DENYING ENTRY, STAY AND RESIDENCE DUE TO HIV STATUS

Ten things you need to know

ENTRY DENIED

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

“Stigma and discrimination around AIDS remain as strong as ever: and in this context I join my voice with the Secretary General, and I call on all countries to drop restrictions on entry to people simply because they are living with HIV.“

Peter Piot, UNAIDS Executive Director, United Nations High Level Meeting on AIDS, June 2008
DENYING ENTRY, STAY AND RESIDENCE DUE TO HIV STATUS

Ten things you need to know

1. Some 67 countries\(^1\) deny the entry, stay or residence of HIV-positive people because of their HIV status only.

2. HIV-related restrictions on entry, stay and residence curtail important life activities of people living with HIV and their families.

3. HIV-related restrictions on entry, stay and residence do not protect the public health.

4. Restrictions on entry, stay and residence based on HIV status are discriminatory.

5. The enforcement of HIV-related restrictions on entry, stay and residence can, and does, violate other human rights.

6. HIV-related restrictions on entry, stay and residence can impede effective responses to HIV.

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.

8. Countries without restrictions on entry, stay and residence of HIV positive people do not report any problems.

9. International organizations support efforts to eliminate HIV-related restrictions on entry, stay and residence.

10. You can help to eliminate HIV-related restrictions on entry, stay and residence!

\(^1\) Any reference to “countries” in this document also includes territories and areas. Please note that the designations employed and the presentation of the material in this paper do not imply the expression of any opinion whatsoever on the part of the authors concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.
1. SOME 67 COUNTRIES 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 the 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 2008, it appears that 67 countries still impose some form of restriction on the entry, stay and residence of people living with HIV. Some 9 countries bar entry of all people living with HIV based on their HIV positive status only; with an additional 5 countries denying visas for even short-term stays. Two countries deport individuals once their HIV infection is discovered. Ninety-six countries have no HIV-specific restrictions on entry, stay or residence. For 21 countries, the information is contradictory; and for 12 countries there is no available information.

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“Attitudes and policies such as these [relating to HIV restrictions on entry, stay and residence] will not contribute to reaching the goal of Universal Access [to HIV prevention, treatment, care and support]; they will however contribute to increased stigma and discrimination of people living with HIV... I am also a person living with HIV, and by revealing my HIV status publicly, I am taking a risk of being banned from entering this country and over seventy other countries around the world.”

Ratri Suksma, Representative from CARAM Asia, United Nations High-Level Meeting on AIDS, June 2008

2 This means that these 5 countries may allow entry of HIV-positive people, but deny visa applications based on HIV status for periods as short as 10 days and beyond (depending on the country).

3 This information is taken from the recently launched Global Database on HIV-related Travel Restrictions. It should be noted that the information on the website has not been independently verified, and the authors of this document cannot warrant its accuracy. For details, see www.hivtravel.org.
2. HIV-RELATED RESTRICTIONS ON ENTRY, STAY AND RESIDENCE CURTAIL IMPORTANT LIFE ACTIVITIES OF PEOPLE LIVING WITH HIV AND THEIR FAMILIES.

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.
HIV travel restrictions are restrictions on the entry, stay and residence of people living with HIV.

The number of people who have been affected by such restrictions is not known, but it appears that those most affected are labour migrants. Potential migrants often use all their resources to finance the migration; and those who have already migrated send remittances to family members in their home country. When HIV-related restrictions are applied to them, individuals in both situations are required to get tested for HIV, and if found HIV positive, are either denied, or deported (as relevant), with their HIV status often disclosed. This can be financially and emotionally devastating, resulting in the loss of all financial resources, as well as return to a community where they are likely to face discrimination and rejection due to their HIV status.
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.\textsuperscript{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.”\textsuperscript{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”.\textsuperscript{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).\textsuperscript{9}
In the Declaration of Commitment on HIV/AIDS (2001)\textsuperscript{10}, paragraph 50, governments committed themselves to “By 2005, develop and begin to implement national, regional and international strategies that facilitate access to HIV/AIDS prevention programmes for migrants and mobile workers, including the provision of information on health and social services”.

\textsuperscript{5} World Health Organization (1988), Statement on screening of international travellers for infection with Human Immunodeficiency Virus, WHO/GPA/INF/88.3.
\textsuperscript{7} World Health Organization (1988), Statement on screening of international travellers for infection with Human Immunodeficiency Virus, WHO/GPA/INF/88.3.
\textsuperscript{8} Ibid.
4. RESTRICTIONS ON ENTRY, STAY AND RESIDENCE BASED ON HIV STATUS ARE DISCRIMINATORY.

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-related restrictions on entry, stay and residence. But as stated, such restrictions do not protect the public health; and the blanket exclusion of all people
living with HIV is not the most rational or least restrictive means by which identify positive people who might require public support. This means that restrictions on entry, stay and residence based on HIV status alone are discriminatory.

“While travel restrictions are a question of state sovereignty... States also have obligations under international law within which sovereign rights may be exercised. Under basic norms of non-discrimination, States must provide compelling reasons for any differentiation, in restricting travel for people living with HIV. We know that there are no such compelling reasons nor is there a public health rationale for restricting the freedom of movement based on HIV status. As a result, any such differentiation is discriminatory and thus unacceptable.”

Kyung-wha Kang, United Nations Deputy High Commissioner for Human Rights, March 2008

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.\textsuperscript{12} Testing under these conditions is a violation of medical ethics and of the rights to privacy and health.\textsuperscript{13}

Furthermore, the implementation of HIV-related restrictions on entry, stay and residence 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
HIV travel restrictions are restrictions on the entry, stay and residence of people living with HIV. Treatment is denied, or are deported back to a situation where they cannot receive, or continue, treatment.¹⁴

The European Court of Human Rights has characterised the deportation of people with life threatening illness as “inhuman or degrading treatment or punishment”, where they are deported to a situation where care would be unavailable.¹⁵

¹⁵ See for example D v. United Kingdom, no. 30240/96, ECHR 1997-III. However, the Court will not prevent deportation when treatment is likely to be available in the country of return. See N v. United Kingdom, no. 26565/05, ECHR 2008 (27 May).
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.\textsuperscript{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 consultations 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).\textsuperscript{17}
“While travelling for work or for personal reasons, HIV positive people like me face prejudice that assumes we are not responsible. We face coercive measures such as mandatory testing, having visas cancelled or denied or even being deported from countries we visit. This is an outrage in 2008 with everything we know about HIV, and with all the global efforts aimed at reducing stigma and discrimination against people living with HIV.”

Gracia Violeta Ross Quiroga, Bolivia, United Nations High-Level Meeting on AIDS, June 2008


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.

A 2008 Canadian news article cited information from Citizenship and Immigration Canada, which stated that of the 2,567 immigration applicants who tested positive for HIV from January 2002 to December 2006, only 126 were refused. The spokesperson for the government agency said such applicants aren’t considered an excessive burden on the medical system – “the medical cost considered during a five to 10-year period generally isn’t considered untoward... Given that Canada accepted 1.2 million immigrants in the 2002-2006 time frame, [the number of immigrants with HIV is] a very small number.”

In addition, HIV travel restrictions cost money. They are costly to implement, and they may result in greater health care costs where they cause HIV positive people to delay seeking health care until they become seriously ill and/or can only receive costly emergency treatment.
8. COUNTRIES WITHOUT RESTRICTIONS ON ENTRY, STAY AND RESIDENCE OF HIV POSITIVE PEOPLE DO NOT REPORT ANY PROBLEMS.

Some 96 countries, territories and areas 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, territories and areas as: Austria, Argentina, Brazil, Croatia, Ethiopia, France, Hong Kong, Indonesia, Japan, Kenya, Kyrgyzstan, Libya, 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

HIV travel restrictions are restrictions on the entry, stay and residence of people living with HIV.

“...We cannot accept the burden imposed on HIV-positive people due to discriminatory practices when travelling. In this era of globalisation, restricting the travel of people living with HIV does not have any impact whatsoever on public health, however it does have a discriminatory effect on the lives of those living with this virus... I urge the international community, as well as the leaders of the world, to bring down walls and restrictions which hamper the free movement of persons living with HIV... Four years ago, El Salvador eliminated those restrictions which were discriminatory for those living with HIV/AIDS.”

Eliás Antonio Saca, President of the Republic of El Salvador, United Nations High Level Meeting on AIDS, June 2008
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.” 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.”
At that same meeting, the Global Fund Board acknowledged UNAIDS’ commitment to create a task team on travel restrictions. The International Task Team on HIV-related Travel Restrictions (Task Team) was subsequently established in early 2008 and is comprised of governments, intergovernmental organizations and civil society, including networks of people living with HIV. Co-chaired by UNAIDS and the Government of Norway, its role is to call for and support efforts toward the elimination of HIV-related restrictions on entry, stay and residence. The principles of non-discrimination and the Greater Involvement of People Living with HIV provide the context in which its efforts are set. The Task Team will finish its work and present its recommendations to the Board of the Global Fund and to the UNAIDS Programme Coordinating Board by the end of 2008.

22 “Acknowledgement of the UNAIDS Commitment to Create a Task Team on Travel Restrictions”, Decision Point GF/B16/DP25, Sixteenth Board Meeting, 12-13 November 2007.
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
HIV travel restrictions are restrictions on the entry, stay and residence of people living with HIV.

- Mobilise your community and build coalitions:
  Inform others about HIV restrictions on entry, stay and residence, including AIDS services organizations, legal and human rights groups, migrants and labour groups, networks of people living with HIV, business coalitions and faith communities; and explore joint strategies to fight against these counter-productive policies inside and outside your country.

- Call for expanded AIDS programming for mobile populations: Urge your country to include HIV programmes in its national response to HIV for mobile populations, both nationals and non-nationals - entering, leaving and returning to the country - as the effective way to address HIV in the context of mobility.
The Global Database on HIV-related Travel Restrictions is maintained by the International AIDS Society, in collaboration with its partners the German AIDS Federation and the European AIDS 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 paper or on the data-based 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.

The following countries/territories/areas appear to have a complete ban on the entry of all HIV positive people: Brunei, China, Oman, Qatar, Republic of Korea (South Korea), Sudan, United Arab Emirates, United States of America and Yemen.
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The following countries/territories/areas deny applications for entry by HIV positive people for stays beginning as short as ten days up to 90 days: Egypt, Iraq, Singapore, Tunisia, Turks and Caicos Islands.

The 30 countries/territories/areas in this table deport foreigners once they are discovered to be HIV positive:

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<td>Jordan</td>
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LIST OF RESOURCES

• Global Database on HIV-related Travel Restrictions
  http://www.hivtravel.org


• 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

• Center for Strategic and International Studies (2007), Moving Beyond the U.S. Government Policy of Inadmissibility of HIV-Infected Noncitizens


Final report and recommendations of the International Task Team on HIV-related Travel Restrictions to be made available November 2008 – www.unaids.org
HIV travel restrictions are restrictions on the entry, stay and residence of people living with HIV.

Brazilian STD/AIDS Programme

Ministry of Health

GIPA2010

Ecumenical Advocacy Alliance

EL SALVADOR

un gobierno con sentido humano

EATG

GMHC

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GLOBAL NETWORK OF PEOPLE LIVING WITH HIV/AIDS

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ICASO

International Community of Women Living with HIV/AIDS (ICW)

IOM International Organization for Migration

Norwegian Ministry of Foreign Affairs

Red Nacional de Personas Que Viven Con VIH/SIDA en Ecuador

Terrence Higgins Trust

UNDP

UN Plus

UNAIDS

World AIDS Campaign

World Health Organization

The Global Fund

To Fight AIDS, Tuberculosis and Malaria

International AIDS Society

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