

IAS POLICY PAPER

Banning Entry of People Living with HIV/AIDS

The United States, China and Saudi Arabia do not allow HIV-positive persons to enter their borders

“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 prospective HIV-positive visitors to declare their HIV status on visa application forms or other documentation required for entry into the country.” – IAS Governing Council

Guiding Principles

People living with HIV/AIDS face unnecessary barriers when they seek to enter some countries as business and professional travellers, visitors, immigrants, or refugees. In these countries, families adopting HIV-positive children from overseas face these same barriers: discriminatory laws that clearly relate a key message, “HIV-positive people are not welcome in our country.”

The International AIDS Society regards these countries’ laws as discriminatory and irrational. Furthermore these “travel ban” laws perpetuate and reinforce the stigma attached to living with HIV/AIDS. Countries that erect entry barriers for people living with HIV (PLHIV) – notably the United States (U.S.), China and a number of Middle Eastern countries, including Saudi Arabia, justify their policies as necessary to protect public health and the public purse.

Consensus among experts in infectious disease and public health, including the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the International Organization of Migration (IOM) affirm recommendations from the U.S. Centers for Disease Control that HIV/AIDS should not be considered a condition that poses a threat to public health in relation to travel because, although infectious, the virus cannot be transmitted by the mere presence of a person with HIV in a country or by casual contact.

Further, according to the Office of the High Commissioner on Human Rights and UNAIDS’ *International Guidelines on HIV/AIDS and Human Rights*, “there

is no public health rationale for restricting liberty of movement or choice of residence on the grounds of HIV status... Therefore, any restrictions on these rights based on suspected or real HIV status alone, including screening of international travellers, are discriminatory and cannot be justified by public health concerns”.

There is growing international momentum to overturn entry restrictions on people living with HIV/AIDS worldwide, given their emerging significance in obstructing effective involvement and adequate participation of people living with HIV whose voices are most needed in international HIV/AIDS conferences, strategic policy debates and governance of global health initiatives.

Overview of the Evidence Base

Many of the laws and policies in which HIV infection is grounds for denying admission of non-citizens on short-term visits were put into place many years before the development and application of current knowledge, tools and technologies on HIV transmission, prevention and treatment. Twenty-five years later, there is wide consensus that such laws do not reduce HIV transmission. Discriminatory exclusion of PLHIV not only promotes societal denial of the collective responsibility for HIV/AIDS, but also creates a false sense of security among residents that counteracts sound prevention efforts, including raising awareness of their own vulnerability.

Studies based on experiences of HIV-positive people travelling to the U.S. under current policy have shown that laws restricting entry on the basis of HIV status have not been effective in keeping out HIV-positive people; instead they have been counterproductive by pushing the issue underground, as many choose to lie about their status rather than risk being turned away. The fear of getting “caught” forces HIV-positive people to take unauthorized “drug holidays” while travelling, and such interruptions of treatment increase the

China HIV Travel Restrictions

China's current visa application form, introduced in September 2007, requires disclosure of HIV status as a condition for entrance into the country. If a person declares themselves HIV-positive on this application form, they will almost certainly be denied an entrance into China. According to the Ministry of Health of the People's Republic of China, in order to ensure smooth entry of PLHIV into China to attend the 16th Board Meeting of the Global Fund to Fight AIDS, TB and Malaria meeting in November 2007, the Chinese Government implemented a special waiver to ensure no delegate attending the board meeting would be required to disclose their HIV status on visa applications forms, or upon his or her entry to China; and that all delegates would be treated equally and not required to complete any additional forms or applications.

A series of meetings took place with relevant parties in Beijing in advance of the Global Fund Board meeting, in which the passage and timing of newer visa/entrance legislation was discussed. Civil society and community activists called for a public statement acknowledging the current discriminatory nature of the Chinese visa form and the law governing entry, and an announcement from the Chinese Government outlining the way forward in terms of the change of legislation.

On 8 November 2007, the Chinese Ministry of Health announced its commitment to changing its immigration laws, scrapping travel restrictions that limit entry of people living with HIV. The amendment of the Chinese Frontier Health and Quarantine Law, which contains relevant stipulations concerning the entry of people living with HIV/AIDS into China, is listed in the working agenda of the State Council and is actively under preparation in several government departments. The law is expected to be submitted for decision in the first half of 2008. The government has made assurances that under the new law, HIV status declaration will no longer be required.

chances of developing new or further viral mutations, which can lead to drug resistant strains of HIV, with risks of possible treatment failure.

Scientific evidence following the introduction of effective Highly Active Antiretroviral Therapy (HAART) showed that there was a significant reduction of viral load and infectivity of HIV-positive people on treatment. The continued expansion of treatment programmes towards Universal Access by 2010, and the sustained fall in the cost of treatment in low- and middle-income countries dispels the myth that travel of PLHIV would drive up the cost of health care systems abroad. Progress in the global AIDS response calls for further study and dialogue on HIV entry restrictions worldwide and the related impact on stigma, public health and human rights.

IAS' Policy Position on Short-Term Travel Discrimination

The IAS believes that people living with HIV/AIDS have the right to full enjoyment of their human rights, including the right to privacy, confidentiality and protection from stigma and discrimination. Short-term travel policies of any country, in which disclosure of HIV status is required for prospective visitors, treat HIV-positive people seeking entry on short term visas differently on the basis of their HIV-positive status. These are not only discriminatory, but also contribute to fuelling national and international stigma against people living with HIV/AIDS.

The IAS calls on all countries that restrict the short term entry of people living with HIV/AIDS and/or require prospective visitors to declare their HIV status to urgently lift such discriminatory policies. The IAS also urges countries to review policies in relation to HIV and restrictions on immigration and other longer-term entry, including adoption and student visas, in light of public health evidence and human rights principles.

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 prospective HIV-positive visitors to declare their HIV status on visa application forms or other documentation required for entry into the country.

U.S. HIV Travel Restrictions

Since 1987, non-U.S. citizens living with HIV have been banned from entering or transiting through the U.S. without a 'special waiver'. This restriction applies to those seeking short-term entry, and also to those that seek longer term visas, including residency status. The ban followed U.S. Congress' addition of AIDS to the Public Health Service (PHS) list of "dangerous, contagious diseases for excluding persons from the United States".

This means that non-U.S. citizens who are living with HIV/AIDS must declare their HIV-status on visa application forms and upon entering the United States. If a person declares themselves as HIV-positive, they are denied entrance. Unless a leading government authority appeals for a special waiver, the person may or may not be allowed to enter or transit through the United States. Once a person's HIV status is officially declared, his or her name and HIV status remains on U.S. immigration lists permanently.

Despite statements from the PHS that "admission of people with HIV would not significantly increase the risk of HIV infection to the U.S. population", Congress focused their objections around the protection of American public health and health care costs, and in 1993 the policy was signed into law by President Clinton. Therefore, successful removal of the U.S. ban will require Congressional legislation and signature of the President, either in the form of stand-alone legislation or as a rider or amendment to a larger bill. Under the current law, eligibility for any type of waiver requires individuals to disclose their HIV status; a disclosure that may limit their ability to travel to, or through, the U.S. in the future.

On 1 December 2006, President George W. Bush announced that "(The President) will direct The Secretary of State to request and The Secretary of Homeland Security to initiate a rulemaking that would propose a categorical waiver for HIV-positive people seeking to enter the United States on short-

term visas... A categorical waiver would enable HIV-positive people to enter the United States for short visits through a streamlined process." Activists and experts who have been working on the repeal of this law have observed that the details of implementation of the President's proposal remain unclear. It is not clear how the streamlined process will work, or how the 'Categorical Waiver' will fundamentally differ from current discretionary waivers. What is clear is that HIV-positive persons, in order to qualify for a "categorical waiver" would continue to be obliged to declare their HIV status prior to entering the United States.

The Center for Strategic and International Studies, in its March 2007 report, *Moving Beyond the U.S. Government Policy of Inadmissibility of HIV-Infected Noncitizens*, examined challenges and options for current U.S. law, and proposed that U.S. policy should be consistent with current scientific knowledge, public health 'best practice', and aligned with humanitarian principles.

U.S. Congressional Representative, Barbara Lee, introduced the "HIV Non-discrimination in Travel and Immigration Act" in August 2007. Representative Lee's bill sought to amend the 1993 Immigration and Nationality Act, striking the provision that renders PLHIV inadmissible to the U.S., and returning the authority of the Secretary of Health and Human Services (HHS) in making the determination regarding the status of HIV as a communicable disease of public health significance. The bill would mandate an HHS review of all policies regarding the continued listing of HIV as grounds for inadmissibility. A report from the process would be made available for public comment, and findings would be submitted to Congress on whether to maintain the ban by regulation or remove it based on public health analysis. While Representative Lee's legislation still falls far short of overturning the discriminatory policy, the outcome would align the Immigration and Nationality Act with public health and pave the way for repeal of the law regarding inadmissibility of HIV-positive people into the U.S.

IAS Advocacy Action

The IAS has historically demonstrated bold leadership in fighting stigma and discrimination, expressed through travel restrictions against PLHIV since 1989, when Dutch HIV-prevention expert, Hans Paul Verhoef, was jailed for four days in Minneapolis en route to the 1990 International AIDS Conference in San Francisco, after AZT was discovered in his suitcase. Demonstrations and mass boycott of the conference followed, which contributed to building the general principle that International AIDS Conferences would only be held in countries where unrestricted, non-discriminatory entry could be assured for people living with HIV. The episode subsequently resulted in moving the 1992 International AIDS Conference from Boston to Amsterdam. For the past 17 years, the IAS has not hosted a conference in the U.S.

Saudi Arabia HIV Travel Restrictions

Some years ago, the Saudi Government passed legislation protecting the privacy of PLHIV and guaranteeing their right to work. Saudi citizens living with HIV have also long had the right to free medical care. But the rights and protections are only for Saudi citizens. More than three-quarters of the reported HIV cases in Saudi Arabia are of foreign residents. Foreigners living with HIV in Saudi Arabia are typically imprisoned and then deported.

Saudi Arabian law, per the Ministry of Health states that all persons entering its kingdom from what it calls "proven areas with an AIDS outbreak" are subject to an HIV test and "medical exam" before being granted a tourist visa. Persons seeking residence in Saudi Arabia must prove they are not infected with HIV before being granted residence status. Furthermore, non-Saudis who are infected with HIV may be deported or returned to their countries or any other country of their choice, while ensuring access to necessary treatment until they leave Saudi territory.

This policy is typical of countries in the Middle East region.

In 2004, the IAS and AIDS 2006 (Toronto) co-organizers recognized that application forms for Canadian visas required prospective visitors to Canada declare their HIV-positive status. The IAS worked with Canadian partners, through a working group convened by the AIDS 2006 Toronto Local Host, to engage the Canadian government to remove the disclosure requirement. In 2005, the Canadian government amended this policy, permanently removing the requirement for short-term visa applicants to disclose their HIV status.

Candidate countries for the International AIDS Conference and the IAS Pathogenesis, Treatment and Prevention Conference will continue to be evaluated on the basis of their ability to assure non-discriminatory entry for people living with HIV/AIDS. The International AIDS Society will continue to play a leading role in raising awareness and facilitating international debate, dialogue and advocacy, urging countries to review and reform discriminatory laws and policies that restrict the freedom of movement of people living with HIV.

As the world's leading independent association of HIV professionals, the custodian and lead organizer of the International AIDS Conference and the organizer of the IAS Pathogenesis, Treatment and Prevention Conference, the IAS is committed to the full engagement of all stakeholders in the response to HIV/AIDS, and is fully committed to the Greater Involvement of People Living with HIV/AIDS (GIPA) principles.

Key Challenges for the Future

On 5 November 2007, the U.S. Department of Homeland Security (DHS) issued a notice for public comment on the proposed rulemaking that provides on a limited and categorical basis, a "more streamlined process" of issuing waivers to the current law restricting entry of PLHIV into the United States. The proposed rule dictates HIV-positive people to show evidence that they pose minimal risk to U.S. public health; that their admission will not create costs to any U.S. government agency; and that they will have access to an adequate supply of antiretroviral drugs as needed. However, the HIV entry ban remains law. Policy and advocacy efforts therefore seeking to overturn U.S. HIV entry restrictions must engage a complex and technical process of rulemaking, and invest in promoting economic, human rights and public health evidence that supports the much needed changes in law and policy.

Further Reading

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Image by Petra Rohr-Rouendaal, for education on HIV stigma and discrimination

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