IAS POLICY PAPER

HIV-specific Travel and Residence Restrictions

In November 2008, The Governing Council of the International AIDS Society affirmed the following positions:

1. The International AIDS Society (IAS) regards HIV-specific restrictions on entry, stay and residence as stigmatizing, discriminatory and contrary to effective public health programming. The IAS will continue to work through our membership and in partnership with other leading public health and advocacy organizations to monitor and eliminate such laws and practices.

2. The International AIDS Society will not hold its conferences in a country that imposes HIV-specific entry restrictions and/or requires prospective visitors to declare their HIV status on visa application forms or other documentation required for entry into the country.

Guiding Principles

Since HIV-specific travel and residence restrictions serve no public health purpose, the International AIDS Society (IAS) regards the 63 countries that impose such restrictions as engaging in state-sponsored discrimination against HIV-positive people and their families. HIV-specific travel and residence restrictions contradict and therefore undermine all other HIV/AIDS programmes these same countries implement. There is no country in the world without an HIV epidemic.

Countries that maintain restrictions are sending the message to their own citizens and the rest of the world that HIV-positive people are persona non grata and should not be able to enjoy the same freedoms and opportunities as everyone else. This message reinforces HIV stigma and discrimination – two powerful barriers to slowing the spread of HIV worldwide. Put into a public health optic, these restrictions harm the general public as much as they harm people who are actually refused entry or are deported as a result of their HIV status.

As the global community seeks to provide universal access to HIV prevention, treatment, care and support by 2010, the IAS believes countries with travel and residence restrictions should reverse these policies in order to achieve universal access.

What are HIV-Specific Travel and Residence Restrictions?

This document uses the terms “HIV-specific travel restrictions” and “HIV-specific travel and residence restrictions” to refer to all laws and regulations that restrict the entry, stay and residence of HIV-positive non-nationals. This definition encompasses laws requiring people to disclose their HIV status or submit to HIV testing as a condition of entering a foreign country. The terms “travel restrictions” and “HIV-related travel restrictions” are commonly used to refer to this. As awareness and advocacy build around these country restrictions, other terminology such as “HIV-related entry, stay and residence restrictions” is used as well. The IAS prefers the term “HIV-specific travel and residence restrictions” to articulate its policies.

HIV-Specific Travel and Residence Restrictions Take Many Forms Worldwide

In the 1980s, when the global response to HIV and AIDS was marked by widespread fear and ignorance, many countries implemented restrictions on the entry, stay or residence of people living with HIV (PLHIV).
More than 25 years into the AIDS epidemic, despite all that has been learned, ill-informed policymakers still have the misconception that turning away HIV-positive non-nationals will shield their countries from the consequences of the AIDS epidemic.

In 2008, there are 63 countries that impose HIV-specific entry, stay or residence restrictions. HIV-positive people can be deported from 28 countries. Five countries refuse to let HIV-positive visitors stay beyond a duration of ten to 90 days, and eight countries refuse to even temporarily admit any HIV-positive non-national for any reason.

Visa application forms for some countries ask applicants to indicate their HIV status or to report whether they have any diseases of public health significance. Another method of screening is to require people seeking to enter a country to provide documentation of HIV-negative test results. In some countries, HIV testing is part of a mandatory medical exam for people seeking work permits; unskilled migrants seem to be particularly vulnerable to the human rights violations that such a situation invites.

HIV-Specific Travel and Residence Restrictions Harm HIV-positive People and Their Families

HIV-specific travel and residence restrictions are harmful to people living with HIV and their families, unduly forcing them to forego opportunities and life experiences that other people are free to enjoy. Depending on the nature of a country’s restrictions, HIV-positive non-nationals may be prevented from:

- immigrating
- seeking or receiving political asylum
- availing themselves of educational opportunities
- conducting business trips
- pursuing seasonal jobs or longer-term employment
- advancing in careers that involve foreign postings, such as careers with consular services and United Nations agencies
- participating in international humanitarian, development and advocacy efforts
- attending professional conferences
- vacationing

Restrictions harm the entire family when they keep HIV-positive people apart from spouses, parents, children and other relatives. Restrictions also may prevent adoptive parents from bringing home HIV-positive children from other countries.

HIV-Specific Travel and Residence Restrictions Serve No Public Health Purpose

Public health and infectious disease experts reached a clear consensus about HIV and travel more than 20 years ago. A 1987 statement by the World Health Organization drew on the findings of a panel of internationally recognized authorities to conclude that screening travelers for HIV would be “ineffective, impractical and wasteful.” In 1991, the United States Public Health Service announced that there were no public health reasons to prevent HIV-positive people from entering that country. The official statement — which was disregarded by lawmakers — read in part, “The risk of (or protection from) HIV infection comes not from the nationality of the infected person, but from the specific behaviors that are practiced.”

Much the same outlook prevails in the worldwide public health community today. The mere presence of HIV-positive people is not a threat to public health because HIV is not easily transmitted. HIV transmission can be reduced by the prevention practices of both HIV-positive and HIV-negative people. Instead of trying to keep HIV-positive people away from HIV-negative people, which is an unrealistic goal, the appropriate public health strategy is to provide HIV prevention services to everyone who might either have or be at risk of acquiring HIV.

Another important public health strategy is to encourage HIV-positive people taking antiretroviral drugs to minimize the likelihood of developing drug resistance by not skipping doses. But it appears as though restrictions pressure some people to seek to conceal their HIV infection from immigration authorities by not bringing HIV medicines with them on international trips. The drug-resistant HIV strains that may emerge as a result of non-adherence to anti-retrovirals are transmissible to other people. Furthermore, because drug resistance allows HIV to replicate in the body more freely, people with higher
viral loads are at a greater risk of developing HIV-related illnesses that require expensive medical care. They are also more infectious.

**HIV-Specific Travel and Residence Restrictions Propagate Stigma and Discrimination**

HIV-specific travel and residence restrictions foster stigma and discrimination by sending the message that people with HIV are dangerous and that their movement needs to be controlled by authorities. This contributes to a climate of fear and hostility, which deters nationals and non-nationals alike from coming forward to utilize HIV prevention, treatment, care and support services. Non-nationals who know that they are HIV-positive, or who have engaged in behaviors that put them at risk for HIV, may fear that seeking medical attention or taking an HIV test could result in deportation.

While such consequences are highly problematic, the indirect implications of travel and residence restrictions undermine public health even more. By institutionalizing one type of HIV-specific discrimination, governments are implying that discrimination in other areas such as employment, housing, education and healthcare is acceptable. Letting HIV-specific discrimination go unchecked reinforces the stigma associated with HIV/AIDS, further causing HIV-positive people to be shunned, isolated, verbally abused and physically attacked by members of their families and communities.

Fear of these consequences deters people from adopting proven HIV prevention technologies, seeking HIV testing, disclosing HIV-positive test results to others (including intimate partners) and accessing HIV treatment and care. This is especially true among vulnerable populations, including immigrants and migrant workers.

**HIV-Specific Travel and Residence Restrictions Violate Human Rights Commitments**

While countries may impose immigration and visa restrictions as a valid exercise of their national sovereignty, they are also bound by international human rights norms. HIV-specific travel restrictions constitute a violation of the rights to non-discrimination and to equality before the law because HIV status does not provide a legitimate public health reason for differential treatment. The basis for this view is a 1984 United Nations document known as the Siracusa Principles, which indicates that government-imposed restrictions must be rationally related to achieving a legitimate goal and must be the least restrictive means of achieving that goal. Banning the entry and stay of HIV-positive non-nationals is not the least restrictive means of protecting a country’s residents from HIV infection. In fact, it would be difficult to argue that travel restrictions are even rationally related to such a goal.\(^5\)

HIV-specific travel and residence restrictions also violate other human rights, including the right to privacy; the right to security of the person; the right to protection of the family; the right to withhold consent to medical treatment; the right to seek and receive information; and the right to the highest attainable standard of health. Of particular concern is the potential for travel and residence restrictions to serve as justification for testing people for HIV without obtaining their informed consent, a practice which may be widely imposed on migrant workers in some parts of the world.\(^6\)

The implementation of restrictions also can result in denial of the right to seek political asylum, leaving HIV-positive people in perilous situations, and even in denial of the right to life, since HIV-positive non-nationals caught by authorities may be refused lifesaving medical treatment while in detention, or may be sent back to a place where treatment is not available.\(^7\)

Most of the world’s countries, recognizing the vast human development and security implications of the AIDS epidemic, have, in recent years, increasingly sought to come together in support of an effective global response. And yet HIV-specific travel and residence restrictions undermine several key provisions of the United Nations General Assembly’s 2001 Declaration of Commitment on HIV/AIDS and 2006 Political Declaration on HIV/AIDS. These include provisions relating to human rights; HIV-related stigma and discrimination; voluntary counseling and testing; and the needs of vulnerable populations.\(^8,9\)
HIV-specific travel and residence restrictions also contravene the widely affirmed principle of the Greater Involvement of People Living with HIV because they inhibit the participation of HIV-positive people in the global response to the AIDS epidemic. When travel restrictions prevent HIV-positive people from attending AIDS conferences and meetings that shape global health initiatives, the world is being denied their valuable insights about the needs and views of the most affected communities. HIV-positive people themselves are being denied full citizenship in global civil society.

HIV-Specific Travel and Residence Restrictions Ignore the Realities of Globalization

One of the most striking features of the 21st-century global community is its steadily increasing mobility. As a complex web of human and financial networks continues to draw the world closer together, vast groups of people are traveling to foreign countries for jobs, educational opportunities and reunification with family members. The global AIDS epidemic has led many countries to question whether such mobility is a threat to their well-being. As previously discussed, screening foreigners for HIV does nothing to protect public health, and governments would be better off strengthening HIV services for everyone within their national borders, regardless of citizenship status.

Economic arguments for screening out HIV-positive visitors are also untenable. There is no evidence to support the premise that allowing HIV-positive non-nationals to enter and settle in a country significantly increases government expenditures. Assertions about the financial burden imposed by HIV-positive non-nationals are even more dubious when they fail to take into account the direct and indirect contributions that non-nationals make to a country’s economy.

Furthermore, there have been no signs in the past that large numbers of HIV-positive people would seek to immigrate to wealthy countries without travel restrictions in order to enjoy state-sponsored medical benefits. As the drive toward universal access to antiretroviral therapy continues, it is even less plausible that restrictions are needed to prevent the large-scale medical migration of HIV-positive people.

Selectively applying an economic rationale to immigration decisions is also objectionable on human rights grounds. In the evaluation of immigration applications, there is utterly no justification for considering the potential cost of care for HIV but not for other health conditions, and such differential treatment therefore constitutes discrimination.

The IAS is Part of a Worldwide Movement to Eliminate All HIV-Specific Travel and Residence Restrictions

As the foremost independent association of HIV professionals, as well as the custodian and lead organizer of the International AIDS Conference, the IAS recognizes its unique responsibility to HIV-positive people and their families and communities. Since its inception, the IAS has made the fight against HIV-related stigma and discrimination a cornerstone of its work. The IAS moved the 1992 International AIDS Conference from Boston to Amsterdam to protest the United States’ ban on HIV-positive travelers, and has refused since then to hold any conferences in the U.S. until this law is reversed. In 1992, the IAS declared its intent to not hold conferences in any country imposing HIV-related restrictions on short-term visitors. The IAS Governing Council amended its official policy in late 2008 to confirm its opposition to country policies that impose any HIV-specific restrictions on entry, stay or residence.

The IAS’s strong leadership on this issue has contributed to the growing momentum to overturn HIV-specific travel restrictions worldwide. In late 2007, the Global Fund to Fight AIDS, Tuberculosis and Malaria resolved not to hold board or committee meetings in countries with short-term entry restrictions or HIV disclosure requirements. The Global Fund also called on UNAIDS to convene a task team to further address the situation on an international level. At UNAIDS’ invitation, the IAS served as the secretariat of the International Task Team on HIV-related Travel Restrictions. (See box)

Through its efforts, the IAS seeks to convey that HIV-specific travel and residence restrictions, far from being a footnote to the AIDS epidemic, embody all that is still wrong with the global response. By failing
IAS Policy Regarding the Right to Travel of People Living with HIV/AIDS • 19 January 2009

United States and China Report Their Intentions to Lift Restrictions

The United States government banned HIV-positive non-nationals from entering the U.S. in 1987, and the U.S. Congress made the policy into law in 1993. In mid-2008, Congress voted to overturn the 1993 law, clearing the way for the U.S. Department of Health and Human Services (DHHS) to remove HIV from an official list of communicable diseases that disqualify non-nationals from entry. DHHS has pledged to do so after completing its rulemaking process, which includes a public comment period. However, as of early November 2008, no new rule had been implemented, which meant that immigration authorities continued to follow the same screening practices. Thus, for practical purposes, the ban remains in effect in the United States, and there is no guarantee that a new DHHS rule will eliminate all forms of consideration of HIV status from entry processes.

Legislation also has imposed discriminatory practices in China, which reportedly deported HIV-positive non-nationals until recently. When the Global Fund to Fight AIDS, Tuberculosis and Malaria expressed opposition to having delegates to a 2007 Global Fund meeting in China screened for HIV, Chinese authorities pledged to change legislation that requires people to declare their HIV status upon entering the country. The Global Fund was first told in early 2006 of the pending change, but the new legislation was still being prepared almost two years later.

The International Task Team on HIV-Related Travel Restrictions

At the request of the Global Fund to Fight AIDS, Tuberculosis and Malaria, UNAIDS convened the International Task Team on HIV-related Travel Restrictions in January 2008. The Task Team, which was comprised of representatives of governments, intergovernmental agencies, nongovernmental organizations and civil society, sought to catalyze global action on HIV-related travel and residence restrictions. Its comprehensive review of the history, context and implications of such restrictions laid the basis for recommendations directed at the UNAIDS Programme Coordinating Board, the Board of the Global Fund to Fight AIDS TB and Malaria, UN Member States, the private sector and civil society. Due in part to the Task Team’s efforts, travel and residence restrictions were discussed by prominent speakers at the 2008 United Nations High Level Meeting on AIDS, 2008 International AIDS Conference and other fora throughout the world.

In 2008, the IAS served as the Secretariat for the International Task Team on HIV-related Travel Restrictions. Members of the Task Team, along with the IAS, supported the publication of Entry Denied: Denying Entry, Stay and Residence Due to HIV Status, Ten Things You Need to Know (http://www.iasociety.org/Web/WebContent/File/travel_restrictions_English_WEB.pdf). This document highlights the central objections to travel restrictions and explains how individuals and organizations can encourage change in their own and other countries. The document is also available in Spanish, French, Arabic and Russian. The document was supported by 30 additional organizations, governments and UN agencies.

IAS Monitoring of HIV-Specific Travel and Residence Restrictions and Their Consequences

In 2008, the IAS launched the Global Database on HIV-Related Travel Restrictions (www.hivtravel.org). This database is an initiative of the German AIDS
Federation, the European AIDS Treatment Group and the International AIDS Society. The database provides updated information from 196 countries on existing regulations denying entry or residency for people living with HIV, based on relevant country legislation. Wherever possible the database informs about the mechanisms used in practice, to support implementation and enforcement of HIV-related travel restrictions. It is the successor to earlier information provided on the European AIDS Treatment Group web site.

The purpose of this new initiative is hence to provide an online resource to all stakeholders (including people living with HIV, civil society, inter-governmental organizations and the private sector) showing the current situation with regard to restrictions based on HIV status, which countries employ them and the different forms they take. The new website displays additional features for both information and advocacy purposes. The database will serve as a regularly updated source of information mapping the evolution of HIV-travel restrictions globally, a mechanism to monitor HIV-related travel restrictions and their impact, and a publicly available tool for advocacy, policy and international accountability initiatives, as well as to inform personal travel and migration.

**Using IAS Conferences to Build Awareness and Advocacy**

On an ongoing basis, the IAS uses the International AIDS Conference as a vehicle for calling attention to HIV-related travel and residence restrictions. The International AIDS Conference is also a vehicle to change harmful host country HIV-specific policies on travel and residence.

Advocacy by civil society before the International AIDS Conference (AIDS 2006) in Toronto led to a permanent change, in 2005, to Canada's immigration policy and practice. The Canadian visa application form was replaced by one that did not demand that people living with HIV disclose their status when applying for a visa for short-term (less than six months) entry.

Until May 2005, the form effectively required people from most countries in Asia, Africa, Latin America and the Caribbean to disclose HIV/AIDS. It asked whether applicants or family members had ever been treated “for any serious physical or mental disorders or any communicable or chronic diseases”. The answers would purportedly help to determine whether a person was “medically inadmissible”. This would be the case if he or she is: “likely to be a danger to public health or public safety”; or “might reasonably be expected to cause excessive demand on [publicly-funded] health or social services”; and specifically, if he or she would add to waiting lists for services.

From late 2004, AIDS 2006 organizers and civil society groups raised objections with the Canadian Government. They noted that eliminating a country’s discriminatory and unjustified restrictions on the entry of PLHIV was an important criterion in determining whether the conference could be held there. Citizenship and Immigration Canada recognized that the question on the application form was broader than necessary to assess “medical inadmissibility”, and undertook a review. The outcome was the introduction of a narrower set of questions on the form, focusing on TB and mental disorders that would require social and/or health services during the stay. However, a mandatory HIV test is still required for immigration and long-term entry to Canada.
Endnotes

1 These and other figures refer to countries, territories and areas. 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. All information is taken from the Global Database on HIV-related Travel Restrictions, available at http://www.hivtravel.org. The authors of this document have not independently verified the information in the database, and cannot guarantee its accuracy.

2 World Health Organization (1988), Statement on screening of international travellers for infection with Human Immunodeficiency Virus, WHO/GPA/INF/88.3.


Additional resources

• Canadian HIV/AIDS Legal Network, Immigration and Travel http://www.aidslaw.ca/immigration


• Gay Men’s Health Crisis, HIV Immigration and Travel Bar http://www.gmhc.org/policy/federal/immigration_travel.html

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


Annex

Countries, territories and areas with and without HIV-specific Travel and Residence Restrictions

The following overview is based on information collected for the Global Database on HIV-Related Travel Restrictions, an initiative of the German AIDS Federation, the European AIDS Treatment Group and the International AIDS Society. The authors of this document have not independently verified the information in the database, and cannot guarantee its accuracy. See the database for regularly updated summaries of what is known about restrictions in individual countries (www.hivtravel.org).

These 63 countries, territories and areas have some form of HIV-specific restriction on entry, stay and residence:

Andorra
Armenia
Aruba
Australia
Bahrain
Bangladesh
Belarus
Belize
Botswana
Brunei
Darussalam
Bulgaria
China
Comoros
Cuba
Cyprus
Dominican Republic
Ecuador
Egypt
Fiji
Georgia
Hungary
Iran
Iraq
Israel
Jordan
Kuwait
Lithuania
Malaysia
Marshall Islands
Micronesia
Moldova
Mongolia
New Zealand
Nicaragua
North Korea
Oman
Panama
Papua New Guinea
Paraguay
Poland
Qatar
Russian Federation
Samoa
Saudi Arabia
Singapore
Slovakia
Solomon Islands
South Korea
Sudan
Syrian Arab Republic
Taiwan
Tajikistan
Tonga
Tunisia
Turkmenistan
Turks and Caicos Islands
Ukraine
United Arab Emirates
United States
Uzbekistan
Yemen

These 8 countries, territories and areas appear to bar the entry of HIV-positive people for any reason or length of stay:

Brunei
Darussalam
China
Oman
Qatar
Sudan
United Arab Emirates
Yemen

These 5 countries, territories and areas, require proof of HIV-negative status when the period of stay surpasses a particular duration (stays beginning as short as ten days up to 90 days):

Egypt
Iraq
Singapore
Tunisia
Turks and Caicos Islands

These 28 countries, territories and areas deport people once their HIV-positive status becomes known:

Armenia
Bahrain
Bangladesh
Brunei
Darussalam
Malaysia
Maldives
Moldova
Mongolia
North Korea
Oman
Russian Federation
Saudi Arabia
Singapore
South Korea
Sudan
Syrian Arab Republic
Taiwan
Tajikistan
United Arab Emirates
United States
Uzbekistan
Yemen
For these 21 countries, territories and areas, various sources provided contradictory information:

Algeria
Angola
Benin
Bolivia
British Virgin Islands
Central African Republic
Costa Rica
Equatorial Guinea

There are 17 countries, territories and areas for which it has not yet been possible to obtain information on HIV-specific restrictions on entry, stay and residence:

Afghanistan
Bahamas
Bhutan
Cape Verde
Congo
Cook Islands
Dominica
Kiribati
Liberia

These 103 countries, territories and areas have no HIV-specific restrictions on entry, stay and residence:

Albania
Antigua and Barbuda
Argentina
Austria
Azerbaijan
Barbados
Belgium
Bosnia and Herzegovina
Brazil
Burkina Faso
Burundi
Cambodia
Cameroon
Canada
Chad
Chile
Colombia
Cote d’Ivoire
Croatia
Czech Republic
Democratic Republic of the Congo
Denmark
Djibouti
El Salvador
Estonia
Ethiopia
Finland
France
Gabon
Gambia
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Holy See
Hong Kong
Iceland
India
Indonesia
Ireland
Italy
Jamaica
Japan
Kazakhstan
Kenya
Kosovo
Kyrgyzstan
Laos
Latvia
Lesotho
Libyan Arab Jamahiriya
Libya
Liechtenstein
Luxembourg
Macedonia
Madagascar
Malawi
Maldives
Mali
Malta
Mauritania
Mexico
Monaco
Montenegro
Morocco
Mozambique
Myanmar
Namibia
Nepal
Netherlands
Nigeria
Norway
Pakistan
Peru
Philippines
Portugal
Romania
Saint Lucia
San Marino
Senegal
Serbia
Sierra Leone
Slovenia
South Africa
Spain
Sri Lanka
Swaziland
Sweden
Switzerland
Tanzania
Thailand
Togo
Trinidad and Tobago
Turkey
Uganda
United Kingdom
Uruguay
Venezuela
Zambia
Zimbabwe