIDS". Available online: <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=95>

9. INTERNATIONAL ORGANIZATIONS SUPPORT EFFORTS TO ELIMINATE HIV-RELATED RESTRICTIONS ON ENTRY, STAY AND RESIDENCE.

There is growing international momentum towards eliminating HIV-related restrictions on entry, stay and residence. In 2007, the *International AIDS Society* published its official policy position regarding HIV-related restrictions stating that, "The International AIDS Society will not hold its conferences in countries that restrict short term entry of people living with HIV/AIDS and/or require their HIV status on visa application forms or other documentation required for entry into the country."

Also in 2007, the Board of the *Global Fund to Fight AIDS, Tuberculosis and Malaria* issued a decision in which the "Board strongly encourages all countries to move rapidly towards elimination of travel/entry restrictions, including waivers, for people living with HIV."²² It decided as well that "The Global Fund to Fight AIDS, Tuberculosis and Malaria will not hold Board or Committee Meetings in countries that restrict short-term entry of people living with HIV/AIDS and/or require prospective HIV positive visitors to declare their HIV status on visa application forms or other documentation required for entry into the country."²³

10. YOU CAN HELP TO ELIMINATE HIV-RELATED RESTRICTIONS ON ENTRY, STAY AND RESIDENCE!

- **Get informed:** Find out whether your country, territory or area has HIV-related restrictions on entry, stay and residence and/or whether other countries or areas apply them to you or your fellow citizens when travelling abroad. Insist that governments that have such restrictions justify them and provide easily available information about them so that travellers and migrants are forewarned.
- **Advocate against HIV restrictions on entry, stay and residence:** Write a letter, e-mail or call government officials, from the Ministry of Interior to the President or Prime Minister. Urge your country's leadership to eliminate such restrictions if they have them, and be a champion against them at global and regional levels.
- **Urge diplomatic intervention:** Urge your government to protect its own HIV-positive citizens who are caught up in and harmed by such restrictions and to make diplomatic efforts on their behalf with the governments that apply such restrictions.
- **Launch public awareness campaigns:** Advocate for the elimination of HIV restrictions on entry, stay and residence as part of campaigns to urge countries to adhere to the commitments made in the Political Declaration on HIV/AIDS (2006), where governments committed themselves to eliminate all forms of discrimination against people living with HIV. Urge international organizations

Examples of HIV restrictions on entry, stay and residence among countries, territories and areas from the *Global Database on HIV-related Travel Restrictions*. (www.hivtravel.org)

The *Global Database on HIV-related Travel Restrictions* is maintained by the International AIDS Society, in collaboration with its partners German AIDS Federation and the European Action Treatment Group. The information in the database has not been independently verified and its accuracy is not warranted. As information on HIV restrictions on entry, stay and residence is often difficult to obtain or verify, any corrections to the information presented in this booklet or in the database are most welcome and will be reflected in the *Global Database*, as well as any updates of this document. Such information can be sent to: info@hivtravel.org

These **7 countries/territories/areas** appear to require declaration of HIV status for entry or for any length of stay and either bar HIV-positive people from entering or apply discretion concerning their entry: Brunei Darussalam, China, Oman, Sudan, United Arab Emirates, United States of America, Yemen.

LIST OF RESOURCES

- Global Database on HIV-related Travel Restrictions
<http://www.hivtravel.org>
- Report of the International Task Team on HIV-related Travel Restrictions: Findings and Recommendations (2008)
<http://www.unaids.org>
- Joint United Nations Program on HIV/AIDS and International Organization for Migration (2004), *UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions*
http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/health/UNAIDS_IOM_statement_travel_restrictions.pdf
- International AIDS Society (2007), *IAS Policy Paper – Banning Entry of People Living with HIV/AIDS*
http://www.iasociety.org/Web/WebContent/File/ias_policy%20paper_07%2012%2007.pdf
- Ecumenical Advocacy Alliance (2008), *Discrimination, Isolation, Denial: A Resource and Action Guide on Travel Restrictions against People Living with HIV*
<http://www.e-alliance.ch/media/media-7311.pdf>
- Gay Men's Health Crisis – *HIV Immigration and Travel Bar*
http://www.gmhc.org/policy/federal/immigration_travel.html
- Canadian HIV/AIDS Legal Network – *Immigration and Travel*
<http://www.aidslaw.ca/immigration>
- Global Health Council (2006), *End Restrictions on Travel to the U.S. by People Living with HIV*
http://www.globalhealth.org/images/pdf/publications/travel_ban.pdf
- Center for Strategic and International Studies (2007), *Moving Beyond the U.S. Government Policy of Inadmissibility of HIV-Infected Noncitizens*
<http://www.csis.org/media/isis/pubs/movingbeyondinadmissibility.pdf>
- Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Program on HIV/AIDS (2006), *International Guidelines on HIV/AIDS and Human Rights*
http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf

Brazilian
STD/AIDS Programme Ministry of Health



Buitendijk Zaken
Ontwikkelings
samenwerking



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AIDS-Hilfe e.V.

Ecumenical Advocacy
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EL SALVADOR
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GMHC
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UN PLUS
UN SYSTEM-WIDE POSITIVE STAFF GROUP

worldaids
campaign

World Health
Organization

Investing in our future
The Global Fund
To Fight AIDS, Tuberculosis and Malaria

UNAIDS
JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS

International
AIDS Society
Stronger Together

