Selected Bibliography

Risk + Stigma: MIGRANTS

HIV and the Law: Risks, Rights & Health

September 2012
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### Treaty Article


### Nature, Scope & Source of Authority
- Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.
- Multilateral treaty between UN Member States.

### Substance

Article 2: (a): ensure that any person whose rights or freedoms are violated shall have an effective remedy; (b): that any person who seeks a remedy will have their access to a competent judicial, administrative or legislative authorities or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) ensure that the competent authorities shall enforce such remedies when granted.

Article 3: States shall ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in this Covenant.

Article 10: imprisoned individuals shall be treated with humanity and respect for the inherent dignity of the human person; accused persons shall, except for in exceptional circumstances, be segregated from convicted persons and receive separate treatment appropriate to their status as an unconvicted person; accused juvenile persons shall be separated from adults and have adjudication as quickly as possible; convicted juveniles should be segregated from adults and be accorded treatment appropriate to their age and legal status; and the aim of the penitentiary systems shall be focused on reformation and social rehabilitation.

Article 12: (1) everyone lawfully within the territory of a State shall have the right of movement and freedom to choose his residence within that territory; (2) everyone shall have the right to leave any country, including his/her own; (3) previously mentioned rights should not be subject to any restrictions unless they are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant; and (4) no one shall be arbitrarily deprived of the right to enter his/her own country.

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### Substance

**Article 12: (right to highest attainable standard of health)**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
   - (b) The improvement of all aspects of environmental and industrial hygiene;
   - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
   - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

### Treaty Article


### Nature, Scope & Source of Authority

- On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions.

- In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity".

### Substance

As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made on the basis of sex...in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (article 3). The Convention on the Political Rights of Women's provisions are restated in article 7 of the present document, whereby women are guaranteed the rights to vote, to hold public office and to exercise public functions. This includes equal rights for women to represent their countries at the international level (article 8). The Convention on the Nationality of Married Women - adopted in 1957 - is integrated under article 9 providing for the statehood of women, irrespective of their marital status. The Convention, thereby, draws attention to the fact that often women's legal status has been linked to marriage, making them dependent on their husband's nationality rather than individuals in their own right. Articles 10, 11 and 13, respectively, affirm women's rights to non-discrimination in education, employment and economic and social activities. These demands are given special emphasis with regard to the situation of rural women, whose particular struggles and vital economic contributions, as noted in article 14, warrant more attention in policy planning. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women's legal
Finally, in article 16, the Convention returns to the issue of marriage and family relations, asserting the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and command over property. 

**Treaty Article**

**Nature, Scope & Source of Authority**
- Resolution adopted by the General Assembly without reference to a Main Committee (A/54/L.84).

**Substance**
Includes provisions regarding the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

**Treaty Article**

**Nature, Scope & Source of Authority**
- Resolution adopted by the General Assembly without reference to a Main Committee (A/55/383).
- This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

**Substance**
The purposes of this Protocol are:
(a) To prevent and combat trafficking in persons, paying particular attention to women and children;
(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
(c) To promote cooperation among States Parties in order to meet those objectives.

**Treaty Article**

**Nature, Scope & Source of Authority**

**Substance**
Adopted in 1998, the Declaration commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions. These categories are: freedom of association and the
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<td>Substance</td>
<td>Article 1 defines discrimination as including “any distinction, exclusion, limitation or preference which, being based on race, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education”.</td>
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<td>Nature, Scope &amp; Source of Authority</td>
<td>Art. 13: Convention is binding only on Members of the ILO whose ratifications have been registered with the Director-General. Convention comes into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General and after that, it shall come into force for any Member twelve months after the date on which its ratification has been registered.</td>
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| Substance | Art. 2: Each Member must provide adequate and free service to assist migrants for employment and to provide them with accurate information.  
Art. 6: Members must provide treatment that is in no way less than that which it applies to its own nationals, without discrimination, regardless of nationality, race, religion, or sex. This includes renumeration, membership in trade unions and enjoyment of benefits of collective bargaining, accommodation, social security, employment taxes, and legal proceedings related to the matters referred to in this Convention.  
Art. 14: Member can accept all or any of the Annexes outlined in the declaration by notifying the Director-General.  
Art. 17: A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the ILO for registration. |

| Treaty Article | International Labour Organization, Migrant Workers (Supplementary Provisions) Convention (C143), 60th Sess., Convention Concerning Migrations in Abusive Conditions and the promotion of Equality of Opportunity and Treatment of |

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<th>Nature, Scope &amp; Source of Authority</th>
<th>• Art. 18: Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General and shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.</th>
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<td>Substance</td>
<td>Members are required to determine if and where illegally employed migrants are located, to suppress clandestine movements of migrants, prosecution of those who employ illegal migrant workers, give equal opportunity and treatment to migrant workers in respect of employment, occupation, social security, trade union, and cultural rights.</td>
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<td>Nature, Scope &amp; Source of Authority</td>
<td>• Convention applies to the entire migration process of migrant workers, members of their families which includes preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin.</td>
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<td>Substance</td>
<td>The various articles defines the various types of workers, outlines who the Convention does not apply to, defines who is considered a “member of the family” and therefore falls under the Convention, the definition of a documented versus an undocumented worker, and what the terms state of origin, employment and transit mean. Some of the rights for migrant workers and their families outlined in the Convention include their right to leave any State, including their State of origin without restrictions, and to return and remain in their State of origin. The right to life of migrant workers and their families are protected by law without being subjected to torture, cruel, inhuman or degrading treatment or punishment. The Convention outlines the rights of migrant workers and their families, which includes not being forced to conduct slave labor (forced or compulsory), be forcefully expelled, be subjected to unlawful arrest, detention or discriminated against.</td>
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The report discusses the global trend in migration, its future and the capacities required by nations, organizations, civil society and private business to handle this trend. At the time of the report writing, there were an estimated 214 million migrants, a number expected to rise to 405 million by 2050 due to demographic disparities, the impact of environmental and climate change, and changes in international politics, the economy, and technology. The report maintains that it is necessary for States to prepare detailed, evidence based plans and institutions that will be able to efficiently account for fluctuations in migrant populations.

The report suggests policies and practices that may allow for successful migration management, to serve as examples for States in constructing and tailoring their own responses on a country specific level. It also provides data on trends in migration, examining in particular the impact of the financial crisis on migrants, migration and remittances. Together, the information serves to better enable States and society actors to respond to and prepare for the cross-border and regional movement of people and challenges posed by migration and increased human mobility.


The report provides information on the population policies of 195 countries, 192 of which are Member States of the United Nations. It is a dissemination of the information gathered from the Population Division of the United Nations Department of Economic and Social Affairs monitoring of the implementation of the International Conference on Population and Development’s (ICPD) Programme of Action goals across the world. The information presented includes government views on population size and growth, population age structure and spatial distribution, and on the demographic components, including fertility, mortality and migration, that impact them; government objectives regarding each variable; and government policies concerning interventions to influence each variable.

The information is collected from a variety of sources, including government response to U.N. inquiries, publications, documents and other materials issues by Governments, materials from international organizations, and materials from the press, academic articles, reports and studies from NGOs. The report highlights the evolution of population policies from 1976 to 2009, with particular attention paid to child mortality, maternal health and responses to HIV/AIDS. The report also tracks the evolution of each country’s government policies regarding population size, growth, age structure, fertility, family planning, health and mortality, spatial distribution and internal and international migration from 1976-2009.


The report examines the impact of demographic change and inequality on migration, highlighting the experiences of individual migrants, families and communities and examining short term and seasonal migration as well. The report showcases the benefits of migration on human development, in the form of increased household income, improved access to education and health care, and the empowerment of disadvantaged populations. It also
discusses problems surrounding migration, particularly when the movement is constrained or is the result of threats or denial of rights at home.

The report discusses how national policies can impact migration and human development, in terms of the institution of travel restrictions and the denial of country level basic rights – including education and health care – to migrants. It maintains that human development can be improved by lowering barriers to movements and improving the treatment of migrants. It offers guidance to nations looking to reform laws in order to realize potential benefits for migrants, community and states as a whole. It contends that migration is very important for enabling households to improve their standard of living and livelihoods in developing countries, and calls upon governments to integrate migration policy into development policy.


This policy brief examines HIV in the context of international labor migration and the particular risks and needs of international labour migrants living with HIV.


This study sought to gather preliminary information on the social and health issues that are impacting the spread of HIV/AIDS amongst Korea’s migrant community. In particular, the researchers sought to analyze the situation of certain ethnic groups and HIV/AIDS intervention and to conduct a needs-based assessment of their situation, to collect information about the migrants geographic location, the feasibility of anonymous VCT services through outreach shelters, the effectiveness of intervention tools and approaches, and to then use the information gathered to design potential intervention programs that meet the basic needs of migrant workers and that provide care, counseling and support services.

Estimated Lifetime Risk for Diagnosis of HIV Infection amongst Hispanics/Latinos—37 States and Puerto Rico, 59 Centre for Disease Control and Prevention 1297, 1297-1301 (2010).

The article notes the elevated risk among Hispanic and Latino population in the US for the contraction of HIV. The authors calculated the estimated lifetime risk (ELR) for diagnosis of HIV infection among Hispanics/Latinos in 37 states and Puerto Rico, finding that 1.92% (1 in 52) of Hispanics/Latinos would be diagnosed with HIV during their lifetime, compared to 0.59% of white and 4.65% of African Americans. The authors called for efforts to reduce high risk behaviors and expand access to medical services, testing and health care.


This study investigated HIV prevalence rates and risk factors for infection among women in urban South Africa. The study randomly sampled 834 women from the community and found a higher HIV prevalence rate among migrant women (46.0%) than non-migrant women (34.7%). The results led to the conclusion that migration leads to an increase in risk of HIV infection and calls for an increase in targeted health care and educational service provision for migrant women.

The study was designed to decipher the risk factors contributing to HIV infection among women living on sugar cane plantation communities in the Dominican Republic. The study found that women on the plantations faced a much higher risk of HIV infection than those in the general population, with rates of infection comparable to those among female sex workers in the Dominican. The authors call for increased HIV prevention services on the plantations, including sex education, condom distribution, increased employment and educational opportunities.


By analyzing the economic, socio-cultural, and political factors that influence the HIV vulnerability of migrant workers - especially female migrant workers - the study aims to aid the design of appropriate rights-based HIV prevention programmes. It also is intended to identify emerging challenges and trends in the response to HIV and migration issues in host countries, particularly in the area of human rights and public health.


The study examines the state of HIV/AIDS care for detained immigrants in the U.S., finding that Immigration and Customs Enforcement (ICE)-supervised facilities failed to provide consistent anti-retroviral therapy to detainees, to monitor the condition of detainees, to ensure continuity of care during detainee transfers, to ensure confidentially and to prescribe prophylactic medications. Human Rights Watch found that inadequate monitoring and unenforceable standards contributed to delays, interruptions and inconsistencies in the medical care for detainees. HRW found the U.S. Department of Homeland Security policies to be conflicting, confusing and incomplete, as well as out of step with national and international standards for the provision of HIV/AIDS care in corrections facilities. This endangers the health of detainees and often results in their death. HRW recommends improving the inspection and monitoring of facilities, ensure adherence to recognized standards, protect vulnerable populations from stigmatization, abuse and harassment, and promote alternatives to detention for immigrants living with HIV/AIDS.


This report documents the standard of healthcare for detainees with HIV, document breaches of the NAT/BHIVA advice, how and why it is violated, and the repercussions of these breaches, examine structures of accountability where detainees living with HIV do not receive adequate clinical care, and produce recommendations based on the findings. The study was based on an analysis of the cases of 35 detainees with HIV whose cases have been handled by Medical Justice between June 2009 (when the NAT/BHIVA advice was published) and November 2010. Some of the detainees were initially detained prior to June 2009, and some have been detained throughout this entire period. Each of these cases involves one or more breaches of the provisions set out in the NAT/BHIVA advice.

This report is a publication Mapping of Restrictions on the entry, stay and residence of people living with HIV (UNAIDS, May 2009), and latest developments as of June 2011. According to the report there are 49 countries, territories, and areas impose some form of restriction on the entry, stay and residence of people living with HIV based on their HIV status, 5 countries require declaration of HIV status for entry or stay, resulting, for people living with HIV, in either a bar to entry/stay or the need for discretionary approval (including through granting waivers), 5 countries deny visas for even short term stays, 22 countries deport individuals once their HIV-positive status is discovered, and 128 countries, territories and areas have no HIV-specific restriction on entry, stay and residence.


The International Task Team on HIV-related Travel Restrictions focused its work on restrictions that are: (a) a part of formal law or regulation; (b) specify HIV as opposed to comparable chronic health conditions; and (c) are applied based on positive HIV status only. Such restrictions usually require a declaration of one’s HIV status and/or a mandatory test for HIV to prove that one is HIV negative. It appears that the HIV testing that is conducted is often not done with appropriate pre- or post-test counselling, confidentiality or referral to any sort of HIV prevention, treatment, care or support services. Whether the person is denied entry or is allowed to apply for a waiver, their HIV-positive status is usually noted in immigration/visa records. In countries of destination that require those staying to be HIV-negative, persons already present must take an HIV test periodically to renew their visa and/or work permit. If the migrants are found to be HIV-positive, then they may be confined prior to deportation or they may be deported summarily. The Task Team confirmed that HIV-specific restrictions on entry, stay and residence based on HIV status are discriminatory, do not protect the public health and do not rationally identify those who may cause an undue burden on public funds. The report outlined their findings and the committee’s recommendations.


Worldwide, far more people migrate within than across borders, and although internal migrants do not risk a loss of citizenship, they frequently confront significant social, financial and health consequences, as well as a loss of rights. The recent global financial crisis has exacerbated the vulnerability internal migrants face in realizing their rights to health care generally and to antiretroviral therapy in particular. Resulting interruptions in HIV services may lead to a wide range of negative consequences, including: individual vulnerability to infection and risk of death; an undermining of state efforts to curb the HIV epidemic and provide universal access to treatment; and the emergence of drug-resistant disease strains. International human rights law guarantees individuals lawfully within a territory the right to free movement within the borders of that state. This guarantee, combined with the right to the highest attainable standard of health set out in international human rights treaties, and the fundamental principle of non-discrimination, creates a duty on states to provide a core minimum of health care services to internal migrants on a non-discriminatory basis. Targeted HIV prevention programs and the elimination of restrictive residence-based eligibility criteria for access to health services are necessary to ensure that internal migrants are able to realize their equal rights to HIV prevention and treatment.

The article analyzes the research conducted by the AIDS and Rights Alliance of Southern Africa (ARASA), which looked at the extent to which the International Guidelines on Human Rights have been put to use in the Southern African Development Community (SADC) region. The authors find that while the region is undergoing reform and places within the SADC are looking to ground HIV responses in a human rights framework, the approach is uneven across the region and many countries still fail to meet minimal standards. The authors call for a reevaluation of remaining laws within the region that violate human rights standards and discriminate against those living with HIV, including the testing and exclusion of HIV-positive recruits from the military, the criminalization of same-sex relationship and the absence of legal protections for women.